

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-4-0299
)	
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:

VIVIAN NICOLL & KENT NICOLL	Subfile No. ZRB-4-0299
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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 Entry of Appearance (Doc. No. 211).

2. VIVIAN NICOLL & KENT NICOLL were provided the documents listed in the Declaration of Gary A. Durr (Exhibit 1) on the dates indicated.

3. With respect to Subfile ZRB-4-0299, Defendants VIVIAN NICOLL & KENT NICOLL 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 8, 2007 for the submission of a Request for Consultation or the return of a signed Consent Order.

4. These deadlines for Subfile ZRB-4-0299 were never extended.

5. Defendants VIVIAN NICOLL & KENT NICOLL are in default for failure to appear, answer, or otherwise defend in Subfile ZRB-4-0299 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 February 13, 2009 (Doc. No. 2121).

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 VIVIAN NICOLL & KENT NICOLL 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:

VIVIAN NICOLL and KENT NICOLL
Subfile No. ZRB-4-0299

WELL

Map Label: 3B-6-W007

OSE File No: G 1366

Priority Date: 4/9/2002

Purpose of Use: EXPLORATION

Well Location: As shown on Hydrographic Survey Map 3B-6

S. 30 T. 10N R. 15W 1/4, 1/16, 1/64: SW SE NW

X (ft): 2,534,466 **Y (ft):** 1,479,037

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

Amount of Water (ac-ft per annum): 0.0

WELL

Map Label: 3B-6-W008

OSE File No: G 1432

Priority Date: 12/2/2002

Purpose of Use: 72-12-1 DOMESTIC ONE HOUSEHOLD

Well Location: As shown on Hydrographic Survey Map 3B-6

S. 30 T. 10N R. 15W 1/4, 1/16, 1/64: SW SE NE

X (ft): 2,534,986 **Y (ft):** 1,478,938

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 ac-ft per annum

WHEREFORE, the Plaintiffs request the Court to enter an order granting default judgment against VIVIAN NICOLL & KENT NICOLL, incorporating the terms of the Consent Order proposed for Subfile ZRB-4-0299 and in conformance with the *Zuni River Basin*

Adjudication Hydrographic Survey Report for Sub Areas 1, 2 and 3 (excluding Ramah), as amended.

Dated: March 2, 2009

Electronically Filed

/s/ Bradley S. Bridgewater

BRADLEY S. BRIDGEWATER
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COUNSEL FOR THE UNITED STATES

(approved 2/27/2009)
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COUNSEL FOR THE STATE OF NEW MEXICO
EX REL. STATE ENGINEER

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on March 2, 2009, 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.

AND I FURTHER CERTIFY that a copy of the foregoing was mailed to the following parties who are not CM/ECF Participants:

Kent Nicoll & Vivian Nicoll
3515 Columbus Hwy SE
Deming, NM 88030

/s/
Bradley S. Bridgewater