

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-4-0138
	)	
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>RICHARD EBERLY &amp; PATRICIA K. EBERLY</b>	<b>Subfile No. ZRB-4-0138</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 service of summons on RICHARD EBERLY (Doc. No. 1870) and PATRICIA K. EBERLY (Doc. No. 1870).

2. RICHARD EBERLY & PATRICIA K. EBERLY were provided the documents listed in the Declaration of Gary A. Durr (Exhibit 1) on the dates indicated.

3. With respect to Subfile ZRB-4-0138, Defendants RICHARD EBERLY & PATRICIA K. EBERLY 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 January 16, 2007 for the submission of a Request for Consultation or the return of a signed Consent Order.

4. These deadlines for Subfile ZRB-4-0138 were never extended.

5. Defendants RICHARD EBERLY & PATRICIA K. EBERLY are in default for failure to appear, answer, or otherwise defend in Subfile ZRB-4-0138 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).

6. 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 RICHARD EBERLY & PATRICIA K. EBERLY 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:

**RICHARD EBERLY and PATRICIA K. EBERLY**  
**Subfile No. ZRB-4-0138**

**POND**

**Map Label:** 3B-3-SP010

**Purpose of Use:** LIVESTOCK

**Priority Date:** 1/1/2000

**Source of Water:** Surface Runoff

**Point of Diversion:** Not Applicable

**Amount of Water:**

**Depth (ft):** 4.0

**Surface Area (sq.ft):** 703

**Storage Impoundment Volume (ac-ft):** 0.039

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

**S. 27 T. 12N R. 16W 1/4, 1/16, 1/64:** NE NW SE

**X(ft):** 2,521,274 **Y(ft):** 1,545,376

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

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

WHEREFORE, the Plaintiffs request the Court to enter an order granting default judgment against RICHARD EBERLY & PATRICIA K. EBERLY, incorporating the terms of the Consent Order proposed for Subfile ZRB-4-0138 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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          (approved 1/28/2009)  
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EX REL. STATE ENGINEER

