

ELEVENTH JUDICIAL DISTRICT
COUNTY OF SAN JUAN
STATE OF NEW MEXICO

DISTRICT COURT
SAN JUAN COUNTY NM
FILED
2013 APR 12 PM 4:49

STATE OF NEW MEXICO ex rel.
State Engineer,
Plaintiff

v.

UNITED STATES OF AMERICA, et al.,
Defendants

v.

THE JICARILLA APACHE TRIBE and the
NAVAJO NATION

No. CV 75-184
SAN JUAN RIVER
ADJUDICATION SUIT

Claims of the Navajo Nation
Case No.: AB-07-1

ROBERT E. OXFORD'S DISPOSITIVE MOTION FOR SUMMARY JUDGEMENT

SUMMARY

1. Name of party filing present document: Robert E. Oxford, Pro-Se
2. Title of the present document: Summary Judgment Motion pursuant to Rule 1-056 to the Settlement Agreement and the proposed decrees associated with the said Settlement Agreement to the Water Rights proposed to be confirmed by the court as to the Water Rights of the Navajo Nation and how those rights would be administered.
3. Descriptive Summary of the Relief Sought: This document represents Robert E. Oxford's, pro-se, belief that there are undisputed facts that should be considered by the court to deny the motion by the Settling Parties to approve the Navajo Settlement Agreement and proposed decrees associate therewith.
3. Number of pages of present document: 4
4. Date of Service: April 12, 2013

COMES NOW Robert E. Oxford, Pro-Se Objector, in accordance with Rule 1-056 for Summary Judgment against the Settlement Agreement and associated proposed decrees and will show there is no genuine issue as to any material fact and that this moving party is entitled to a judgment as a matter of law. The proposed decrees awarding all of the water rights a 1968 priority date is not fair and reasonable to the other water right holders. A general assessment of the Navajo Settlement Agreement is to me a series of special deals agreed to by the State of New Mexico that compromises existing State Water Law and Supreme Court Cases. I will list below what is now protecting junior priority water right holders that the State of New Mexico is asking the court to abolish and approve new federal rules to administer the San Juan Basin Rivers Waters used by non-Indian water right holders in the basin. The Luna Irrigating and City of Raton Supreme Court Cases protect waters held in Navajo Lake

Reservoir and released into the San Juan River from being considered private water that can only be used if a federal contract for that water is obtained. The excess water stored each year in Navajo Reservoir and not having a beneficial use for any particular year by the Federal Government is available for junior users out of priority in any year by the City of Raton case, and the Navajo Agreement will overturn this protection by non-Indian users. I know the court has commented that it is only responsible for the water rights in the Navajo decrees and the State Engineer will be responsible for administrating this water. This is not how the outcome will be. The State Engineer, by the State of New Mexico signing this agreement, has now been given new rules, that a court appointed Water Master, will be required to acknowledge that State Law 72-1-1 natural waters will not prevail anymore because releasing water from Navajo Reservoir into a public waterway will contain private water (that water requiring a Federal Contract), and public water. This is adverse to applicable State Water Law (see Luna Irrigating case). These are just some of the special deals in the Navajo agreement that is not applicable to existing State Law and not fair and reasonable to other non-Indian water users in this basin. What law governs water rights in New Mexico? Provisions of the New Mexico Constitution, statutory law of New Mexico, and case law of federal, territorial, and State Courts govern, (see United States v. Ballard, 184 F. supp. 1 (D.N.M. 1960). The Settlement Agreement under Section 9.5 on page 23. Administration of Water Rights states "Subject to the provisions of the Partial Final Decree, the Supplemental Partial Final Decree and this agreement, the Navajo Nation and the United states, acting in the capacity as trustee for the Navajo Nation, agree that the New Mexico State Engineer has the authority under State Law to administer water rights within, and to supervise the apportionment, diversion, and use of the waters of the San Juan River Basin in New Mexico, including by appointment of Water Masters, according to the orders and decrees of the Court in the Stream Adjudication and the licenses and permits issued by the State Engineer in the Basin.

One might think that the above is innocent of any violation of State Water Law or existing case law from the Supreme Court on water administration in the State. Nothing could be further from the truth. Under Section 9.0 and specifically Section 9.1, which specifies applicable federal law on page 14 of the Settlement Agreement. And again specifically in Section 9.2.6 on page 18 the Settlement Agreement states "the provisions of the sub-paragraph 9.2 are conditioned upon enforcement of the provisions of Section 11 of the Act of June 13, 1962, that no water user has entitlement to water released from Navajo Reservoir Storage into the San Juan River that is in excess of the direct flow determined to be available at the Navajo Dam except under contract with the Secretary, except that:

- (1) direct flow water users may divert and use water released from the reservoir storage and made available to them Pursuant to the provisions of subparagraph 9.1 of this agreement; and

(2) water released for delivery from a top water bank in the reservoir established pursuant to Section 10401(6) of the Settlement Act is available only to the owners or assigns of the banked water.

The above requirements in the Navajo Settlement Agreement are adverse to State Water Law specifically in decided New Mexico Supreme Court Cases, as listed in my objection filed with the court October 19, 2012 and are referenced State ex rel. Reynolds v. Luna Irrigation Co. 80 N.M. 515, 458 R.2d 598 (1969) and City of Raton v. Verjemo Conservancy District (101 N.M. 95, 678 p 2d. 1170 (1984).

The Luna case specifies that the State Engineer considers only public water flows in a public river and therefore the State Engineer must consider the most senior priority and those next senior, etc. are entitled to all waters flowing in the public rivers, such as the San Juan, and not governed by this Navajo Settlement Agreement and Federal Law. As to the City of Raton case the N.M. Supreme Court ruled that waters stored in any reservoir are available to that storer to the extent only that they have a beneficial use for an amount stored for the completion of the current calendar year only. All waters stored in excess of this amount must fall under the administration of water rights by the State Engineer for those users out of priority downstream from the reservoir and are entitled to released water to them for the remainder of the calendar year and not requiring any such contract for the water as stated in the Navajo Settlement Agreement. The Navajo Settlement Agreement violates applicable law and would cause the State Engineer to violate his oath of office and this Settlement Agreement is an undisputed fact that it is not applicable to State Water Laws and summary judgment against this Navajo Settlement Agreement must be granted. Abandoning State Water Laws in favor of this Settlement Agreement and Federal Law is highly detrimental to other non-Indian water users on the San Juan River.

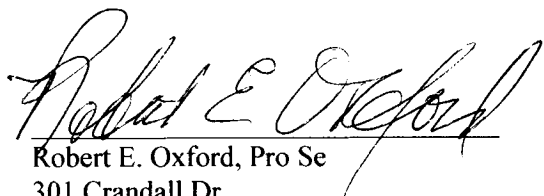
As to section 8.1.1-8.1.4 on page 13 of the Navajo Settlement Agreement these sections attempt to award one-half of the water left in file No. 2883, set aside by the United States for the Animas La Plata project, that is left over from the down-sized project. The San Juan Water Commission (SJWC) filed a permit with the State Engineer in 2001 to appropriate this same left over water from file 2883. The State Engineer refused to publish the application and the SJWC took the State Engineer to District Court case No. D-116-CV-2008-1699 and was successful in a decision by the 11th District court to order the State engineer to publish this application for all (not one-half) of the returned water not needed in the downsized project. For this reason the sections 8.1.1-8.1.4 are adverse to existing law and therefore the Navajo Settlement agreement must be denied by this Summary Judgment Motion. These facts are undisputed.

On page 4 and 5 Section 3(e) of the Proposed Final Judgment and Decree of the Water Rights of the Navajo Nation grants the Hogback-Cudei Irrigation Project a diversion of 48,550 acre-feet, or the quantity of water necessary to

supply a depletion of 21,280 acre-feet from the San Juan River to irrigate 8,830 acres of land. Those amounts are said to have been historically already irrigated and put to beneficial use previously. John Whipple, the Interstate Stream Commission Engineer, who negotiated these water rights amounts has stated only about 4500 acres have ever been irrigated in any one year and therefore are represented wrongfully and are actually future water users not defined as such in this decree. These facts are undisputed by the Office of the State Engineer and therefore must be declared correctly for future user and are not entitled to be decreed by this proposed judgment.

I ask the court to deny the Settlement Agreement and associated proposed decrees as per the above reasons of undisputed facts, per this summary judgment motion.

Respectfully, submitted by:



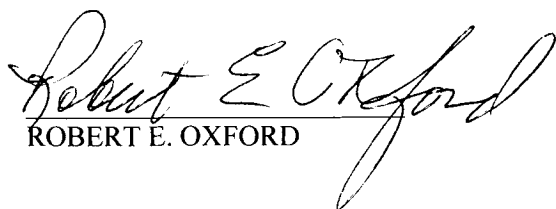
Robert E. Oxford, Pro Se
301 Crandall Dr.
Aztec, NM 87410
505-330-2284

April 12, 2013
Date

PROOF OF SERVICE BY ELECTRONIC TRANSMISSION

I HEREBY CERTIFY – In accordance with the ORDER MANDATING ALTERNATIVE METHOD FOR SERVICE OF ORDERS, MOTIONS, NOTICES AND OTHER COURT PAPERS, entered in the present matter on September 28, 2011 by the Honorable James Wechsler, Presiding Judge – that a true copy of the foregoing was served on the parties and Claimants in the present matter, by attaching a copy of said document to an email sent to the following email list server(s) maintained by the Court this 12th day April 2013 and to the U.S. Government as listed below:

wrvajointerse@nmcourts.gov.



ROBERT E. OXFORD