## IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW MEXICO

STATE OF NEW MEXICO, ex rel. STATE  ENGINEER,  Plaintiffs,  No. 01cv00072 BB/WDS  and  ZUNI RIVER BASIN  ZUNI INDIAN TRIBE, NAVAJO NATION,  ADJUDICATION	UNITED STATES OF AMERICA and	)	
Plaintiffs,  No. 01cv00072 BB/WDS and  ZUNI RIVER BASIN ADJUDICATION  Plaintiffs in Intervention,  v.  A & R PRODUCTIONS, et al.	STATE OF NEW MEXICO, ex rel. STATE	)	
and  ) No. 01cv00072 BB/WDS and ) ZUNI RIVER BASIN ZUNI INDIAN TRIBE, NAVAJO NATION, ) ADJUDICATION ) Plaintiffs in Intervention, ) Subfile No. ZRB-4-0356  v. ) A & R PRODUCTIONS, et al. )	ENGINEER,	)	
and  Description of the property of the proper	Plaintiffs,	)	
ZUNI RIVER BASIN ADJUDICATION Plaintiffs in Intervention,  v.  A & R PRODUCTIONS, et al.		)	No. 01cv00072 BB/WDS
ZUNI INDIAN TRIBE, NAVAJO NATION,  Plaintiffs in Intervention,  v.  A & R PRODUCTIONS, et al.	and	)	
Plaintiffs in Intervention,  v.  A & R PRODUCTIONS, et al.		)	ZUNI RIVER BASIN
v. ) A & R PRODUCTIONS, et al. )	ZUNI INDIAN TRIBE, NAVAJO NATION,	)	ADJUDICATION
v. ) A & R PRODUCTIONS, et al. )		)	
A & R PRODUCTIONS, et al.	Plaintiffs in Intervention,	)	Subfile No. ZRB-4-0356
A & R PRODUCTIONS, et al.		)	
)	V.	)	
)		)	
Defendants. )	A & R PRODUCTIONS, et al.	)	
Defendants. )		)	
)	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:

ROBERT JOHNSTON &	Subfile No. ZRB-4-0356
MELY JOHNSTON	

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 ROBERT JOHNSTON (Doc. No. 1225) and the voluntary appearance of MELY JOHNSTON (Doc. No. 248).

2. ROBERT JOHNSTON & MELY JOHNSTON were provided the documents listed in the Declaration of Gary A. Durr (Exhibit 1) on the dates indicated.

3. With respect to Subfile ZRB-4-0356, Defendants ROBERT JOHNSTON & MELY JOHNSTON 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 15, 2007 for the submission of a Request for Consultation or the return of a signed Consent Order.

4. These deadlines for Subfile ZRB-4-0356 were never extended.

5. Defendants ROBERT JOHNSTON & MELY JOHNSTON are in default for failure to appear, answer, or otherwise defend in Subfile ZRB-4-0356 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 4, 2009 (Doc. No. 2157).

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 ROBERT JOHNSTON & MELY JOHNSTON 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:

# ROBERT JOHNSTON and MELY JOHNSTON Subfile No. ZRB-4-0356

#### **WELL**

**Map Label:** 3B-5-W003

**OSE File No:** G 1928

**Priority Date:** 1/1/2004

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

**Well Location:** As shown on Hydrographic Survey Map 3B-5

**S.** 30 **T.** 11N **R.** 15W **1/4, 1/16, 1/64:** NW NE NE

**X** (ft): 2,535,415 **Y** (ft): 1,514,668

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 ROBERT JOHNSTON & MELY JOHNSTON, incorporating the terms of the Consent Order proposed for Subfile ZRB-4-0356 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 12, 2009

Electronically Filed

/s/ Bradley S. Bridgewater

BRADLEY S. BRIDGEWATER U.S. Department of Justice 1961 Stout Street - 8<sup>th</sup> Floor Denver, CO 80294 (303) 844-1359

COUNSEL FOR THE UNITED STATES

(approved 3/6/2009)

EDWARD BAGLEY Office of the State Engineer, Legal Division P.O. Box 25102 Santa Fe, NM 87504 (505) 827-6150

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

### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on March 12, 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:

Robert Johnston & Mely Johnston P.O. Box 855 Ramah, NM 87321

/s/ Bradley S. Bridgewater