

STATE OF NEW MEXICO
COUNTY OF SAN JUAN
ELEVENTH JUDICIAL DISTRICT COURT

DISTRICT COURT
SAN JUAN COUNTY NM
FILED
2013 MAY 10 AM 9:31

STATE OF NEW MEXICO, *ex rel.*
THE STATE ENGINEER,

Plaintiff,

vs.

THE UNITED STATES OF AMERICA, *et al.*,

Defendants.

AB-07-1

Claims of Navajo Nation

No. CV 75-184

Honorable James J. Wechsler
Presiding Judge

AFFIDAVIT OF ROBERT E. OXFORD

STATE OF NEW MEXICO)
COUNTY OF SAN JUAN) ss

I, Robert E. Oxford, being duly sworn, allege and state:

1. My name is Robert E. Oxford. I qualified and took the Professional Engineer's test in 1964 in Kansas, and received my license (#5461) in 1964.
2. I had attended the University of Kansas from September 1956 till April of 1958, taking civil engineering courses, but did not graduate. I had accumulated 104 credit hours toward a B.S. in Civil Engineering.
3. I took the New Mexico Professional Engineer's test in 1981 and received my professional license number 7332. I was also registered in Colorado until retirement.
4. From December 1987 till December 1999 I was employed by the New Mexico State Engineer and was manager of the Aztec office of the State Engineer, administering the water rights in the San Juan River Basin and those under the Echo Ditch Decree of 1948.

5. I have been President of B.J. Resources, Inc. since retirement from the State in 1999, and specialize in consulting on water rights in the San Juan River Basin.

6. I have reviewed the Affidavit of John J. Whipple, filed on April 15, 2013, in this matter and dispute the following items.

7. In Mr. Whipple's Affidavit (paragraph 16), he states, "the maximum amount of acres irrigated within the existing Hogback Project boundary, including the Cudei area, in any one year historically was about 6,327 acres in 1966." Mr. Whipple has told me, and he uses a figure of 3,500 acres in the sharing shortage agreements for the years from 2003 through 2012 he lists himself as being a "primary drafter and facilitator" for (paragraph 8e, at 4). Mr. Whipple's Affidavit (paragraph 18) then says the BIA had issued "Land Use Permits for farming" totaling 8,829 acres for the Hogback. The Proposed Decree provides water for the highest number (8,829) of acres, thus exceeding the historical irrigated acreage by as much as 5,329 acres, depending on whether you believe the BIA or the shortage agreements. This cannot be claimed as anything else but "future water."

8. In Mr. Whipple's Affidavit (paragraph 31), he states that the Proposed Decree "was negotiated consistent with the per-acre consumptive irrigation requirements (CIR) for non-Indian ditches contained in the 1938 State Engineer Hydrographic Survey report approved by the Echo Ditch Decree." This so-called approval by the Decree is not correct. It was only used as evidence in the adjudication of the 1948 Decree. When I worked for the State Engineer at the Aztec Office administering the Decree, we did not use the CIR listed in the Engineer's Report.

Instead we used a figure developed by the New Mexico State University Experimental Farm study of 1.64 af/acre. Mr. Whipple also claims (paragraph 34) the Proposed Decree usage of FDRs and PDRs from this 1938 Engineer's Report as being approved by the Echo Ditch Decree which is erroneous.

9. Mr. Whipple's Affidavit (paragraph 38) is by far the most damaging declaration that undermines existing state water law for the administration of the Navajo Settlement.

10. Mr. Whipple's Affidavit (paragraph 39) tells you that the only additional water in the settlement is the Navajo Gallup Pipeline. Not true – the increase in the Hogback-Cudei water needed for additional acres never before irrigated is new water.

11. Although numerous meetings were held in the San Juan Basin about the settlement, the community ditches through their association were never satisfied that this settlement was fair and that it would not harm them.

12. I have also reviewed the Affidavit of John Leeper, filed as Attachment A to the Joint Memorandum of the Navajo Nation and the United States in Support of the Settlement Motion on April 15, 2013, in this matter and dispute the following items.

13. Mr. Leeper's Affidavit (paragraph 43) states "The only 'new' water in the Partial Final Decree is the municipal water supply for the NGWSP with a 1955 priority date for" This is his opinion of the settlement and the Hogback-Cudei Ditch, in my opinion, has acres that have never before been irrigated, especially in any one year, and according to Mr. Whipple only 6700 or so acres have been irrigated in 1964 and now only about 3500 acres are being irrigated. The Partial Final Decree awards 8,830

acres of water rights of which maybe 5,330 acres of irrigation water rights are “new” water. At paragraph 48, Mr. Leeper includes these as Historic and Present Irrigation Uses when in fact as listed above they never were irrigated in the past at the quantities shown and proposed in the decree.

14. Mr. Leeper’s Affidavit (paragraph 73) fails to mention that if Navajo Reservoir does not contain 1,000,000 acre-feet of water in storage on May 1st of each water year, the 12,000 acre-feet concession by the Navajo’s to release to satisfy the Hogback-Cudei and Fruitland’s diversion demand of 321 cfs will not be available. (It is noted that 2013 would be an example of that condition.)

15. Mr. Leeper’s Affidavit (paragraph 81) assumes that stored water being released into a public river is privately held water, only available by contract from the BOR. No such New Mexico state law backs this up. In fact, *State ex rel. Reynolds v. Luna Irrigation Co.*, 80 N.M. 515, 458 P.2d 590 (1969), refutes that entirely.

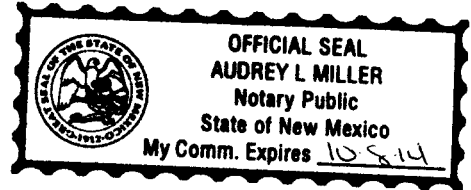
16. Mr. Leeper’s Affidavit (paragraph 82) supposes that other water from non-Indian users cannot be stored in Navajo Reservoir. To the contrary, NMSA 1978, § 72-5-17 authorizes the State Engineer to demand the reservoir owner let other users store water if he determines space permits.

17. Another major problem with the proposed agreement is that there is no way to measure return flow from NIIP. Therefore depletion cannot be verified. So the way the agreement is written, the depletion limit cannot be measured or enforced.

FURTHER AFFIANT SAYETH NOT.

Robert E Oxford
ROBERT E. OXFORD

SUBSCRIBED AND SWORN TO before me by Robert E. Oxford on this 10th day of May, 2013.




Audrey L. Miller
Notary Public

My commission expires 10.8.14.

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 10th day May 2013 and to the U.S. Government as listed below:

wrnavajointerse@nmcourts.gov


ROBERT E. OXFORD