

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-3-0184
)	
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:

DAVID L. OVERMYER & PATRICIA OVERMYER	Subfile No. ZRB-3-0184
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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 waiver of service of summons of DAVID L. OVERMYER (Doc. No. 758) and PATRICIA OVERMYER (Doc. No. 758).

2. DAVID L. OVERMYER & PATRICIA OVERMYER were provided the documents listed in the Declaration of Gary A. Durr (Exhibit 1) on the dates indicated.

3. With respect to Subfile ZRB-3-0184, Defendants DAVID L. OVERMYER & PATRICIA OVERMYER were subject to the Special Master's September 27, 2006 *Order Granting Joint Motion to Amend Procedural and Scheduling Orders and Establish or Revise Deadlines for Defendants to Return Requests for Consultation and Submit Subfile Answers* (Doc. No. 837) ("Procedural and Scheduling Order"), which established a deadline of March 22, 2009 for the submission of a Request for Consultation or the return of a signed Consent Order.

4. These deadlines for Subfile ZRB-3-0184 were never extended.

5. Defendants DAVID L. OVERMYER & PATRICIA OVERMYER are in default for failure to appear, answer, or otherwise defend in Subfile ZRB-3-0184 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 April 3, 2009 (Doc. No. 2253).

6. In accordance with the *Zuni River Basin Adjudication Hydrographic Survey Report for Sub-Area 7*, as amended, the right(s) of DAVID L. OVERMYER & PATRICIA OVERMYER to divert and use the public waters of the Zuni River Stream System, Sub-Area 7, should be as set forth below:

DAVID L. OVERMYER and PATRICIA OVERMYER
Subfile No. ZRB-3-0184

WELL

Map Label: 7B-3-W51

OSE File No: G 2632

Priority Date: 6/15/2007

Purpose of Use: 72-12-1 DOMESTIC & LIVESTOCK WATERING

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

S. 13 T. 8N R. 16W 1/4, 1/16, 1/64: NW SW NE

X (ft): 2,528,591 **Y (ft):** 1,428,499

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 DAVID L. OVERMYER & PATRICIA OVERMYER, incorporating the terms of the Consent Order proposed for Subfile ZRB-3-0184 and in conformance with the *Zuni River Basin Adjudication Hydrographic Survey Report for Sub-Area 7*, as amended.

Dated: April 9, 2009

Electronically Filed

/s/ Bradley S. Bridgewater

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(approved 4/6/2009)

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EX REL. STATE ENGINEER

