

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-1-0066
)	
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:

CECILIO MIRABAL	Subfile No. ZRB-1-0066
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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 waiver of service of summons of CECILIO MIRABAL (Doc. No. 422).

2. CECILIO MIRABAL was provided the documents listed in the Declaration of Gary A. Durr (Exhibit 1) on the dates indicated.

3. With respect to Subfile ZRB-1-0066, Defendant CECILIO MIRABAL was 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 of January 10, 2006, for the submission of a Request for Consultation, return of a Consent Order, or the filing of a form Subfile Answer.

4. These deadlines for Subfile ZRB-1-0066 were never extended.

5. Defendant CECILIO MIRABAL failed to submit a request for consultation, file a subfile answer, or return a signed Consent Order for Subfile ZRB-1-0066 in accordance with the Procedural and Scheduling Order or other applicable scheduling orders.

6. Defendant CECILIO MIRABAL is in default for failure to appear, answer, or otherwise defend in Subfile ZRB-1-0066 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 28, 2007 (Doc. No. 1233).

7. In accordance with the *Zuni River Basin Adjudication Hydrographic Survey Report for Sub Areas 4 and 8*, as amended, the right(s) of CECILIO MIRABAL to divert and use the public waters of the Zuni River Stream System, Sub-Areas 4 and 8, should be as set forth below:

CECILIO MIRABAL
Subfile No. ZRB-1-0066

STOCK POND

Map Label: 8B-1-SP39

Purpose of Use: LIVESTOCK

Priority date: 1/1/1952

Source of Water: Surface Runoff

Point of Diversion: Not Applicable

Amount of Water:

Depth (ft): 4.0

Surface Area (sq.ft): 16,227

Storage Impoundment Volume (ac-ft): 0.894

Pond Location: As shown on Hydrographic Survey Map 8B-1

S. 14 T. 09N R. 13W 1/4, 1/16, 1/64: SW NE SW

X(ft): 2,618,234 **Y(ft):** 1,458,167

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

Dam height (if greater than 9 ft):

STOCK POND

Map Label: 8B-1-SP47

Purpose of Use: LIVESTOCK

Priority date: 1/1/1967

Source of Water: Surface Runoff

Point of Diversion: Not Applicable

Amount of Water:

Depth (ft): 9.5

Surface Area (sq.ft): 9,908

Storage Impoundment Volume (ac-ft): 1.297

Pond Location: As shown on Hydrographic Survey Map 8B-1

S. 23 T. 09N R. 13W 1/4, 1/16, 1/64: SW NE NW

X(ft): 2,618,119 **Y(ft):** 1,453,314

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

Dam height (if greater than 9 ft):

STOCK POND

Map Label: 8B-1-SP48

Purpose of Use: LIVESTOCK

Priority date: 1/1/1967

Source of Water: Surface Runoff

Point of Diversion: Not Applicable

Amount of Water:

Depth (ft): 8.5

Surface Area (sq.ft): 4,913

Storage Impoundment Volume (ac-ft): 0.575

Pond Location: As shown on Hydrographic Survey Map 8B-1

S. 21 T. 09N R. 13W 1/4, 1/16, 1/64: SE SW NW

X(ft): 2,609,432 **Y(ft):** 1,452,297

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

Dam height (if greater than 9 ft):

STOCK POND

Map Label: 8C-1-SP04

Purpose of Use: LIVESTOCK

Priority date: 1/1/1952

Source of Water: Surface Runoff

Point of Diversion: Not Applicable

Amount of Water:

Depth (ft): 1.5

Surface Area (sq.ft): 17,294

Storage Impoundment Volume (ac-ft): 0.357

Pond Location: As shown on Hydrographic Survey Map 8C-1

S. 13 T. 09N R. 13W 1/4, 1/16, 1/64: NW SE NW

X(ft): 2,623,796 **Y(ft):** 1,460,156

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

Dam height (if greater than 9 ft):

STOCK POND

Map Label: 8C-2-SP05

Purpose of Use: LIVESTOCK

Priority date: 10/6/1997

Source of Water: Surface Runoff

Point of Diversion: Not Applicable

Amount of Water:

Depth (ft): 6.0

Surface Area (sq.ft): 7,447

Storage Impoundment Volume (ac-ft): 0.615

Pond Location: As shown on Hydrographic Survey Map 8C-2

S. 25 T. 09N R. 13W 1/4, 1/16, 1/64: SW NW SE

X(ft): 2,623,358 **Y(ft):** 1,447,567

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

Dam height (if greater than 9 ft):

STOCK POND

Map Label: 8C-2-SP07

Purpose of Use: LIVESTOCK

Priority date: 10/6/1997

Source of Water: Surface Runoff

Point of Diversion: Not Applicable

Amount of Water:

Depth (ft): 2.0

Surface Area (sq.ft): 4,316

Storage Impoundment Volume (ac-ft): 0.119

Pond Location: As shown on Hydrographic Survey Map 8C-2

S. 35 T. 09N R. 13W 1/4, 1/16, 1/64: SE NE NE

X(ft): 2,621,746 **Y(ft):** 1,442,509

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 CECILIO MIRABAL, incorporating the terms of the Consent Order proposed for Subfile ZRB-1-0066 and in conformance with the *Zuni River Basin Adjudication Hydrographic Survey Report for Sub Areas 4 and 8*, as amended.

Dated: November 13, 2007

Electronically Filed

/s/ Bradley S. Bridgewater

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(approved 11/1/2007)
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EX REL. STATE ENGINEER

