

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-3-0090
)	
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:

DAVID S. KESSLER & LISA KESSLER	Subfile No. ZRB-3-0090
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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 DAVID S. KESSLER and LISA KESSLER (Doc. No. 719).

2. DAVID S. KESSLER & LISA KESSLER were provided the documents listed in the Declaration of Gary A. Durr (Exhibit 1) on the dates indicated.

3. With respect to Subfile ZRB-3-0090, Defendants DAVID S. KESSLER & LISA KESSLER were subject to the Special Master's March 7, 2006 *Procedural and Scheduling Order for the Adjudication of Water Rights Claims in Sub-Area 7 of the Zuni River Stream System* (Doc. No. 561) ("Procedural and Scheduling Order"), which established deadlines of June 12, 2006, for the submission of a Request for Consultation, and of August 12, 2006, for the return of a signed Consent Order, or filing of a Subfile Answer.

4. These deadlines for Subfile ZRB-3-0090 were never extended.

5. Defendants DAVID S. KESSLER & LISA KESSLER are in default for failure to appear, answer, or otherwise defend in Subfile ZRB-3-0090 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 March 3, 2008 (Doc. No. 1618).

6. In accordance with the *Zuni River Basin Adjudication Hydrographic Survey Report for Sub-area 7*, as amended, the right(s) of DAVID S. KESSLER & LISA KESSLER to divert and use the public waters of the Zuni River Stream System, Sub-Area 7, should be as set forth below:

DAVID S. KESSLER & LISA KESSLER
Subfile No. ZRB-3-0090

STOCK POND

Map Label: 7C-1-SP10

Purpose of Use: Recreation

Priority Date: 10/6/1997

Source of Water: Well

Point of Diversion: Fills from well 7C-1-W05 (Location X(ft): 2,560,828; Y(ft):
1,471,047)

Amount of Water:

Depth (ft): 3.0

Surface Area (sq.ft): 1,848

Storage Impoundment Volume (ac-ft): 0.076

Pond Location: As shown on Hydrographic Survey Map 7C-1

S. 1 T. 09N R. 15W 1/4, 1/16, 1/64: NW SW NE

X(ft): 2,560,324 **Y(ft):** 1,471,023

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

Dam height (if greater than 9 ft):

STOCK POND

Map Label: 7C-1-SP11

Purpose of Use: Livestock

Priority Date: 10/6/1997

Source of Water: Surface Runoff

Point of Diversion: Not Applicable

Amount of Water:

Depth (ft): 1.5

Surface Area (sq.ft): 3,452

Storage Impoundment Volume (ac-ft): 0.071

Pond Location: As shown on Hydrographic Survey Map 7C-1

S. 1 T. 09N R. 15W 1/4, 1/16, 1/64: NW NE SW

X(ft): 2,560,830 **Y(ft):** 1,471,246

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

Dam height (if greater than 9 ft):

WELL

Map Label: 7C-1-W04

OSE File No: None

Priority Date: 1/1/1963

Purpose of Use: DOMESTIC

Well Location: As shown on Hydrographic Survey Map 7C-1

S. 1 T. 09N R. 15W 1/4, 1/16, 1/64: NW NE SW

X (ft): 2,560,845 **Y (ft):** 1,471,316

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

Amount of Water (ac-ft per annum): Historical beneficial use not to exceed 0.7
acre-feet per annum

WELL

Map Label: 7C-1-W05

OSE File No: G 1633

Priority Date: 12/31/1992

Purpose of Use: DOMESTIC

Well Location: As shown on Hydrographic Survey Map 7C-1

S. 1 T. 09N R. 15W 1/4, 1/16, 1/64: NW SE NW

X (ft): 2,560,828 **Y (ft):** 1,471,047

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

Amount of Water (ac-ft per annum): 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 DAVID S. KESSLER & LISA KESSLER, incorporating the terms of the Consent Order proposed for Subfile ZRB-3-0090 and in conformance with the *Zuni River Basin Adjudication Hydrographic Survey Report for Sub-area 7*, as amended.

Dated: March 31, 2008

Electronically Filed

/s/ Bradley S. Bridgewater

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(approved 3/31/2008)

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EX REL. STATE ENGINEER

