

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

DISTRICT COURT  
SAN JUAN COUNTY NM  
26 FILED  
2013 SEP -5 AM 10:41

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

DESCRIPTIVE SUMMARY: Robert Oxford makes a motion for the court to correct its August 16 concerning the diversions by Hogback and Fruitland. The judge misread what Whipple and Leeper said in their affidivits.

Oxford also makes a motion for the court and parties to go visit the Hogback and Fruitland to see for themselves.

NUMBER OF PAGES: 4

DATE OF FILING: September 5, 2013

**MOTION BY ROBERT E. OXFORD FOR CORRECTIONS  
CONCERNING HOGBACK AND FRUITLAND**

I, Robert E Oxford, Pro Se Objector, make a motion that the court should correct its opinion concerning the Hogback and Fruitland projects. See August 16, 2013 Decision page such and such. The judge has gotten the historic diversion numbers wrong. The judge misread what the settling parties actually said about Hogback and

Fruitland. This is not easy to spot because Mr. Whipple and Mr. Leeper and the others were deliberately fuzzy in their affidavits, so those affidavits have to be read very carefully.

In Mr. Whipple's affidavit filed April 15, 2013, he says that the Navajo Nation reported to the state that "the diversion capacity of the Hogback Canal as originally constructed was about 300 cfs, though the existing capacity is less due to an siltation." Whipple Affidavit ¶ 33. I agree with Mr. Whipple that the existing capacity of the Hogback project is less than 300 cfs. It is much less than 300 cfs, and I know that from my own personal knowledge – my work at the state engineer's office, the diversion records, and my own observations of the Hogback and Fruitland projects.

In paragraph 16 Mr. Whipple says that BIA records show that the maximum peak acreage irrigated on the Hogback was "about 6,327 acres in 1966." I know from my own experience that BIA records are completely unreliable. No competent engineer would rely on them without verifying them first, and Mr. Whipple and Mr. Leeper didn't do that. Also Mr. Whipple is claiming one peak year more than 50 years ago. That doesn't tell anybody what has happened since then. And it doesn't tell you actual or average irrigable acres irrigated for the project.

If somebody wants to use that inflated and inaccurate number of 6,327 acres, and divide it by one cfs per 40 acres, that comes out to a maximum diversion rate for the Hogback of 158.2 cfs.

On the Fruitland-Cambridge project, Mr. Whipple says that "based on BIA records" (which are unreliable and unchecked), the maximum acreage irrigated in any

one year was "about 3,120 acres in 1965." That number is wrong, and it doesn't tell you what acreage is sustainable PIA, and it's more than 50 years old. I know from my own personal knowledge that that number is inflated.

If somebody wants to use that inflated and unverified number of 3,120 acres and divide that number by 40 cfs per acre, that is a maximum diversion of 78 cfs.

Even using those inflated numbers, the maximum diversion rate for Hogback and Fruitland is  $158.2+78$ , which equals 236.2 cfs for both projects combined.

The judge misread the Whipple and Leeper affidavits. They did not say that the historic maximum diversion rate for Hogback and Fruitland was "524 to 1,209 cfs." Decision at 21. Those numbers are apparently total diversion rates including NIIP, not just Hogback and Fruitland. The judge has misread their testimony.

I know based on my own personal experience and observations that Hogback and Fruitland have never diverted anything close to 524 to 1,209 cfs. I also know that there is no way they could possibly do that.

My testimony will be confirmed by going out to the Hogback and Fruitland projects and looking at them right now. I am asking the judge to come visit those projects before making a final decision, because he and all the parties will see for themselves that the paper numbers for the Hogback and Fruitland are wildly inflated.

Respectfully submitted by:

Robert E Oxford

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9-5-13

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 on the 5<sup>th</sup> day of September 2013 and to the U.S. Government as listed below:

wrnavajointerse@nmcourts.gov

  
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ROBERT E. OXFORD