

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA )  
 and )  
 STATE OF NEW MEXICO, *ex rel.* STATE )  
 ENGINEER, )  
 )  
 Plaintiffs, )  
 )  
 and )  
 )  
 ZUNI INDIAN TRIBE, NAVAJO NATION, )  
 )  
 Plaintiffs in Intervention, )  
 )  
 v. )  
 )  
 A & R PRODUCTIONS, et al. )  
 )  
 Defendants. )  
 \_\_\_\_\_ )

No. 01cv00072 MV/WPL  
 ZUNI RIVER BASIN  
 ADJUDICATION  
 Subfile No. ZRB-1-0077

**CORRECTED MOTION FOR DEFAULT JUDGMENT NUNC PRO TUNC**

The Plaintiffs United States of America and New Mexico ex rel. State Engineer, pursuant to Fed. R. Civ P. 55(b)(2), move the Court to enter its order granting default judgment against the following Defendants:

<b>COLIN E. O'NEILL, JOHANNE F. O'NEILL &amp; GREGORY C. FRANK</b>	<b>Subfile No. ZRB-1-0077</b>
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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 waivers of service of summons of GREGORY C. FRANK (Doc. No. 504), COLIN E. O'NEILL (Doc. No. 513) and JOHANNE F. O'NEILL (Doc. No. 514).

2. JOHANNE F. O'NEILL, COLIN E. O'NEILL and GREGORY C. FRANK were provided the documents listed in the Declaration of Karmen Miller (Exhibit 1) on the dates indicated.

3. With respect to Subfile ZRB-1-0077, Defendants JOHANNE F. O'NEILL, COLIN E. O'NEILL and GREGORY C. FRANK were subject to the Special Master's September 8, 2005, *Amended Procedural and Scheduling Order for the Adjudication of Water Rights Claims in Sub-Areas 4 and 8 of the Zuni River Stream System (Doc. No. 387)* ("Procedural and Scheduling Order"), which established a deadline 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-1-0077.

4. These deadlines for Subfile ZRB-1-0077 were never extended. Defendants JOHANNE F. O'NEILL, COLIN E. O'NEILL and GREGORY C. FRANK submitted a timely Request for Consultation. However, the consultation never took place and the Defendants failed to either sign and return the last-offered Consent Order or to file and serve a Subfile Answer within 20 days of service of the May 16, 2016, *Notice That the Consultation Period Has Ended* (Doc. No. 3265).

5. Defendants JOHANNE F. O'NEILL, COLIN E. O'NEILL and GREGORY C. FRANK are in default for failure to appear, answer, or otherwise defend in Subfile ZRB-1-0077 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 22, 2016 (Doc. No. 3307).

6. In accordance with the *Zuni River Basin Adjudication Hydrographic Survey Report for Sub Areas 4 and 8*, as amended, the right(s) of JOHANNE F. O'NEILL, COLIN E. O'NEILL and GREGORY C. FRANK to divert and use the public waters of the Zuni River Stream System, Sub-Areas 4 and 8, should be as set forth below:

**WELL**

**Map Label:** 4B-3-W26  
**OSE File No:** G 00828  
**Priority Date:** 10/8/1997  
**Purpose of Use:** 72-12-1 DOMESTIC ONE HOUSEHOLD

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

**S. 30 T. 10N R. 13W 1/4, 1/16, 1/64:** NE NW SE

**X (ft):** 2,599,620 **Y (ft):** 1,481,803

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

**Amount of Water:** Historical beneficial use not to exceed 0.7 ac-ft per annum

WHEREFORE, the Plaintiffs request the Court to enter an order granting default judgment against JOHANNE F. O'NEILL, COLIN E. O'NEILL and GREGORY C. FRANK, incorporating the terms of the Consent Order proposed for Subfile ZRB-1-0077 and in

conformance with the *Zuni River Basin Adjudication Hydrographic Survey Report for Sub Areas 4 and 8*, as amended.

Dated: August 25, 2016

Respectfully submitted,

/s/ Samuel D. Gollis  
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Approved: 6/24/2016  
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COUNSEL FOR THE STATE OF NEW MEXICO  
EX REL. STATE ENGINEER

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on August 25, 2016, I filed the foregoing *Motion for Default 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.

AND I FURTHER CERTIFY that a copy of the foregoing was mailed to the following parties who are not CM/ECF Participants:

Johanne F. and Colin E. O'Neill  
Gregory C. Frank  
343 Baker Lane  
Erie, CO 80516

/s/ Samuel D. Gollis