

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 MV/LFG
)	
and)	
)	ZUNI RIVER BASIN
ZUNI INDIAN TRIBE, NAVAJO NATION,)	ADJUDICATION
)	
Plaintiffs in Intervention,)	Subfile No. ZRB-1-0035
)	
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:

WILHELMINA GROSS & LOUIS W. GROSS	Subfile No. ZRB-1-0035
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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 LOUIS W. GROSS (No. 362) and WILHEMINA GROSS (No. 362).

2. WILHELMINA GROSS & LOUIS W. GROSS were provided the documents listed in the Declaration of Karmen Miller (Exhibit 1) on the dates indicated.

3. With respect to Subfile ZRB-1-0035, Defendants WILHELMINA GROSS & LOUIS W. GROSS 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) and the September 27, 2006 *Order Granting Joint Motion to Amend Procedural and Scheduling Orders and Establish or Revise Deadlines for Defendants to Return Requests for Consultation and Submit Subfile Answers* (Doc. No. 837) ("Procedural and Scheduling Order"), which established a deadline of March 20, 2006 for these Defendants to submit a Request for Consultation or return a signed Consent Order and which required these Defendants to either sign and return the last-offered Consent Order or to file and serve a Subfile Answer within 20 days of service of a *Notice That the Consultation Period Has Ended* for Subfile ZRB-1-0035.

4. These deadlines for Subfile ZRB-1-0035 were never extended. Defendants WILHELMINA GROSS & LOUIS W. GROSS submitted a timely Request for Consultation. However, following the conclusion of the consultation these Defendants failed to either sign and return the last-offered Consent Order or to file and serve a Subfile Answer within 20 days of service of the January 30, 2012 *Notice That the Consultation Period Has Ended* (Doc. No. 2748).

5. Defendants WILHELMINA GROSS & LOUIS W. GROSS are in default for failure to appear, answer, or otherwise defend in Subfile ZRB-1-0035 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 October 31, 2012 (No. 2812).

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

WILHELMINA GROSS & LOUIS W. GROSS
Subfile No. ZRB-1-0035

STOCK POND

Map Label: 8A-1-SP17
Purpose of Use: LIVESTOCK
Priority date: 10/6/1997
Source of Water: Surface Runoff
Point of Diversion: Not Applicable
Amount of Water:

Depth (ft): 4.0

Surface Area (sq.ft): 12,572

Storage Impoundment Volume (ac-ft): 0.693

Pond Location: As shown on Hydrographic Survey Map 8A-1

S. 4 T. 09N R. 14W 1/4, 1/16, 1/64: NW NE SW

X(ft): 2,576,458 **Y(ft):** 1,471,350

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

Dam height (if greater than 9 ft):

STOCK POND

Map Label: 8A-1-SP33
Purpose of Use: LIVESTOCK
Priority date: 10/6/1997
Source of Water: Surface Runoff
Point of Diversion: Not Applicable

Amount of Water:

Depth (ft): 1.5

Surface Area (sq.ft): 10,384

Storage Impoundment Volume (ac-ft): 0.215

Pond Location: As shown on Hydrographic Survey Map 8A-1

S. 4 T. 09N R. 14W 1/4, 1/16, 1/64: NW NE SW

X(ft): 2,576,333 Y(ft): 1,471,469

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

Dam height (if greater than 9 ft):

WELL

Map Label: 8A-1-W10
OSE File No: G 1503
Priority Date: 6/27/2003
Purpose of Use: 72-12-1 DOMESTIC ONE HOUSEHOLD
Well Location: As shown on Hydrographic Survey Map 8A-1

S. 4 T. 09N R. 14W 1/4, 1/16, 1/64: NE NE NE

X (ft): 2,579,635 **Y (ft):** 1,472,400

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 WILHELMINA GROSS & LOUIS W. GROSS, incorporating the terms of the Consent Order proposed for Subfile ZRB-1-0035 and in conformance with the *Zuni River Basin Adjudication Hydrographic Survey Report for Sub Areas 4 and 8*, as amended.

Dated: November 13, 2012

Electronically Filed

/s/ Bradley S. Bridgewater

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