

ELEVENTH JUDICIAL DISTRICT
COUNTY OF SAN JUAN
STATE OF NEW MEXICO

DISTRICT COURT
SAN JUAN COUNTY HM
FILED

2013 MAY 10 AM 9:31

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
Defendant-Interveners

No. CV 75-184
SAN JUAN RIVER
ADJUDICATION SUIT

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

**ROBERT E. OXFORD'S RESPONSE TO THE SETTLING PARTIES MEMORANDUMS IN SUPPORT
OF THE SETTLEMENT MOTION**

SUMMARY

- 1. Name of party filing present document:** Robert E. Oxford, Pro-Se
- 2. Title of the present document:** Response to the settling parties memorandum's in support of the Settlement Motion filed by the settling parties April 15, 2013.
- 3. Descriptive Summary of the Relief Sought:** Court should rebuke the Navajo Nation and the United States of America's argument on pages 50-52 of their joint memorandum that declare water held in Navajo Reservoir, and releases of that water into the San Juan River, must have a contract with the USA (BOR) for it's use.
- 3. Number of pages of present document:** 3
- 4. Date of Service:** May 10, 2013

COMES NOW Robert E. Oxford, Pro-Se Objector, and files this response to the settling parties memorandums in support of the Settlement Motion, in particular to page 18 of the State of New Mexico's memorandum and to pages 50-52 of the joint memorandum of the Navajo Nation and the United states of America.

The court has said that the Navajo Inter Se is all about the water rights, as shown in the Partial Final Decrees (I and II), but the court should take note of the State of New Mexico's item 38 on page 18 of their memorandum in support of the Settlement Motion and John Whipple's affidavit. I have filed an affidavit with the court disputing this and other settlements made by Mr. Whipple and Mr. Leeper in their affidavits.

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The state's argument is "The Navajo Settlement is not just a settlement of claims in the adjudication but is also a settlement of how water rights will be administrated after entry of the decree. Without resolution of administration issues, the question of jurisdiction and authority over administration of rights, including potential federal challenges to state authority, could require a second round of lengthy and protracted litigation."

The way water stored in Navajo Reservoir and released into the San Juan River is crucial to protect junior users and non-Indian users. The State of New Mexico has not made an argument in their memorandum whether the Settlement Agreement is according to State Law, but the Navajo Nation and the United States of America actually state "as a matter of Federal Law, no water stored in Navajo Reservoir may be used by a water user without a contract with the Secretary of the Interior. 1962 act 1(a) (footnote 44). This is adverse to New Mexico State Supreme Court Case State ex rel. Reynolds v. Luna Irrigation Company, 80 N.M.515, 458 P.2d590 (1969) and City of Raton v. Verjamo Conservancy District 101 N.M. 95, 678 p2d. 1170 (1984). These New Mexico court cases confirm that water released from a reservoir into a public waterway (San Juan River) is considered public water by the State of New Mexico (State Engineer) and must be administered as public water to the most senior priority user first, then the next priority user, etc. The Federal Government cannot supersede State Water Law (case law) under projects authorized by the Federal Reclamation Act. The Federal Government, or any other reservoir owner, must keep the released water separated from public water in canals or pipes for delivery to the contracted users. Water stored in any reservoir is subject to that stored users amount of water that can be put to beneficial use in that calendar (January – December) water year. There is no carry over rights to water from year to year.

The Navajo Nation/USA memorandum lists court case Public Service Company of Colorado v. FERC, 754 F. 2d 1555, 1565 10th circuit 1985 to support their position, but Colorado has water law 37-87-101-103 that allows stored water to be carried along with public water, but this is for Colorado and not for New Mexico. New Mexico has no revised water laws like Colorado.

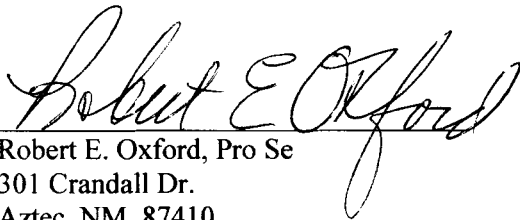
The City of Raton case emphasizes that no water user can monopolize the use of water if their beneficial use is exceeded for water stored. These protections of junior beneficial users must prevail and this Settlement Agreement asks the non-Indian and junior priority direct flow water users to surrender protections to their use of water.

As to the Navajo Nation – United States of America's argument to the Luna Irrigation Court Case, on their page 52 and footnote 45, that Mr. Horner's and now my argument, are "unsupported." First off the United States of America has not acquired a "water right" through file 2849 of the State of New Mexico. Acquiring a water right in New Mexico requires the appropriator put the water to beneficial use first. The Federal Government has not put this water to beneficial use but probably has a right to store a future beneficial user's water right. Therefore the

The argument that reservoirs throughout the west would make them valueless is ridiculous. Private delivery systems from these reservoirs, that keep the waters separated from the public waters flowing down public waterways, is the way these waters can be utilized by the contracted users.

Let's imagine that we have 100 water users storing water in the same reservoir and demanding the State Engineer keep records of each users demand to receive their stored water at the time they want it and at the rate they want it while flowing down the same public waterway as their private water. This would be as the Settlement Agreement sets forth if the Settlement Agreement is approved by the court. This way of administrating distribution of water from a reservoir is ludicrous therefore the Settlement Agreement must be denied.

Respectfully, submitted by:



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May 10, 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 10th day May 2013.

wnava@interse@nmcourt.gov


ROBERT E. OXFORD