

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-4-0137
	)	
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 defendants:

<b>BEVERLY DUTY &amp; JOHN DUTY</b>	<b>Subfile No. ZRB-4-0137</b>
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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 BEVERLY DUTY (Doc. No. 873) and JOHN DUTY (Doc. No. 362).

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

3. With respect to Subfile ZRB-4-0137, Defendants BEVERLY DUTY & JOHN DUTY were subject to the Special Master's September 28, 2006 *Procedural and Scheduling Order for the Adjudication of Water Rights Claims in Sub-Areas 1, 2, and 3 (Excluding Ramah) of the Zuni River Stream System* (Doc. No. 838) ("Procedural and Scheduling Order"), which established a deadline of February 27, 2008 for the filing of a Subfile Answer or the return of a signed Consent Order.

4. These deadlines for Subfile ZRB-4-0137 were never extended.

5. Defendants BEVERLY DUTY & JOHN DUTY submitted a Request for Consultation but failed to respond to repeated attempts to schedule a consultation and failed to file a Subfile Answer, or return a signed last-offered Consent Order for Subfile ZRB-4-0137 within twenty (20) days after being served with a Notice That The Consultation Period Has Ended (Doc. No. 1499).

6. Defendants BEVERLY DUTY & JOHN DUTY are in default for failure to appear, answer, or otherwise defend in Subfile ZRB-4-0137 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 December 17, 2008 (Doc. No. 2013).

7. In accordance with the *Zuni River Basin Adjudication Hydrographic Survey Report for Sub Areas 1, 2 and 3 (excluding Ramah)*, as amended, the right(s) of

BEVERLY DUTY & JOHN DUTY to divert and use the public waters of the Zuni River Stream System, Sub-Areas 1, 2 and 3 (excluding Ramah), should be as set forth below:

**BEVERLY DUTY and JOHN DUTY**  
**Subfile No. ZRB-4-0137**

**POND**

**Map Label:** 3C-4-SP014

**Purpose of Use:** LIVESTOCK

**Priority Date:** 1/1/1961

**Source of Water:** Well

**Point of Diversion:** Fills from well 3C-4-W013 (Location X(ft): 2,539,398; Y(ft):  
1,519,562);

**Amount of Water:**

**Depth (ft):** 2.0

**Surface Area (sq.ft):** 7,588

**Storage Impoundment Volume (ac-ft):** 0.209

**Pond Location:** As shown on Hydrographic Survey Map 3C-4

**S. 20 T. 11N R. 15W 1/4, 1/16, 1/64:** NW NW SE

**X(ft):** 2,539,372 **Y(ft):** 1,519,475

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

**Dam height (if greater than 9 ft):**

**WELL**

**Map Label:** 3C-4-W013

**OSE File No:** G 1517

**Priority Date:** 1/1/1860

**Purpose of Use:** NON 72-12-1 DOMESTIC & LIVESTOCK

**Well Location:** As shown on Hydrographic Survey Map 3C-4

**S. 20 T. 11N R. 15W 1/4, 1/16, 1/64:** NW NW SE

**X (ft):** 2,539,398 **Y (ft):** 1,519,562

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

**Amount of Water (ac-ft per annum):** Historical beneficial use not to exceed  
0.722 ac-ft per annum

WHEREFORE, the Plaintiffs request the Court to enter an order granting default judgment against BEVERLY DUTY & JOHN DUTY, incorporating the terms of the Consent Order proposed for Subfile ZRB-4-0137 and in conformance with the *Zuni River Basin Adjudication Hydrographic Survey Report for Sub Areas 1, 2 and 3 (excluding Ramah)*, as amended.

Dated: January 29, 2009

Electronically Filed

/s/ Bradley S. Bridgewater

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

COUNSEL FOR THE UNITED STATES

(approved 1/28/2009)  
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

