

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-3-0175
)	
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:

DAVID SWINDLE TRUSTEE & LINDA SWINDLE TRUSTEE	Subfile No. ZRB-3-0175
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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 DAVID SWINDLE TRUSTEE (No. 958) and LINDA SWINDLE TRUSTEE (No. 958)

2. DAVID SWINDLE TRUSTEE & LINDA SWINDLE TRUSTEE were provided the documents listed in the Declaration of Yvonne Marsh (Exhibit 1) on the dates indicated.

3. With respect to Subfile ZRB-3-0175, Defendants DAVID SWINDLE TRUSTEE & LINDA SWINDLE TRUSTEE 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 DAVID SWINDLE TRUSTEE & LINDA SWINDLE TRUSTEE 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 DAVID SWINDLE TRUSTEE & LINDA SWINDLE TRUSTEE are in default for failure to appear or otherwise defend in Subfile No. ZRB-3-0175 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 for Sub-area 7*, as amended, the right(s) of DAVID SWINDLE TRUSTEE &

LINDA SWINDLE TRUSTEE to divert and use the public waters of the Zuni River Stream System, Sub-Area 7, should be as set forth below:

DAVID SWINDLE TRUSTEE & LINDA SWINDLE TRUSTEE
Subfile No. ZRB-3-0175

WELL

Map Label: 7A-8-W11
OSE File No: G 2301
Priority Date: 6/1/2005
Purpose of Use: 72-12-1 DOMESTIC ONE HOUSEHOLD
Well Location: As shown on Hydrographic Survey Map 7A-8
S. 27 T. 05N R. 16W 1/4, 1/16, 1/64: NW NW SE
X (ft): 2,517,173 **Y (ft):** 1,323,185
New Mexico State Plane Coordinate System, West Zone, NAD 1983
Amount of Water: 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 DAVID SWINDLE TRUSTEE & LINDA SWINDLE TRUSTEE, incorporating the terms of the Consent Order proposed for Subfile ZRB-3-0175 and in conformance with the *Zuni River Basin Adjudication Hydrographic Survey Report for Sub-area 7*, as amended.

Dated: September 7, 2011

Electronically Filed

/s/ Bradley S. Bridgewater

BRADLEY S. BRIDGEWATER

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(approved 9/7/2011)

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