

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-4-0431
)	
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 defendant:

RUDY GARCIA TRUSTEE OF THE DIANA MAE GARCIA SPECIAL NEEDS TRUST	Subfile No. ZRB-4-0431
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and as grounds therefor Plaintiffs state:

1. The Court has jurisdiction over the above-named defendant as shown by the filed Proof of Service of Process by Publication (Doc. No. 2379).

2. RUDY GARCIA TRUSTEE OF THE DIANA MAE GARCIA SPECIAL NEEDS TRUST was provided the documents listed in the Declaration of Khaleelah E. Jones (Exhibit 1) on the dates indicated.

3. With respect to Subfile ZRB-4-0431, Defendant RUDY GARCIA TRUSTEE OF THE DIANA MAE GARCIA SPECIAL NEEDS TRUST was 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 27, 2007 for the submission of a Request for Consultation or the return of a signed Consent Order.

4. These deadlines for Subfile ZRB-4-0431 were never extended. In addition, Defendant RUDY GARCIA TRUSTEE OF THE DIANA MAE GARCIA SPECIAL NEEDS TRUST failed to appear and defend in this case by June 30, 2009, as required by the Court-approved *Notice of Lawsuit and Summons* served on the Defendant by publication.

5. Defendant RUDY GARCIA TRUSTEE OF THE DIANA MAE GARCIA SPECIAL NEEDS TRUST is in default for failure to appear, answer, or otherwise defend in Subfile ZRB-4-0431 within the time limitations imposed by the Federal Rules of Civil Procedure, 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: Sub-areas 1, 2, and 3 (Excluding Ramah)*, as amended, the right(s) of RUDY GARCIA TRUSTEE OF THE DIANA MAE GARCIA SPECIAL NEEDS TRUST 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:

RUDY GARCIA, TRUSTEE OF THE DIANA MAE GARCIA SPECIAL NEEDS TRUST
Subfile No. ZRB-4-0431

POND

Map Label: 3B-2-SP015

Purpose of Use: LIVESTOCK

Priority Date: 1/1/1997

Source of Water: Surface Runoff

Point of Diversion: Not Applicable

Amount of Water (ac-ft per annum):

Depth (ft): 3.0

Surface Area (sq.ft): 10,045

Storage Impoundment Volume (ac-ft): 0.415

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

S. 30 T. 13N R. 15W 1/4, 1/16, 1/64: NW NW SW

X(ft): 2,531,309 **Y(ft):** 1,577,303

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

Dam height (if greater than 9 ft):

WELL

Map Label: 3B-2-W020

OSE File No: G 0261

Priority Date: 1/1/1976

Purpose of Use: DOMESTIC

Well Location: As shown on Hydrographic Survey Map 3B-2

S. 30 T. 13N R. 15W 1/4, 1/16, 1/64: SE SE SE

X(ft): 2,536,180 **Y(ft):** 1,573,046

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 RUDY GARCIA TRUSTEE OF THE DIANA MAE GARCIA SPECIAL NEEDS TRUST, incorporating the terms of the Consent Order proposed for Subfile ZRB-4-0431 and in conformance with the *Zuni River Basin Adjudication Hydrographic Survey Report: Sub-areas 1, 2, and 3 (Excluding Ramah)*, as amended.

Dated: September 4, 2009

Electronically Filed

/s/ Bradley S. Bridgewater

BRADLEY S. BRIDGEWATER

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(approved 9/1/2009)

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EX REL. STATE ENGINEER

