



INTERNATIONAL BOUNDARY AND WATER COMMISSION
UNITED STATES AND MEXICO

OFFICE OF THE COMMISSIONER
UNITED STATES SECTION

April 30, 2024

Mr. Mark Havens
Chief of Staff
Texas General Land Office
1700 N. Congress Ave.
Austin, TX 78701-1495

Subject: International Boundary and Water Commission, United States Section (USIBWC) Requirements for Construction in the Rio Grande Floodplain – Fronton Island, Start County, Texas

Dear Mr. Havens:

Reference is made to the island known as Fronton Island at coordinates 26°24'0.25" N and 99° 4'8.11" W located about 12 miles (19.3 km) downstream of Falcon Dam and about 2 miles (3.2 km) northwest of Roma, Texas (**Exhibit 1**). The U.S. Section of the International Boundary and Water Commission (USIBWC) is aware of work that has occurred in this area. We understand that clearing and grubbing and fill operations have occurred pursuant to the installation of concertina fencing in this area (photos before and after the completed work are shown in **Exhibit 2**.) I am following up to conversations between Texas General Land Office Commissioner, Dr. Dawn Buckingham and USIBWC Commissioner, Dr. Maria Elena Giner, and would like to bring to your attention that the completed work is located in the floodplain of the Rio Grande and that this work was completed without consultation with the USIBWC.

Concern regarding the deflection & obstruction of the Rio Grande

To ensure the U.S. Government's compliance with the *Treaty to Resolve Pending Boundary Differences and Maintain the Rio Grande and Colorado River as the International Boundary*, U.S.-Mex, TIAS 7313 (Nov. 23, 1970) ("1970 Treaty"), the U.S. and Mexican Sections of the IBWC monitor construction activities along the Rio Grande floodplain. Pursuant to the 1970 Treaty, the IBWC shall identify and prohibit the construction of works in its area of responsibility which, in the judgment of the Commission, may cause deflection or obstruction of the normal flow of the river or of its flood flows. This is an important aspect of the Treaty as any IBWC approved completed construction works along the Rio Grande floodplain must not obstruct normal river flows or flood flows that would cause additional areas to flood or deflect flows that could change the alignment of the international boundary and could cause the loss of territory in either country.

During a field visit on January 29, 2024, USIBWC staff noticed two land bridges to the island, cleared vegetation, and a line of concertina wire fence along the southern boundary of the island. The west land bridge is located at 26° 23' 53.89" N and 99° 04' 42.01" W and the east land bridge at 26° 24' 5.63" N and 99° 04' 23.86" W. The land bridges were constructed by placing fill in the river channel to connect the north bank of the river to the island. Hydraulic modeling documented in the '*Lower Rio Grande Valley from Falcon Dam to Peñitas, Programmatic Floodplain Analysis*

and Report of February 5, 2019, prepared by Michael Baker International for the U.S. Army Corps of Engineers (USACE), Fort Worth District, Texas (**Exhibit 3**) shows that Fronton Island is within the floodplain of the Rio Grande and thus within USIBWC jurisdiction in accordance with the 1970 Treaty and as such requires USIBWC involvement and coordination on any proposed work.

To assure compliance to the 1970 Treaty, any proponent considering such proposed projects within the International Boundary floodplain are required to submit detailed hydraulic modeling of existing and proposed (with project) conditions, calculation of hydraulic impacts (to assess obstructions and deflections) and a detailed drainage report for any future projects that may be undertaken in the Rio Grande floodplain. Details regarding the modeling and the required submissions are provided in the 'Hydraulic Modeling Methodology' document available in the following link at the USIBWC website:

<https://www.ibwc.gov/resources-info/#requirements>

The analysis requires 2D HEC-RAS hydraulic modeling, calculation of percent flow deflection and water surface elevation (WSE) rise within the modeling domain to determine if they are within threshold limits specified in the methodology document. Hydraulic impacts exceeding threshold limits are required to be mitigated to assure that the required thresholds are met and that such proposed work does not cause deflection or obstruction of the normal flow of the river or of its flood flows.

If the contemplated work is constructed in multiple phases, the USIBWC requires the proponent to provide the existing condition, interim condition(s), and complete proposed condition (or full build out condition) models for review. The existing condition model shall include all existing infrastructure in the floodplain. For the interim condition model, the existing condition model is the starting point, and the interim construction condition should be reflected in the model. The complete proposed model needs to include all of the contemplated work that will be built in phases. Work segments that are not physically contiguous but are near other segments may be considered one project. Project proponents must coordinate with the USIBWC to determine if non-contiguous segments must be considered one project. Also, please note that the succession of hydraulic models from the existing condition model to the proposed condition model shall show the cumulative infrastructure development within the floodplain.

In regard to the unapproved constructed works, the constructed land bridges, and the installed concertina fence (as described above) block the portion of flow that would normally occur in the small river channel along the northern bank of Fronton Island during normal and design flood events and could potentially cause deflection of the river flow towards Mexico, in violation of the 1970 Treaty. Another concern is potential debris that may be trapped along the concertina wire fence that has the potential to also cause flow deflection toward Mexico. This could be particularly harmful in flood conditions where this situation may promote unanticipated flooding in Mexico and the surrounding area.

It is also important to note that we have received information that the land bridges that were constructed to access Fronton Island and accomplish the clearing and grubbing and concertina

fence installation are also blocking water access and availability to Texas water users in this area.

We respectfully request that the Texas General Land Office direct the removal of the obstructions and reestablish the flow in the existing channel north of the island. We would also like to emphasize that hydraulic modeling and analysis for hydraulic impacts be conducted in advance of these kinds of projects. Both the U.S. and Mexican Sections review the modeling and ensure that the hydraulic impacts are minor and consistent with the 1970 Treaty before work may be accomplished. We respectfully request that the Texas General Land Office notify us within seven days of receipt of this letter of a plan and schedule on when the site will be returned to pre-construction conditions, reestablishing the previous ability for water flow into the existing channel north of the island and for removing the installed obstructions such as the concertina wire fence.

Concern regarding potential trespass

We would also like to point out that trespassing onto Federal land may have occurred as a result of the previously unapproved completed work. Our documentation reflects that Fronton Island is federal property under the jurisdiction of the USIBWC. **Exhibit 4** shows the 1853 alignment of the Rio Grande with respect to Fronton Island. The first plate shows the original survey of the 1853 river alignment. The plate shows two islands, #14 (downstream and near the present town of Roma) and #15 upstream. These two islands and the location of Fronton Island are in the territory of Mexico. The second plate shows a zoom in of these islands. A 1937 map still depicted the river north of the Fronton Island. Sometime between 1853 and the 1950s, Rio Grande started to shift south of the island.

The 1970 Boundary Treaty attempts to resolve the sovereignty over islands like Fronton where sovereignty was ambiguous due to changes in the flow of the river. The Treaty's Art. III, B. (1) states that for future changes created by the shifting of the Rio Grande, that Contracting state from which the land has been separated has the right to restore the river to its previous position and shall notify the other state that it intends to do so and will do so at its own expense. Art. III, B. (2) of the Treaty states that if the river is not restored to its previous position within 3 years, then sovereignty over that land shall pass to the "Contracting State on whose side of the river the separated tract is then located."

Between 1972 and 1978 a survey places the International Boundary Line (IBL) south of Fronton Island, making the island U.S. Territory. The survey was agreed to by Mexico in Minute 253 (1978). The next two IBL surveys (1989 and 2008) also show the IBL south of the island. The 1989 IBL map states that the river channel south of Fronton Island is the IBL pursuant to the 1970 treaty. Mexico never attempted to restore the Rio Grande to its previous position, thus, Fronton Island became U.S. Territory pursuant to the 1970 Treaty. When lands are exchanged between the U.S. and Mexico pursuant to the 1970 Treaty provisions, the Treaty only mandates that the exchanged territory becomes property of the "Contracting State" – which in the context of the Treaty is the United States or Mexico.

Our respective Survey Offices discussed ownership of this island between August 2023 and September 2023. In our review of the Texas General Land Office's submitted documentation, we cannot confirm when or how the State of Texas formally acquired Fronton Island. The USIBWC

assets that Fronton Island became federal property between 1970 and 1978 pursuant to the 1970 Treaty. If you have documentation that demonstrates otherwise, we respectfully request that you submit such documentation to USIBWC within 30 days of the date of this letter.

As USIBWC asserts that Fronton Island is federal property and is under the jurisdiction of the IBWC, we note that the State of Texas has undertaken the following activities without permission from the USIBWC: (i) built two sediment bridges between the Texas bank of the northern channel to Fronton Island; (ii) cleared vegetation on Fronton Island; and (iii) placed concertina wire along the banks and in other areas of Fronton Island. We respectfully request that the Texas General Land Office remove the obstructions and reestablish the ability for flow in the existing channel north of the island.

We strongly encourage meeting with us in advance of projects within the Rio Grande floodplain to discuss site conditions and any other issues as may be warranted or to further address the content within this letter. In regard to the hydraulic modeling, should the Texas General Land Office still consider its works necessary in this area, we require the digital hydraulic models along with the hydraulic impact calculations and technical report to be submitted as a complete package for review at least three (3) months before any proposed construction start date. This will allow time for the USIBWC to perform the technical review of the submittals and work with the proponent's team to seek clarifications or additional analyses to address the review comments; and confer with Mexico as required by the 1970 Treaty.

Please note that a proposed project may also require consultation with and/or authorization from other agencies, such as the U.S. Army Corps of Engineers, the U.S. Environmental Protection Agency, and the Texas Commission on Environmental Quality. We strongly suggest reaching out to those agencies to determine if your project falls within their jurisdiction.

Prior to any work within the Rio Grande floodplain, project plans, specifications and related engineering documents may be submitted to Mr. John Claudio, Realty Chief in our Mercedes Field Office. Mr. Claudio can be contacted at 956-565-3159 or via email at John.Claudio@ibwc.gov.

If you have any questions, please contact me at 915-832-4749.

Sincerely,

RAMON MACIAS Digitally signed by RAMON MACIAS
Date: 2024.04.30 09:01:00 -06'00'

Ramon Macias III, P.E.
Principal Engineer

cc:

Commissioner Dawn Buckingham, M.D.
Texas General Land Office
1700 N. Congress Ave.
Austin, TX 78701-1495

Exhibit 1: Fronzon Island, Starr County, Texas

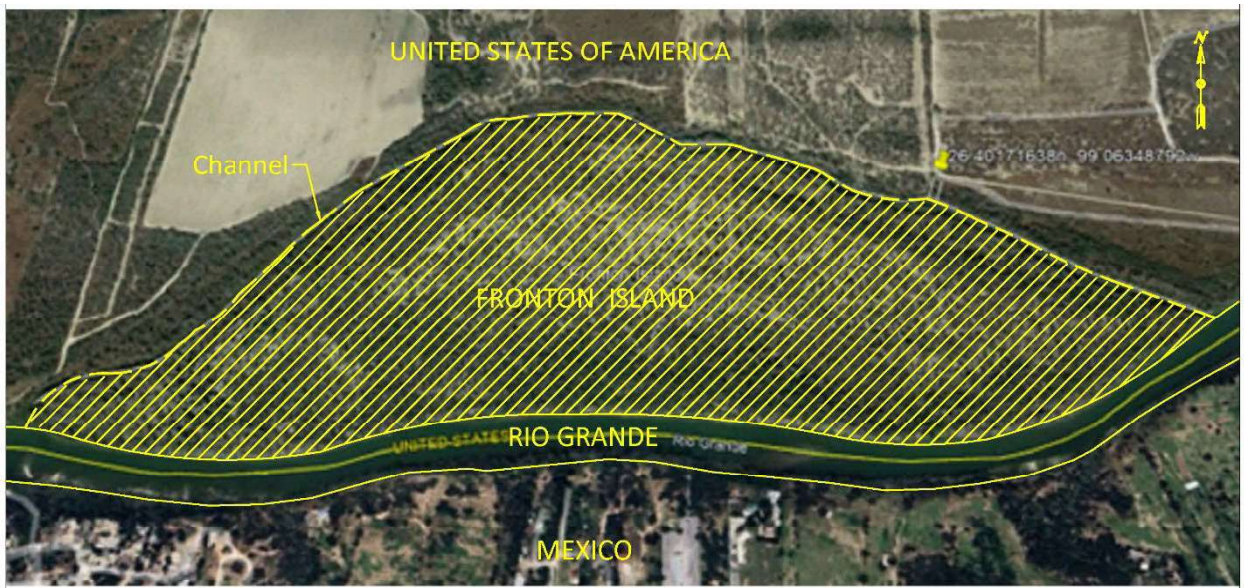
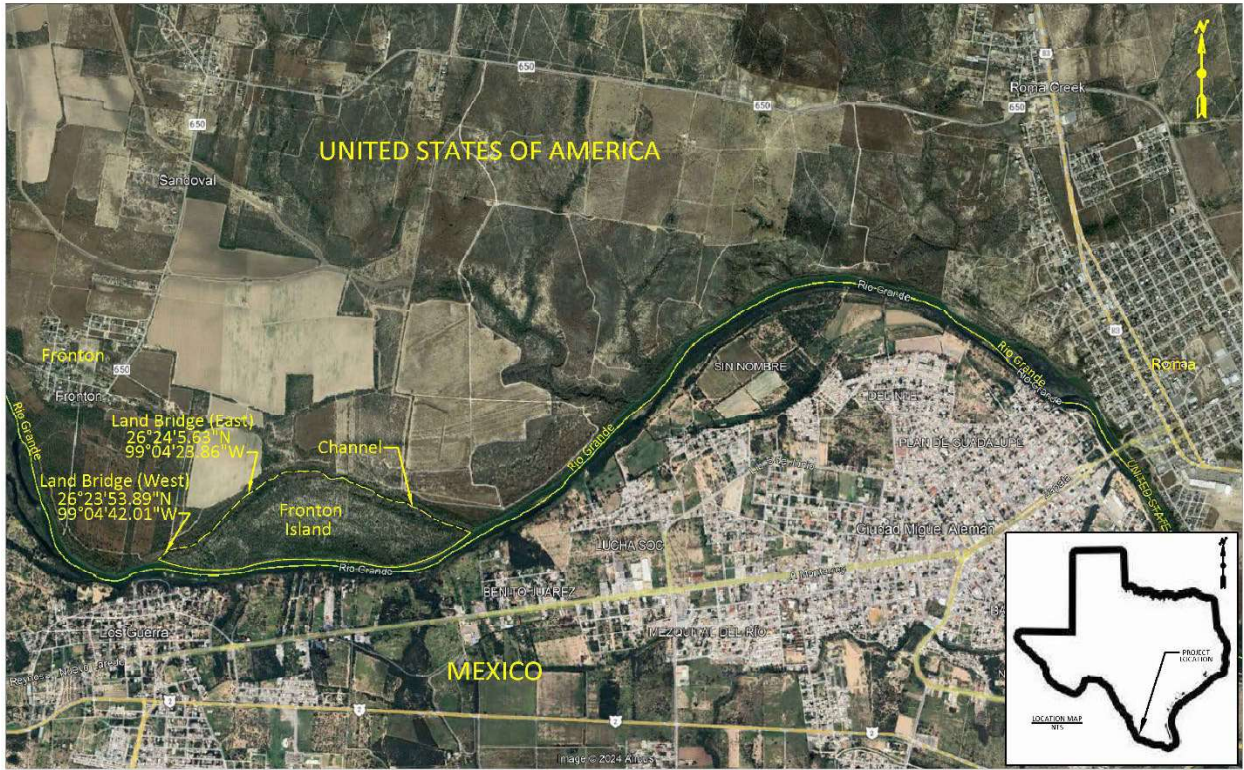


Exhibit 2: Photos

Photo Before Completed Work

Northeast section of island (prior to clearing)



Photos of Unapproved Completed Work

East end of island



Looking upstream along bank



Southwest view of island



View of entire island (looking west)



Brush line on the right depicts the North Channel



West end of island (Land Bridge 1)



Brush in the North Channel just east of Bridge 1



Removed brush in the North Channel of island



Bridge 2 near the northern apex of island



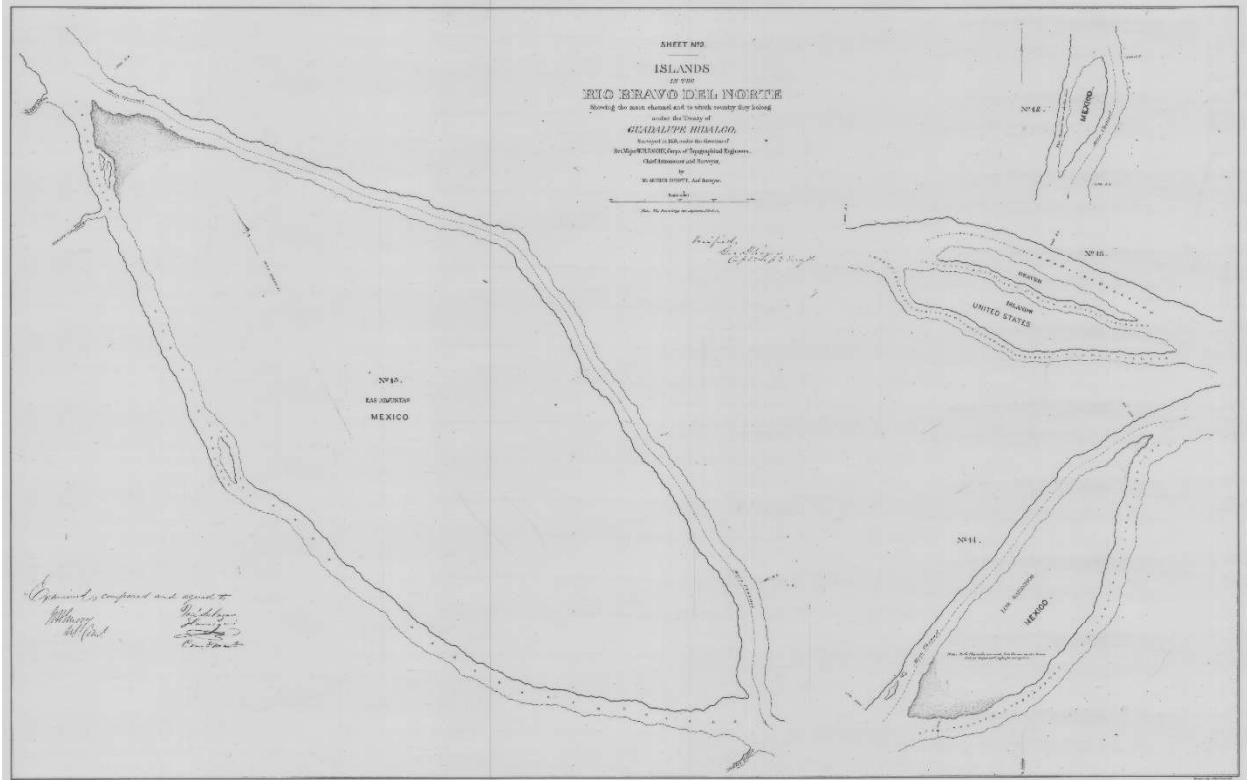
Bridge 2 (looking east at North Channel of island)




Exhibit 3: Rio Grande Floodplain (Adapted from Figure A5 of Baker, 2019)



Exhibit 4 Fronton Island Federal Property



	STAFF	INITIALS	DATE
	COMMISSIONER		
	PE - OPERATIONS		
2	PE - ENGINEERING	RM3	4/22/2024
	CHIEF ADMIN OFFICER		
	FOREIGN AFFAIRS		
	HUMAN CAPITAL		
	LEGAL ADVISOR		
	PUBLIC AFFAIRS OFFICE		
	COMPLIANCE OFFICE		
	EEO OFFICE		
	CHIEF SECURITY OFFICER		
	AUDITOR-PARKER		
	BUDGET DIVISION		
	ACQUISITION DIVISION		
	FINANCIAL SERVICES DIV.		
	O&M DIVISION		
1	ENGINEERING SERVICES DIV.		4/22/2024
	WATER ACCOUNTING DIV.		
	ENVIRONMENTAL MGT DIV.		
	INFORMATION MGT DIV.		
	SAFETY & HEALTH OFFICE		
	BOUNDARY & REALTY OFFICE		
3	D.Rivera		

bcc email: XOC Commissioner Giner; ED P.E. R. Macias; OD P.E. I. Canava; ESD P. Unnikrishna, A. Borah & S. Rouch; RAMD J. Claudio, J. Saldivar & F. Pinon; LAO J. Pena & R. Rizzuti; COND A. Glover; OMD X. Aranda; EMD G. Anaya; FDFO M. Gomez; DMS

DCE 2 (DCS 2-1)

PU: RM: dr

April 22, 2024

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