

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-1-0028 |
| |) | |
| 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:

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| ANN HEATH & RICHARD HEATH | Subfile No. ZRB-1-0028 |
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and as grounds therefor Plaintiffs state:

1. The Court has jurisdiction over the above-named defendants as shown by filed service of summons on ANN HEATH (Doc. No. 647) and RICHARD HEATH (Doc. No. 648).

2. ANN HEATH & RICHARD HEATH were provided the documents listed in the Declaration of Gary A. Durr (Exhibit 1) on the dates indicated.

3. With respect to Subfile ZRB-1-0028, Defendants ANN HEATH & RICHARD HEATH were 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 return of a Consent Order, or the filing of a form Subfile Answer.

4. These deadlines for Subfile ZRB-1-0028 were extended by the Order Granting Motion to Extend Time for Persons Served with a Summons to File Subfile Answers (Doc. No. 442), which extended the deadline to file a subfile answer to 20 days after service of summons and the Amended 2003 Complaint.

5. Defendants ANN HEATH & RICHARD HEATH are in default for failure to appear, answer, or otherwise defend in Subfile ZRB-1-0028 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).

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

RICHARD HEATH and ANN HEATH
ZRB-1-0028

WELL

Map Label: 8C-1-W08

OSE File No: G 0789

Priority Date: 5/28/1997

Purpose of Use: 72-12-1.1 DOMESTIC

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

S. 17 T. 09N R. 12W 1/4, 1/16, 1/64: SE SW NE

X (ft): 2,636,559 **Y (ft):** 1,457,375

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

Amount of Water (ac-ft): 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 ANN HEATH & RICHARD HEATH, incorporating the terms of the Consent Order proposed for Subfile ZRB-1-0028 and in conformance with the *Zuni River Basin Adjudication Hydrographic Survey Report for Sub Areas 4 and 8*, as amended.

Dated: January 15, 2008

Electronically Filed

/s/ Bradley S. Bridgewater

BRADLEY S. BRIDGEWATER
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COUNSEL FOR THE UNITED STATES

(approved 1/14/2008)

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COUNSEL FOR THE STATE OF NEW MEXICO
EX REL. STATE ENGINEER

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on January 15, 2008, 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:

I further certify that on January 15, 2008, a copy of the foregoing was served by first class mail on each of the parties set forth below.

Richard Heath & Ann Heath
350 Oso Ridge
Grants, NM 87020

 /s/
Bradley S. Bridgewater