

Bryan W. Shaw, Ph.D., *Chairman*
Carlos Rubinstein, *Commissioner*
Toby Baker, *Commissioner*
Zak Covar, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

May 22, 2013

The Honorable Roberta S. Jacobson
Assistant Secretary
Bureau of Western Hemisphere Affairs
U.S. Department of State
2201 C Street N.W. Room 6262
Washington D.C. 20520

Dear Secretary Jacobson:

I ask for your direct involvement in resolving a very critical situation in the Lower Rio Grande Valley of Texas. As you are well aware, Mexico is once again not making water deliveries required by the 1944 Water Treaty. This failure to deliver water is compounded by the lack of real progress through the International Boundary and Water Commission's (IBWC) handling of the situation. As you remember, a similar water deficit situation occurred recently and when resolved, both countries vowed to not let it reoccur.

To provide background to my concerns, let me review some history with regard to the previous debt settled in 2005. You were instrumental in those negotiations. Many of the discussions took place at the Department of State with your direct involvement. It was clear to Texas, at that time, the Department of State and the IBWC had the interests of the United States first and foremost. It did take time to reach a conclusion of these negotiations, but we all hoped lessons were learned to prevent this reoccurrence. At that time, I believed Mexico would honor the treaty and treat the United States as a partner and user of our joint resource, the Rio Grande.

I want to compare this with the present day actions by Mexico and the IBWC. Being part of the previous negotiations, I've advised IBWC Commissioner Edward Drusina on what I believed would be Mexico's actions to delay water deliveries and associated reactions by Mexico to the United States' proposals. Based on negotiations to date, the predicted actions have occurred almost every time. Among those were promised but then perpetually delayed deliveries from several reservoirs, including Luis Leon; or in other instances insignificant attempts at releases that do not contribute to reducing the rate of growth in the mounting water deficit. I've also suggested to Commissioner Drusina next steps to take. I am perplexed at the IBWC's continued pursuit of soft negotiations and discussions with Mexico, all the while knowing that all Mexico is doing is waiting for the next significant rain event. It appears to me that the current meetings

The Honorable Roberta S. Jacobson
Page 2
May 22, 2013

simply serve to say “we” are continuing to meet. However, progress on finding a resolution is lacking. In the interim, Mexico continues to utilize their reserves while ignoring the United States’ requests for equitable distribution of water as per the terms of the Treaty. To me, this is ineffective diplomacy and further delays water deliveries. As I’m sure you appreciate, if we do not learn from history, we will relive it. Relying on significant rain events for treaty compliance does not allow for sustainable socio-economic growth in the Lower Rio Grande Valley. Plus, it violates the spirit of the Treaty.

Mexico has failed in each of the three years in this cycle to meet the minimum treaty obligation of 350,000 acre-feet per year on average. In year one, Mexico delivered 82% of the required minimum, in year two 29% of the required minimum. This year, they have delivered approximately 6% of the required minimum. If we treated Mexico the same way as they treat us, our delivery for year 3 of the cycle in the Colorado should be closer to 94,500 acre-feet, not the 1,500,000 acre-feet they are guaranteed. I am certain that Mexico would not stand for that. Yet we appear to be at their mercy on the Rio Grande.

Contrast this with the United States’ efforts on numerous occasions, through the IBWC, to assist and benefit Mexico. Many of these are actions I would expect and applaud as neighbors and partners. Some actions I disagreed with, but nonetheless, those actions benefited Mexico. Recently, the United States stored Mexican water in Lake Mead after the 2010 earthquake. In order to provide this storage, the IBWC enacted various Minutes, including the recent Minute 319, which required extensive action by the member states of the Colorado River Compact and the federal Bureau of Reclamation. Also, Mexico requested early delivery in 2012, for water deliveries under the 1906 Convention solely for crop insurance purposes. The IBWC quickly granted this request requiring Texas water users to scramble to implement alternative actions. This action, which we protested, cost United States water users a large amount of water. Finally, over a dozen IBWC minutes have been signed, including Minute 310 in 2003, to allow for emergency delivery of Colorado River water for use in Tijuana.

I ask for the United States Department of State to take meaningful unilateral action. Mexico does not consider the United States as a water user under the 1944 treaty and does not allocate any water during their distribution decisions for treaty compliance. This is completely and totally unacceptable. The United States, on the other hand, always sets aside water for Mexico to meet our various treaty obligations. At this point in time, it is difficult to accept how the United States could consider Mexico a good faith partner in these negotiations. The only way for the United States to get the serious attention of Mexico is to take demonstrative and meaningful actions, such as reducing Colorado River water deliveries to Mexico commensurate with the pitiful quantities they

The Honorable Roberta S. Jacobson
Page 3
May 22, 2013

have delivered to the United States in the Rio Grande. As we have communicated with Commissioner Drusina on several occasions, we could hold their water in Colorado River storage, pending their compliance on the Rio Grande. To be clear, a treaty that continues to have only one party, the United States, comply, is not a treaty. We have complete control over the United States' portion of our water obligations to Mexico. Mexico should be advised that compliance with the 1944 treaty on the Rio Grande is a must if the United States is to continue to meet its obligations. To date, the IBWC has been unable to achieve a meaningful delivery from Mexico that addresses the deficit and protects our interests. No reasonable justification for this failure has been provided. This seems to demonstrate more diplomatic concern for Mexico than real water for Texas.

Let me close with a statement from IBWC Commissioner Drusina. We raised a valid issue associated with accounting of water at Fort Quitman. While I don't agree with Commissioner Drusina's response, I find one of his closing statements troubling. He wrote that "Moreover, to account for this water, in a different manner would require concurrence of the Mexican Section, something that seems entirely unlikely." I perceive his use of the word "moreover" to mean that, regardless of the contents of my letter, Commissioner Drusina seems reluctant to pursue any actions that may upset the Mexican Section. Similarly, we wonder who at the Federal level will in fact represent and protect our interests.

The Department of State must initiate direct and immediate involvement in this man-made drought in the Lower Rio Grande Valley commensurate, at a minimum, with the level that led to settling this similar issue in 2005. I strongly believe only immediate and significant unilateral action, not tacit diplomacy, will end this tragic event. Today, as we wait for negotiations to produce results, people in the Valley are suffering. I look forward to your ideas to resolve this issue and am always open to discuss ways to resolve this matter.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Carlos Rubinstein', with a stylized flourish at the end.

Carlos Rubinstein
Commissioner
Texas Commission on Environmental Quality