

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 MV/LFG |
| |) | |
| and |) | |
| |) | ZUNI RIVER BASIN |
| ZUNI INDIAN TRIBE, NAVAJO NATION, |) | ADJUDICATION |
| |) | |
| Plaintiffs in Intervention, |) | Subfile No. ZRB-3-0201 |
| |) | |
| 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:

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| JERRY CLARK & VIRGINIA CLARK | Subfile No. ZRB-3-0201 |
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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 service of summons on JERRY CLARK (No. 2670) and VIRGINIA CLARK (No. 2670).

2. JERRY CLARK & VIRGINIA CLARK were provided the documents listed in the Declaration of Yvonne Marsh (Exhibit 1) on the dates indicated.

3. With respect to Subfile ZRB-3-0201, Defendants JERRY CLARK & VIRGINIA CLARK 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 October 26, 2010 for these Defendants to submit a Request for Consultation or return a signed Consent Order, and which required these Defendants to either sign and return the last-offered Consent Order or to file and serve a Subfile Answer within 20 days of service of a *Notice That the Consultation Period Has Ended* for Subfile ZRB-3-0201.

4. These deadlines for Subfile ZRB-3-0201 were never extended. Defendants JERRY CLARK & VIRGINIA CLARK neither submitted a timely Request for Consultation nor returned a signed Consent Order. In addition, these Defendants, after being served with a summons and complaint, failed to serve and file a responsive pleading within 21 days as required by Fed.R.Civ.P. 12(a)(1)(A)(i).

5. Defendants JERRY CLARK & VIRGINIA CLARK are in default for failure to appear, answer, or otherwise defend in Subfile ZRB-3-0201 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 October 31, 2012 (No. 2812).

6. In accordance with the *Zuni River Basin Adjudication Hydrographic Survey Report for Sub-area 7*, as amended, the right(s) of JERRY CLARK & VIRGINIA

CLARK to divert and use the public waters of the Zuni River Stream System, Sub-Area 7, should be as set forth below:

JERRY CLARK & VIRGINIA CLARK
Subfile No. ZRB-3-0201

WELL

Map Label: 7A-4-W15

OSE File No: G 01676

Priority Date: 12/31/1993

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

Well Location: As shown on Hydrographic Survey Map 7A-4

S. 34 T. 08N R. 16W 1/4, 1/16, 1/64: NW NW NE

X (ft): 2,518,238 **Y (ft):** 1,414,159

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

Amount of Water: 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 JERRY CLARK & VIRGINIA CLARK, incorporating the terms of the Consent Order proposed for Subfile ZRB-3-0201 and in conformance with the *Zuni River Basin Adjudication Hydrographic Survey Report for Sub-area 7*, as amended.

Dated: November 16, 2012

Electronically Filed

/s/ Bradley S. Bridgewater

BRADLEY S. BRIDGEWATER

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(approved 11/15/2012)

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EX REL. STATE ENGINEER

