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.
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• American Canal was outdated and found to be in deteriorated condition.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