

**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,)	No. 01cv00072-MV/WPL
)	
Plaintiffs,)	
)	
)	ZUNI RIVER BASIN
-v-)	ADJUDICATION
)	
A & R PRODUCTIONS, <i>et. al.</i> ,)	Subfile No. ZRB-3-0121
)	
Defendants.)	
_____)	

JOINT MOTION FOR SUMMARY JUDGMENT

Pursuant to Fed. R. Civ. P. 56(a), Plaintiff United States of America and Plaintiff State of New Mexico *ex rel.* State Engineer (collectively “Plaintiffs”) jointly move this Court for summary judgment in this subfile action. Plaintiffs request that the Court enter an order resolving the water rights for Defendant Joseph F. Neas & Susan S. Neas Revocable Trust (“Defendant Neas Trust”) for the wells and impoundments identified. Grounds for Plaintiffs’ motion are specified in the paragraphs below.

1. Fed. R. Civ. P. 56(a) provides that “[t]he court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.”
2. On March 10, 2014, the United States filed the *Notice that the Consultation Period Has Ended* (Doc. 2935).
3. On March 18, 2014, Defendant Neas Trust filed a *Subfile Answer* (Doc. 2939) for

Subfile No. ZRB-3-0121 in response to the proposed consent order previously prepared and presented by Plaintiffs.¹

4. The Defendant Neas Trust's *Subfile Answer* raises no dispute as to any material fact concerning the Plaintiffs' description of the Defendant Neas Trust's water right in the proposed consent order offered to Defendant Neas Trust as described in the *Zuni River Basin Hydrographic Survey Report for Subarea 7*, as amended.
5. The Defendant Neas Trust's *Subfile Answer* (Doc. 2939) indicates that its only contention of dispute with Plaintiffs is that a single well (designated 7A-3-W17) associated with Subfile No. ZRB-3-0022 should have been included and adjudicated in this Subfile Action. *Subfile Answer* (Doc. 2939) at 2.
6. For Subfile No. ZRB-3-0022, Plaintiffs secured service on property owners and joined them to this general stream adjudication by either securing a waiver of service or by personal service: Debbie Byington – May 13, 2005 (Doc. 362), John Byington – June 14, 2006 (Doc. 727), Carla Ferong – September 4, 2008 (Doc. 1853), and Konrad Knoll – September 4, 2008 (Doc. 1853). Subfile No. ZRB-3-0022 was resolved on March 1, 2010 when this Court entered judgment against Defendants Debbie Byington, John Byington, Carla Ferong, and Konrad Knoll. *Order Granting Default Judgment* (Doc. 2532). In the Court's Order, the water

¹ Joseph F. Neas and Susan S. Neas are trustees for Defendant Neas Trust. As an artificial entity, it appears that Defendant Neas Trust can only appear before this Court through representation of licensed counsel. D.N.M.LR-Civ 83.7. Unless Defendant Neas Trust's real property is transferred directly to Mr. and Mrs. Neas, it appears that Mr. and Mrs. Neas should not be able to appear and represent the Defendant Neas Trust's interests before the Court. If necessary, this Court should instruct Mr. and Mrs. Neas that they may not further appear before this Court to represent the Defendant Neas Trust's interests and that the Defendant Neas Trust's interests may only be represented by an attorney licensed to practice law in New Mexico.

right associated with well designated 7A-3-W17 was addressed, quantified, and resolved. *Id.* at 2.

7. Defendant Neas Trust secured its interest in real property associated with Subfile No. ZRB-3-0022 from Defendant John Byington on or about May 23, 2007. *Motion to Vacate Default Judgment* Exhibit 1 (Doc. 2934). Therefore, Defendant Neas Trust obtained an interest in the property on which well 7A-3-W17 is located **after** Defendant John Boyington was joined. As a subsequent real property transferee, Defendant Neas Trust is subject to the judgments associated with Subfile No. ZRB-3-0022. Fed.R.Civ.P. 25(c) (“If an interest is transferred, the action may be continued by or against the original party unless the court, on motion, orders the transferee to be substituted in the action or joined with the original party.”); *see also Joint Response to the Motion to Vacate Default Judgment* (Doc. 2941) (Subfile No. ZRB-3-0022) at 4-7 (presenting Plaintiffs’ complete argument supporting this Court’s default judgment in Subfile No. ZRB-3-0022).
8. To the extent that Defendant Neas Trust is entitled to any relief concerning well 7A-3-W17, that relief can only be provided in Subfile No. ZRB-3-0022 and not in this subfile action. *See Joint Response to the Motion to Vacate Default Judgment* (Doc. 2941) (Subfile No. ZRB-3-0022)
9. Except for the contention centered on well 7A-3-W17 and Subfile No. ZRB-3-0022, no factual or legal dispute exists between Plaintiffs and Defendant Neas Trust over the water rights of the wells and impoundments associated with this subfile action.

10. As previously presented in the proposed consent order and as articulated in the *Zuni River Basin Hydrographic Survey Report for Subarea 7*, as amended, the water rights of the Defendant Neas Trust in this subfile action are as follows:

STOCK POND

Map Label: 7A-4-SP07

Purpose of Use: Livestock

Priority Date: 1/1/1961

Source of Water: Surface Runoff

Point of Diversion: Not Applicable

Amount of Water:

Depth (ft): 4.0

Surface Area (sq.ft): 3,044

Storage Impoundment Volume (ac-ft): 0.168

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

S. 27 T. 08N R. 16W 1/4, 1/16, 1/64: NW NW NE

X(ft): 2,517,646 Y(ft): 1,419,473

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

STOCK POND

Map Label: 7A-4-SP08

Purpose of Use: Livestock

Priority Date: 1/1/1961

Source of Water: Surface Runoff

Point of Diversion: Not Applicable

Amount of Water:

Depth (ft): 5.0

Surface Area (sq.ft): 36,600

Storage Impoundment Volume (ac-ft): 2.521

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

S. 27 T. 08N R. 16W 1/4, 1/16, 1/64: NW NW NE

X(ft): 2,518,150 **Y(ft):** 1,419,617

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

STOCK POND

Map Label: 7A-4-SP39

Purpose of Use: Livestock

Priority Date: 1/1/1972

Source of Water: Surface Runoff

Point of Diversion: Not Applicable

Amount of Water:

Depth (ft): 2.0

Surface Area (sq.ft): 1,486

Storage Impoundment Volume (ac-ft): 0.041

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

S. 28 T. 08N R. 16W 1/4, 1/16, 1/64: NE NE NW

X(ft): 2,515,680 **Y(ft):** 1,419,886

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

WELL

Map Label: 7A-3-W19

OSE File No: None

Priority Date: 1/1/1976

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

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

S. 22 T. 08N R. 16W 1/4, 1/16, 1/64: SE SW NW

X (ft): 2,519,734 **Y (ft):** 1,421,070

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

11. Pursuant to NMSA 1978, Sections 72-4-15 through 72-4-19, Plaintiffs are entitled as a matter of law to judgment on the Defendant Neas Trust’s rights to the use of water consistent with the description above and the facts shown in the *Zuni River Basin Hydrographic Survey Report for Subarea 7*, as amended.

12. Pursuant to D.N.M.LR-Civ. 7.1, a draft of the present motion was e-mailed to Defendant Neas Trust on June 23, 2014, with a request that it concur with this motion. Defendant Neas Trust (acting through Mr. Neas) has indicated that it does not take a position on the motion at this time and, therefore, Plaintiffs believe that the Court should consider Defendant Neas Trust as opposing this motion.

WHEREFORE, the Plaintiffs request the Court to enter an order granting summary judgment against Defendant Neas Trust, incorporating the terms of the Consent Order proposed

for Subfile ZRB-3-0121, and in conformance with the *Zuni River Basin Hydrographic Survey Report for Subarea 7*, as amended.

DATED this 26th day of June, 2014.

Electronically Filed

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on June 26, 2014, I filed the foregoing JOINT MOTION FOR SUMMARY JUDGMENT electronically through the CM/ECF system, which caused CM/ECF Participants to be served by electronic means, as more fully reflected on the Notice of Electronic Filing. In addition, I served Joseph F. Neas and Susan S. Neas, trustees for Defendant, by first class mail at the addresses below.

Attn: Joseph F. Neas and Susan S. Neas
For: Joseph F. Neas and Susan S. Neas Revocable Trust

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