

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/LFG
)	
and)	
)	ZUNI RIVER BASIN
ZUNI INDIAN TRIBE, NAVAJO NATION,)	ADJUDICATION
)	
Plaintiffs in Intervention,)	Subfile No. ZRB-4-0406
)	
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:

KENNETH MONTAGUE & TONIA MONTAGUE	Subfile No. ZRB-4-0406
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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 Proof of Service of Process by Publication for Tonia Montague (No. 2379) and for Kenneth Montague (No. 2379).

2. KENNETH MONTAGUE & TONIA MONTAGUE were provided the documents listed in the Declaration of Yvonne Marsh (Exhibit 1) on the dates indicated.

3. With respect to Subfile ZRB-4-0406, Defendants KENNETH MONTAGUE & TONIA MONTAGUE were subject to the Special Master's May 3, 2011 *Order Setting Scheduling Conference* (No. 2654), which required these Defendants to appear at a scheduling conference on May 31, 2011 and stated: "**Failure to appear without good cause may result in a default order which incorporates the Plaintiffs' proposed consent order(s).**"

4. Defendants KENNETH MONTAGUE & TONIA MONTAGUE did not appear at the May 31, 2011 scheduling conference, were never excused from the requirement to so appear, and have not otherwise shown good cause for their failure to appear.

5. Defendants KENNETH MONTAGUE & TONIA MONTAGUE are in default for failure to appear or otherwise defend in Subfile No. ZRB-4-0406 within the time limitations imposed by the Orders of the Court, as shown by the Clerk's Certificate of Default filed August 31, 2011 (No. 2699).

6. In accordance with the *Zuni River Basin Adjudication Hydrographic Survey Report: Sub-areas 1, 2, and 3 (Excluding Ramah)*, as amended, the right(s) of KENNETH MONTAGUE & TONIA MONTAGUE 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:

KENNETH MONTAGUE & TONIA MONTAGUE
Subfile No. ZRB-4-0406

POND

Map Label: 3C-4-SP015

Purpose of Use: LIVESTOCK
Priority Date: 10/6/1997
Source of Water: Surface Runoff
Point of Diversion: Not Applicable

Amount of Water:

Depth (ft): 1.0
Surface Area (sq.ft): 12,797
Storage Impoundment Volume (ac-ft): 0.176

Pond Location: As shown on Hydrographic Survey Map 3C-4

S. 20 T. 11N R. 15W 1/4, 1/16, 1/64: NE SW SE

X(ft): 2,541,901 **Y(ft):** 1,517,723

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

Dam height (if greater than 9 ft):

POND

Map Label: 3C-4-SP016
Purpose of Use: LIVESTOCK
Priority Date: 10/6/1997
Source of Water: Surface Runoff
Point of Diversion: Not Applicable

Amount of Water:

Depth (ft): 3.0
Surface Area (sq.ft): 503
Storage Impoundment Volume (ac-ft): 0.021

Pond Location: As shown on Hydrographic Survey Map 3C-4

S. 20 T. 11N R. 15W 1/4, 1/16, 1/64: NW SE NW

X(ft): 2,540,222 **Y(ft):** 1,518,430

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

Dam height (if greater than 9 ft):

WELL

Map Label: 3C-4-W014
OSE File No: G 2167
Priority Date: 3/25/2004
Purpose of Use: 72-12-1 DOMESTIC ONE HOUSEHOLD
Well Location: As shown on Hydrographic Survey Map 3C-4
S. 20 T. 11N R. 15W 1/4, 1/16, 1/64: NE SE NE
X (ft): 2,543,057 Y (ft): 1,518,593
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

WELL

Map Label: 3C-4-W015
OSE File No: G 1218
Priority Date: 3/12/2002
Purpose of Use: 72-12-1 DOMESTIC ONE HOUSEHOLD
Well Location: As shown on Hydrographic Survey Map 3C-4
S. 20 T. 11N R. 15W 1/4, 1/16, 1/64: NE SW NE
X (ft): 2,541,897 Y (ft): 1,518,344
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 KENNETH MONTAGUE & TONIA MONTAGUE, incorporating the terms of the Consent Order proposed for Subfile ZRB-4-0406 and in conformance with the *Zuni River Basin Adjudication Hydrographic Survey Report: Sub-areas 1, 2, and 3 (Excluding Ramah)*, as amended.

Dated: September 16, 2011

Electronically Filed

/s/ Bradley S. Bridgewater

BRADLEY S. BRIDGEWATER

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(approved 9/15/2011)

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EX REL. STATE ENGINEER

