

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-4-0298
)	
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:

JOEL L. NICOLL	Subfile No. ZRB-4-0298
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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 Entry of Appearance (Doc. No. 211)

2. JOEL L. NICOLL was provided the documents listed in the Declaration of Khaleelah E. Jones (Exhibit 1) on the dates indicated.

3. With respect to Subfile ZRB-4-0298, Defendant JOEL L. NICOLL 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 8, 2007 for the submission of a Request for Consultation or the return of a signed Consent Order.

4. These deadlines for Subfile ZRB-4-0298 were never extended.

5. Defendant JOEL L. NICOLL is in default for failure to appear, answer, or otherwise defend in Subfile ZRB-4-0298 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 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 JOEL L. 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:

JOEL L. NICOLL
Subfile No. ZRB-4-0298

POND

Map Label: 3C-6-SP071

Purpose of Use: LIVESTOCK

Priority Date: 1/1/1940

Source of Water: Surface Runoff

Point of Diversion: Not Applicable

Amount of Water:

Depth (ft): 8.0

Surface Area (sq.ft): 4,524

Storage Impoundment Volume (ac-ft): 0.498

Pond Location: As shown on Hydrographic Survey Map 3C-6

S. 20 T. 10N R. 15W 1/4, 1/16, 1/64: SW NE SE

X (ft): 2,540,664 **Y (ft):** 1,484,903

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

Dam height (if greater than 9 ft):

POND

Map Label: 3C-6-SP072

Purpose of Use: LIVESTOCK

Priority Date: 1/1/1920

Source of Water: Surface Runoff

Point of Diversion: Not Applicable

Amount of Water:

Depth (ft): 6.0

Surface Area (sq.ft): 6,469

Storage Impoundment Volume (ac-ft): 0.535

Pond Location: As shown on Hydrographic Survey Map 3C-6

S. 20 T. 10N R. 15W 1/4, 1/16, 1/64: SW SW SW

X (ft): 2,537,967 **Y (ft):** 1,483,641

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

Dam height (if greater than 9 ft):

POND

Map Label: 3C-6-SP074

Purpose of Use: LIVESTOCK

Priority Date: 10/6/1997

Source of Water: Surface Runoff

Point of Diversion: Not Applicable

Amount of Water:

Depth (ft): 3.0

Surface Area (sq.ft): 5,943

Storage Impoundment Volume (ac-ft): 0.246

Pond Location: As shown on Hydrographic Survey Map 3C-6

S. 20 T. 10N R. 15W 1/4, 1/16, 1/64: SW NE NE

X (ft): 2,540,186 **Y (ft):** 1,485,625

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

Dam height (if greater than 9 ft):

POND

Map Label: 3C-6-SP075

Purpose of Use: LIVESTOCK

Priority Date: 1/1/1978

Source of Water: Surface Runoff

Point of Diversion: Not Applicable

Amount of Water:

Depth (ft): 3.0

Surface Area (sq.ft): 43,932

Storage Impoundment Volume (ac-ft): 1.815

Pond Location: As shown on Hydrographic Survey Map 3C-6

S. 20 T. 10N R. 15W 1/4, 1/16, 1/64: NW NE SE

X (ft): 2,540,301 **Y (ft):** 1,487,688

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 JOEL L. NICOLL, incorporating the terms of the Consent Order proposed for Subfile ZRB-4-0298 and in conformance with the *Zuni River Basin Adjudication Hydrographic Survey Report for Sub Areas 1, 2 and 3 (excluding Ramah)*, as amended.

Dated: May 16, 2011

Electronically Filed

/s/ Bradley S. Bridgewater

BRADLEY S. BRIDGEWATER

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(approved 5/10/2011)

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