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

STATE OF NEW MEXICO, ex rel. STATE ENGINEER, Plaintiffs, No. 01cv00072 BB/WDS and ZUNI RIVER BASIN ADJUDICATION Plaintiffs in Intervention, V. V.	UNITED STATES OF AMERICA and)	
Plaintiffs, No. 01cv00072 BB/WDS and ZUNI RIVER BASIN ADJUDICATION Plaintiffs in Intervention, v. A & R PRODUCTIONS, et al.	STATE OF NEW MEXICO, ex rel. STATE)	
and One of the state of the st	ENGINEER,)	
and Description: ZUNI RIVER BASIN ADJUDICATION Plaintiffs in Intervention, V. A & R PRODUCTIONS, et al. A & R PRODUCTIONS, et al.	Plaintiffs,)	
ZUNI RIVER BASIN ADJUDICATION Plaintiffs in Intervention, v. A & R PRODUCTIONS, et al.)	No. 01cv00072 BB/WDS
ZUNI INDIAN TRIBE, NAVAJO NATION, Plaintiffs in Intervention, v. A & R PRODUCTIONS, et al.	and)	
Plaintiffs in Intervention, v. A & R PRODUCTIONS, et al.)	ZUNI RIVER BASIN
v.) A & R PRODUCTIONS, et al.)	ZUNI INDIAN TRIBE, NAVAJO NATION,)	ADJUDICATION
v.) A & R PRODUCTIONS, et al.))	
A & R PRODUCTIONS, et al.	Plaintiffs in Intervention,)	Subfile No. ZRB-3-0023
A & R PRODUCTIONS, et al.)	
)	V.)	
))	
Defendants.)	A & R PRODUCTIONS, et al.)	
Defendants.))	
)	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 defendants:

DEBBIE A. BYINGTON &	Subfile No. ZRB-3-0023
JOHN C. BYINGTON	

and as grounds therefor Plaintiffs state:

1. The Court has jurisdiction over the above-named defendants as shown by the filed waivers of service of summons of DEBBIE A. BYINGTON (Doc. No. 362) and JOHN C. BYINGTON (Doc. No. 727).

2. DEBBIE A. BYINGTON & JOHN C. BYINGTON were provided the documents listed in the Declaration of Gary A. Durr (Exhibit 1) on the dates indicated.

3. With respect to Subfile ZRB-3-0023, Defendants DEBBIE A. BYINGTON & JOHN C. BYINGTON were subject to the Special Master's March 7, 2006 Procedural and Scheduling Order for the Adjudication of Water Rights Claims in Sub-Area 7 of the Zuni River Stream System (Doc. No. 561) ("Procedural and Scheduling Order"), which established deadlines of June 12, 2006, for the submission of a Request for Consultation, and of August 12, 2006, for the return of a signed Consent Order, or filing of a Subfile Answer.

- 4. These deadlines for Subfile ZRB-3-0023 were never extended.
- 5. Defendants DEBBIE A. BYINGTON & JOHN C. BYINGTON are in default for failure to appear, answer, or otherwise defend in Subfile ZRB-3-0023 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 March 3, 2008 (Doc. No. 1618).
- 6. In accordance with the Zuni River Basin Adjudication Hydrographic Survey Report for Sub-area 7, as amended, the right(s) of DEBBIE A. BYINGTON & JOHN C. BYINGTON to divert and use the public waters of the Zuni River Stream System, Sub-Area 7, should be as set forth below:

DEBBIE A. BYINGTON & JOHN C. BYINGTON Subfile No. ZRB-3-0023

WELL

Map Label: 7A-3-W14

OSE File No: None

Priority Date: 1/1/1994

Purpose of Use: DOMESTIC

Well Location: As shown on Hydrographic Survey Map 7A-3

S. 22 T. 08N R. 16W 1/4, 1/16, 1/64: SW NW NE

X (**ft**): 2,518,557 **Y** (**ft**): 1,422,215

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

Amount of Water (ac-ft per annum): 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 DEBBIE A. BYINGTON & JOHN C. BYINGTON, incorporating the terms of the Consent Order proposed for Subfile ZRB-3-0023 and in conformance with the Zuni River Basin Adjudication Hydrographic Survey Report for Sub-area 7, as amended.

Dated: March 20, 2008

Electronically Filed

/s/ Bradley S. Bridgewater

BRADLEY S. BRIDGEWATER U.S. Department of Justice 1961 Stout Street - 8th Floor Denver, CO 80294 (303) 844-1359

COUNSEL FOR THE UNITED STATES

(approved 3/14/2008) EDWARD BAGLEY Office of the State Engineer, Legal Division P.O. Box 25102 Santa Fe, NM 87504 (505) 827-6150

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on March 20, 2008, 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 March 20, 2008, a copy of the foregoing was served by first class mail on each of the parties set forth below.

Debbie A. Byington & John C. Byington P.O. Box 92 Pinehill, NM 87357

<u>/s/</u> Bradley S. Bridgewater