

9-1-2004

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Recommended Citation

LADB Staff. "Texans Seek Damages from Mexico for Failing to Comply with Water Treaty." (2004).
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Texans Seek Damages from Mexico for Failing to Comply with Water Treaty

by LADB Staff

Category/Department: Mexico

Published: 2004-09-01

A coalition of farmers and officials from irrigation districts in southern Texas have filed a US\$500 million claim against the Mexican government because of the failure of President Vicente Fox's administration to comply with a 1944 water treaty. The claim, filed under the framework of the North American Free Trade Agreement (NAFTA), said Mexico's failure to comply with the 1944 treaty caused crop losses and other damages to the agriculture community in the Rio Grande Valley of Texas.

Under the treaty, Mexico is required to release about 350,000 acre-feet, or the equivalent of 433.2 billion liters, of water from six tributaries to the Rio Grande each year. In exchange, Mexico is to receive 1.5 million acre-feet of water from the Colorado River each year. Fox administration officials have repeatedly said Mexico would like to comply with the obligations under the 1944 treaty but has been unable to do so because of severe drought conditions during most of the past dozen years.

In addition to drought, increased development in northern Mexico since the implementation of NAFTA in 1994 has contributed to tightened supplies of water, Mexican officials have said (see SourceMex, 2001-04-08). The Fox government has made a good-faith effort to retire some of the debt of 1.3 million acre-feet of water that has accumulated since 1992. In 2002 and 2003, the administration reached agreements with US officials to make partial water payments to the US (see SourceMex, 2002-07-31 and 2003-01-09).

Partial payments anger both US, Mexican farmers

In making the partial payments to the US, the Mexican president angered farmers in northern states, particularly those who reside in once thriving agricultural communities in northeastern Tamaulipas states. Farmers in the area, near the border cities of Reynosa and Matamoros, complain that, to make the payments to the US, Fox has taken water that should have been allocated to them.

As a result, the farmers say they are no longer able to irrigate their fields to grow corn, cotton, and vegetables and instead are having to rely on sorghum, a crop that requires less water but is also less profitable. "In the last few years, [the administration] has opted to first pay the United States and then tell us there is no water left for us," said Jaime Garza, who heads a farm cooperative in the Tamaulipas community of Rio Bravo. "We are not asking for extra water. What we want is the water that belongs to us."

Farmers in the US Rio Grande Valley are also dissatisfied with Mexico's partial payments, accusing the Fox government of underreporting the actual amounts of water available in Mexican reservoirs (see SourceMex, 2002-10-09 and 2003-07-16). Heavy rain during the last two years has replenished supplies in some areas of northeastern Mexico, but water levels have not increased sufficiently at the

Amistad and Falcon Reservoirs along the US-Mexico border to allow the Fox government to make a larger debt payment to the US, said the Comision Nacional de Agua (CNA).

Still, levels at the two reservoirs have improved sufficiently to allow Mexico to make some repayment this year. For example, water levels at the two reservoirs increased by 143,000 acre-feet because of rainfall during a single week in April 2004. One-third of the increase was used to make a water payment to the US, CNA officials said.

Farmers and irrigation-district officials say these partial payments, while welcome, are not sufficient to meet the needs of the agriculture sector in the Rio Grande Valley. "As far as the debt issue is concerned, there's still a problem," said Wayne Halbert, general manager of the Harlingen irrigation district. "It's still being paid the way it's always been paid by accident."

US claimants to bring issue to NAFTA

The Harlingen irrigation district has joined 16 other districts and 29 independent water-rights holders in the Rio Grande Valley in filing the US\$500 million claim against Mexico. Attorneys for the group said they sent paperwork to the Mexican government in late August, giving officials 90 days to pay the claim or submit to arbitration under a special NAFTA dispute-resolution panel.

"Mexico's failure to provide the water it owes under the 1944 Treaty has caused significant economic harm to Texas farmers, even as the Mexican fruit and vegetable output and exports to the United States have increased," representatives of South Texas agricultural interests said in letter to Gregorio Canales, director of the foreign-investment section at the Secretaria de Economia (SE). "They have obligations to release certain water, and they haven't done so," Don Wallace, an attorney for the claimants, said in an interview with Bloomberg news service. "We're claiming that we have property rights to this water."

The state of Texas has joined the farmers in the Rio Grande Valley in seeking to pressure Mexico to make the payments. "There is plenty of water," Texas Agriculture Commissioner Susan Combs told reporters earlier this year. "The problem is Mexico is not allocating it to make everybody happy." Combs said the shortfall in payment of the water debt has cost Texas farmers about US\$1 billion in crop losses since 1992.

Mexican officials dispute the damage requests by the South Texas coalition, warning that the claim could hamper future cooperation between the US and Mexico on the issue. "Any claim that there could have been some damage to US farmers is unfounded, given that [Mexico's] average water payments have been greater than those called for in the treaty," said Juan Bosco Marti, director of North American affairs at the Secretaria de Relaciones Exteriores (SRE).

The move to request monetary compensation before proceeding with a NAFTA dispute-resolution panel appears to be a new strategy by the South Texas farmers and irrigation-district officials. In March of this year, Arturo Duran, the newly appointed director of the US section of the International Boundary and Water Commission (IBWC), recommended that South Texas agriculture interests

seek a cash payment from the Mexican government in lieu of the water payments. At that time, Halbert and others immediately shot down the proposal. "The real loss to the [Rio Grande] Valley was the opportunity to use that water," Halbert told the Brownsville Herald.

Ray Prewett, president of Texas Citrus Mutual, was also among those who were initially skeptical of Duran's proposal. He said it would weaken the US demand that Mexico meet terms of the 1944 treaty. A better strategy, said Prewett, would be for the US government to require Mexico to agree to a payment schedule and to ensure timely payments in the future. "I don't want to sound ungrateful about the water we've got, because it has been very helpful, and we're in the best shape we have been in since 1994," he said. "But the fact is there's been no change in Mexico's behavior as far as managing their water differently."

Fox promised that Mexico would not renege on its commitment to the US. "We will make payments on the water debt according to availability," he said. The president said, however, his priority was to ensure an adequate supply of water in the country. "The government is not concerned about whether we are complying with a water treaty with the US," Fox told reporters during a tour of new hydraulic projects in drought-stricken Chihuahua state in early August. "The obligation of all of us is to ensure that all Mexicans have an adequate supply of water."

The president made special mention of the cities along the US-Mexico border, which, he said, have to reduce waste and increase efficiency in water distribution. "We've had a couple of good years of rain, but not all years are like this," Fox said.

Water shortages become growing problem elsewhere in Mexico Water shortages and a lack of water-related infrastructure are rapidly becoming a problem in Mexico, with millions of people still lacking access to running water.

The issue has raised such concerns in Congress that the hydraulic-resources committee (Comision de Recursos Hidraulicos) in the lower house has made it a priority to seek solutions to the problem during the next session of the legislature. "It is becoming a matter of national security," said committee chair Jesus Vizcarra Calderon, a member of the former governing Partido Revolucionario Institucional (PRI).

Vizcarra said his committee would ask all members of the lower house to supply data from their districts to help form a more accurate picture of the water situation in Mexico. The latest government statistics indicate that about 10.7 million Mexicans do not have access to running water. Citing government statistics, Vizcarra noted that the agricultural sector accounts for 77% of all water used in Mexico, compared with 10% for industry and 13% for public distribution. (Sources: The Herald-Mexico City, 01/28/04; Notimex, 08/03/04, 08/22/04, 08/23/04; La Jornada, 08/04/04, 08/23/04; The McAllen [Texas] Monitor, 08/25/04; The Brownsville [Texas] Herald, 03/29/04, 07/11/04, 08/27/04; El Universal, 08/02/04, 08/04/04, 08/23/04, 08/26/04, 08/27/04; Bloomberg news service, 08/27/04; Associated Press, 01/26/04, 02/06/04, 04/20/04, 08/27/04, 08/30/04; United Press International, 08/30/04)

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