

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-3-0040
	)	
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:

<b>MICHAEL E. COSTELLO &amp; YVONNE H. COSTELLO</b>	<b>Subfile No. ZRB-3-0040</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 service of summons on YVONNE H. COSTELLO and MICHAEL E. COSTELLO (Doc. No. 1861).

2. MICHAEL E. COSTELLO & YVONNE H. COSTELLO were provided the documents listed in the Declaration of Gary A. Durr (Exhibit 1) on the dates indicated.

3. With respect to Subfile ZRB-3-0040, Defendants MICHAEL E. COSTELLO & YVONNE H. COSTELLO 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 a deadline of August 12, 2006, for the return of a signed Consent Order or the filing of a Subfile Answer.

4. These deadlines for Subfile ZRB-3-0040 were never extended.

5. Defendants MICHAEL E. COSTELLO & YVONNE H. COSTELLO are in default for failure to appear, answer, or otherwise defend in Subfile ZRB-3-0040 within the time limitations imposed by the Federal Rules of Civil Procedure, applicable Procedural and Scheduling Orders, or Orders of the Court extending deadlines, as shown by the Clerk's Certificate of Default filed October 8, 2008 (Doc. No. 1908).

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

**YVONNE H. COSTELLO and MICHAEL E. COSTELLO**  
**Subfile No. ZRB-3-0040**

**WELL**

**Map Label:** 7C-1-W16

**OSE File No:** G 0311

**Priority Date:** 3/20/1995

**Purpose of Use:** 72-12-1.1 DOMESTIC

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

**S. 11 T. 09N R. 15W 1/4, 1/16, 1/64:** NW NE SE

**X (ft):** 2,556,072 **Y (ft):** 1,466,249

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 MICHAEL E. COSTELLO & YVONNE H. COSTELLO, incorporating the terms of the Consent Order proposed for Subfile ZRB-3-0040 and in conformance with the *Zuni River Basin Adjudication Hydrographic Survey Report for Sub-area 7*, as amended.

Dated: October 17, 2008

Electronically Filed

/s/ Bradley S. Bridgewater

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BRADLEY S. BRIDGEWATER

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(approved 10/17/2008)

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EX REL. STATE ENGINEER

