

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA)	
and)	
STATE OF NEW MEXICO, <i>ex rel.</i> STATE)	
ENGINEER,)	
)	
Plaintiffs,)	No. 01cv00072 BB/WDS
)	
and)	
)	ZUNI RIVER BASIN
ZUNI INDIAN TRIBE, NAVAJO NATION,)	ADJUDICATION
)	
Plaintiffs in Intervention,)	Subfile No. ZRB-1-0051
)	
v.)	
)	
A & R PRODUCTIONS, et al.)	
)	
Defendants.)	
_____)	

MOTION FOR DEFAULT JUDGMENT

The Plaintiffs United States of America (“United States”) and New Mexico ex rel. State Engineer (“State”), pursuant to Fed. R. Civ P. 55(b)(2), move the Court to enter its order granting default judgment against the following defendant:

TOM R. KENNEDY	Subfile No. ZRB-1-0051
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and as grounds therefor Plaintiffs state:

1. The Court has jurisdiction over the above-named defendant as shown by the filed waiver of service of summons of TOM R. KENNEDY (Doc. No. 362).

2. TOM R. KENNEDY was provided the documents listed in the Declaration of Gary A. Durr (Exhibit 1) on the dates indicated.

3. With respect to Subfile ZRB-1-0051, Defendant TOM R. KENNEDY was subject to the Special Master's September 8, 2005 *Amended Procedural and Scheduling Order for the Adjudication of Water Rights Claims in Sub-Areas 4 and 8 of the Zuni River Stream System* (Doc. No. 387) ("Procedural and Scheduling Order"), which established a deadline of January 10, 2006, for the return of a Consent Order, or the filing of a form Subfile Answer.

4. These deadlines for Subfile ZRB-1-0051 were never extended.

5. Defendant TOM R. KENNEDY failed to submit a request for consultation, file a subfile answer, or return a signed Consent Order for Subfile ZRB-1-0051 in accordance with the Procedural and Scheduling Order or other applicable scheduling orders.

6. Defendant TOM R. KENNEDY is in default for failure to appear, answer, or otherwise defend in Subfile ZRB-1-0051 within the time limitations imposed by applicable Procedural and Scheduling Orders, or Orders of the Court extending deadlines, as shown by the Clerk's Certificate of Default filed August 28, 2007 (Doc. No. 1233).

7. In accordance with the *Zuni River Basin Adjudication Hydrographic Survey Report for Sub Areas 4 and 8*, as amended, the right(s) of TOM R. KENNEDY to divert and use the public waters of the Zuni River Stream System, Sub-Areas 4 and 8, should be as set forth below:

TOM R. KENNEDY
Subfile No. ZRB-1-0051

WELL

Map Label: 8C-1-W12

OSE File No: G 2184

Priority Date: 4/13/2004

Purpose of Use: 72-12-1.1 DOMESTIC

Well Location: As shown on Hydrographic Survey Map 8C-1

S. 18 T. 09N R. 12W 1/4, 1/16, 1/64: NE NE SW

X (ft): 2,631,763 **Y (ft):** 1,460,664

New Mexico State Plane Coordinate System, West Zone, NAD 1983

Amount of Water (ac-ft): Historical beneficial use not to exceed 0.7 acre-feet per annum

WHEREFORE, the Plaintiffs request the Court to enter an order granting default judgment against TOM R. KENNEDY, incorporating the terms of the Consent Order proposed for Subfile ZRB-1-0051 and in conformance with the *Zuni River Basin Adjudication Hydrographic Survey Report for Sub Areas 4 and 8*, as amended.

Dated: December 19, 2007

Electronically Filed

/s/ Bradley S. Bridgewater

BRADLEY S. BRIDGEWATER
U.S. Department of Justice
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(303) 844-1359

COUNSEL FOR THE UNITED STATES

(approved 11/15/2007)

EDWARD BAGLEY

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COUNSEL FOR THE STATE OF NEW MEXICO
EX REL. STATE ENGINEER

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on December 19, 2007, I filed the foregoing *Motion for Default Judgment* electronically through the CM/ECF system, which caused CM/ECF Participants to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

I further certify that on December 19, 2007, a copy of the foregoing was served by first class mail on each of the parties set forth below.

Tom R. Kennedy
P.O. Box 484
Zuni, NM 87327

_____/s_____
Bradley S. Bridgewater