

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-3-0075
)	
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:

DONALD J. PHILIPPE & HOWARD PRICE & TOMMY D. HARTSFIELD	Subfile No. ZRB-3-0075
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and as grounds therefore Plaintiffs state:

1. The Court has jurisdiction over the above-named defendants as shown by the filed Proof of Service of Process by Publication for Howard Price (Doc. No. 2379), and the waivers of service of summons for Donald J. Philippe and Tommy D. Hartsfield (Doc. No. 745).

2. DONALD J. PHILIPPE & HOWARD PRICE & TOMMY D. HARTSFIELD were provided the documents listed in the Declaration of Khaleelah E. Jones (Exhibit 1) on the dates indicated.

3. With respect to Subfile ZRB-3-0075, Defendants DONALD J. PHILIPPE & HOWARD PRICE & TOMMY D. HARTSFIELD 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 a deadline of June 12, 2006 for the submission of a Request for Consultation or the return of a signed Consent Order.

4. These deadlines for Subfile ZRB-3-0075 were never extended.

5. Defendants DONALD J. PHILIPPE & HOWARD PRICE & TOMMY D. HARTSFIELD are in default for failure to appear, answer, or otherwise defend in Subfile ZRB-3-0075 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 August 13, 2009 (Doc. No. 2396).

6. In accordance with the *Zuni River Basin Adjudication Hydrographic Survey Report for Sub-area 7*, as amended, the right(s) of DONALD J. PHILIPPE & HOWARD PRICE & TOMMY D. HARTSFIELD to divert and use the public waters of the Zuni River Stream System, Sub-Area 7, should be as set forth below:

DONALD J. PHILIPPE & HOWARD PRICE & TOMMY D. HARTSFIELD
Subfile No. ZRB-3-0075

WELL

Map Label: 7B-3-W13

OSE File No: G 2386

Priority Date: 7/29/2005

Purpose of Use: 72-12-1.1 Domestic

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

S. 14 T. 08N R. 16W 1/4, 1/16, 1/64: SW SE SE

X(ft): 2,524,410 **Y(ft):** 1,425,713

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 DONALD J. PHILIPPE & HOWARD PRICE & TOMMY D. HARTSFIELD, incorporating the terms of the Consent Order proposed for Subfile ZRB-3-0075 and in conformance with the *Zuni River Basin Adjudication Hydrographic Survey Report for Sub-area 7*, as amended.

Dated: September 4, 2009

Electronically Filed

/s/ Bradley S. Bridgewater

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(approved 9/1/2009)
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EX REL. STATE ENGINEER

