



**United States Section  
International Boundary and Water  
Commission**

**BRIEF ON USIBWC  
ENVIRONMENTAL CLAIM  
AGAINST ASARCO**

**Rio Grande Citizens Forum  
March 23, 2010  
Eric Meza, J.D., USIBWC**

# I. American Dam and American Canal

- American Dam and American Canal project authorized by the Act of August 29, 1935 (Ch. 305, 49 Stat. 961).
- For control and division of waters of the Rio Grande.
- The American Dam and Canal Site in El Paso, Texas consists of the diversion dam, the canal and the American Dam/Carlos Marin Field Office.



## American Dam and American Canal (cont'd)

- Pursuant to the Convention of May 21, 1906, "*Equitable Distribution of the Waters of the Rio Grande*," American Dam was constructed to regulate and divert waters from the Rio Grande for the use of the United States and Mexico.



# American Dam and American Canal (cont'd)

- The American Canal receives the waters diverted for beneficial use from the Rio Grande River.
- Canal was extended under the *Rio Grande American Canal Extension*, located adjacent to Rio Grande from International Dam to Riverside Dam, approx. 12.0 miles.





## American Dam and American Canal (cont'd)

- The American Dam/Carlos Marin Field Office, located at 2616 West Paisano Drive, serves as the center for Operation and Maintenance of the American Dam and American Canal.



## II. ASARCO's El Paso, Texas Smelter

- El Paso Smelter, 2699 West Paisano Drive.
- Situated directly across from American Dam/Carlos Marin Field Office property.
- Operations ceased at El Paso Smelter in 1999.



### **III. Contamination at American Dam Site**

- In 2001, USIBWC determined the need for renovation of the American Canal.
- American Canal was outdated and found to be in deteriorated condition.
- Studies showed that Asarco's operations had caused major arsenic and lead contamination to the soil and groundwater at the American Dam Site.

# Contamination at American Dam (cont'd)

- While Smelter was in operation, arsenic, lead and other metals were released into atmosphere and adjacent USIBWC property through fallout from the stacks and other sources.
- The presence of these metals in the groundwater indicates that for many years, the heavy metals slowly leached from the soil into the groundwater.





# Contamination at American Dam (cont'd)

- Asarco determined to be liable to United States for contamination at the American Dam Site.
- Under Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), also called the “Superfund” law, Asarco was determined to be liable based on the following:
  - (a) Asarco was owner of a portion of the site;
  - (b) Asarco was owner of a portion of the site at the time of disposal of hazardous substances;
  - (c) Asarco was the party responsible for disposal of hazardous substances.

# IV. ASARCO Bankruptcy Case



# ASARCO Bankruptcy Case (cont'd)

- Asarco filed for Chapter 11 Bankruptcy Protection on August 9, 2005.

*(Case No. 05-21207, Southern District of TX, Corpus Christi Division)*

- Through the U.S. Dept. of Justice, the USIBWC filed as a Creditor based on existing claim of soil and groundwater contamination at American Dam Site.

# ASARCO Bankruptcy Case (cont'd)

- Settlement Agreement - In 2007, Asarco reached a settlement with the Dept. of Justice for payment of USIBWC claim.
- U.S. on USIBWC's behalf would receive nineteen million dollars (\$19,000,000) in settlement of all costs related to clean-up at the American Dam and Canal Site, including the American Dam/Carlos Marin Field Office.
- Asarco would be absolved of any liability related to contamination at the American Dam and Canal Site.

## V. Bankruptcy Plan Completed

- Nov. 13, 2009 - the District Court confirmed the Bankruptcy Court's recommendation of Grupo Mexico's Bankruptcy Payment Plan.
- December 9, 2009 - Grupo Mexico met its funding obligations as its payment Plan was executed successfully.



## Bankruptcy Plan (cont'd)

- Grupo Mexico transferred funds into various trusts set up for the Creditors.
- Total funds paid to Dept. of Justice trust account set up for USIBWC = \$22,356,980
- \$19,000,000 plus \$3,356,980 interest.
- Subject to 3 percent (.03) deduction by Dept. of Justice for administrative expenses/establishment of USIBWC Trust.

## VI. Conclusion

- Approximately \$1.79 billion was paid to fund environmental clean-up and restoration at over 80 sites, including the USIBWC Site.
- EPA stated this figure to be the largest amount ever recovered for hazardous waste clean-up.
- Asarco case stated to be the largest environmental bankruptcy in U.S. history.

End of Presentation