

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-4-0428
	)	
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>OSCAR LEE ZILLHART, JR. &amp; MARTHA M. ZILLHART</b>	<b>Subfile No. ZRB-4-0428</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 waiver of service of summons of OSCAR LEE ZILLHART, JR. (Doc. No. 362) and MARTHA M. ZILLHART (Doc. No. 362).

2. OSCAR LEE ZILLHART, JR. & MARTHA M. ZILLHART were provided the documents listed in the Declaration of Gary A. Durr (Exhibit 1) on the dates indicated.

3. With respect to Subfile ZRB-4-0428, Defendants OSCAR LEE ZILLHART, JR. & MARTHA M. ZILLHART were subject to the Special Master's September 28, 2006 *Procedural and Scheduling Order for the Adjudication of Water Rights Claims in Sub-Areas 1, 2, and 3 (Excluding Ramah) of the Zuni River Stream System* (Doc. No. 838)("Procedural and Scheduling Order"), which established a deadline of January 19, 2007 for the submission of a Request for Consultation or the return of a signed Consent Order.

4. These deadlines for Subfile ZRB-4-0428 were never extended.

5. Defendants OSCAR LEE ZILLHART, JR. & MARTHA M. ZILLHART are in default for failure to appear, answer, or otherwise defend in Subfile ZRB-4-0428 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 13, 2009 (Doc. No. 2194).

6. In accordance with the *Zuni River Basin Adjudication Hydrographic Survey Report for Sub Areas 1, 2 and 3 (excluding Ramah)*, as amended, the right(s) of OSCAR LEE ZILLHART, JR. & MARTHA M. ZILLHART to divert and use the public waters of the Zuni River Stream System, Sub-Areas 1, 2 and 3 (excluding Ramah), should be as set forth below:

**OSCAR LEE ZILLHART, JR. and MARTHA M. ZILLHART**  
**Subfile No. ZRB-4-0428**

**WELL**

**Map Label:** 3B-3-W029

**OSE File No:** G 2444

**Priority Date:** 11/21/2005

**Purpose of Use:** 72-12-1 DOMESTIC ONE HOUSEHOLD

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

**S. 22 T. 12N R. 16W 1/4, 1/16, 1/64:** NE NW SW

**X (ft):** 2,520,255 **Y (ft):** 1,550,755

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 ac-ft per annum

WHEREFORE, the Plaintiffs request the Court to enter an order granting default judgment against OSCAR LEE ZILLHART, JR. & MARTHA M. ZILLHART, incorporating the terms of the Consent Order proposed for Subfile ZRB-4-0428 and in conformance with the *Zuni River Basin Adjudication Hydrographic Survey Report for Sub Areas 1, 2 and 3 (excluding Ramah)*, as amended.

Dated: March 23, 2009

Electronically Filed

/s/ Bradley S. Bridgewater

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BRADLEY S. BRIDGEWATER  
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COUNSEL FOR THE UNITED STATES

          (approved 3/23/2009)  
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COUNSEL FOR THE STATE OF NEW MEXICO  
EX REL. STATE ENGINEER

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on March 23, 2009, 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:

Oscar Lee Zillhart, Jr. & Martha M. Zillhart  
4657 Montana Rd  
Ottawa, KS 66067

          /s/                                  
Bradley S. Bridgewater