

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-3-0171
)	
v.)	
)	
A & R PRODUCTIONS, et al.)	
)	
Defendants.)	
_____)	

UNOPPOSED MOTION FOR SUMMARY JUDGMENT

The Plaintiffs United States of America (“United States”) and New Mexico ex rel. State Engineer (“State”), pursuant to Fed. R. Civ P. 56(a), move the Court to enter its order granting summary judgment against the following Defendants:

SHIRLEY SWEET & MICHAEL SWEET	Subfile No. ZRB-3-0171
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and as grounds therefor Plaintiffs state:

1. On October 22, 2012, Plaintiffs filed a Notice that the Consultation Period Has Ended for Subfile No. ZRB-3-0171 (No. 2807).

2. On October 26, 2012, Defendants SHIRLEY SWEET & MICHAEL SWEET filed a timely Subfile Answer for Subfile No. ZRB-3-0171 (No. 2810). The Defendants' Subfile Answer indicates that they make no claim as to the water right described in the Consent Order offered to them by Plaintiffs, and otherwise specifies no objection to the description of the water right included in said Consent Order.

3. The Defendants SHIRLEY SWEET & MICHAEL SWEET were provided with a proposed Consent Order and documents listed in the Declaration of Yvonne M. Marsh (Exhibit 1) on the dates indicated. The description of the water right included in the Consent Order provided to these Defendants was consistent with the description for Subfile ZRB-3-0171 included in the *Zuni River Basin Hydrographic Survey Report for Subarea 7* which was filed with the Court on January 13, 2006 (No. 464).

4. Fed.R.Civ.P. 56(a) provides that “[t]he Court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” The Defendants' Subfile Answer raises no dispute as to any material fact concerning the Plaintiffs' description of the Defendants' water right in the Consent Order offered to Defendants or in the *Zuni River Basin Hydrographic Survey Report for Subarea 7*. Pursuant to NMSA 1978, Sections 72-4-15 through 72-4-19, Plaintiffs are entitled as a matter of law to judgment on the Defendants rights to the use of water consistent with the facts shown in the *Zuni River Basin Hydrographic Survey Report for Subarea 7*, as amended.

5. Pursuant to D.N.M.LR-Civ. 7.1, a draft of the present motion was mailed to Defendants SHIRLEY SWEET & MICHAEL SWEET on April 23, 2013, with a request that

they concur within 10 days of said mailing. Defendants, via correspondence dated April 25, 2013 to counsel for the United States, have indicated that they concur in this motion.

6. In accordance with the *Zuni River Basin Hydrographic Survey Report for Subarea 7*, as amended, the right(s) of SHIRLEY SWEET & MICHAEL SWEET to divert and use the public waters of the Zuni River Stream System, Sub-Area 7, should be as set forth below:

SHIRLEY SWEET & MICHAEL SWEET
Subfile No. ZRB-3-0171

WELL

Map Label: 7B-3-W49

OSE File No: G 02385

Priority Date: 9/9/2005

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

Well Location: As shown on Hydrographic Survey Map 7B-3

S. 24 T. 08N R. 16W 1/4, 1/16, 1/64: SW SW SE

X (ft): 2,528,732 Y (ft): 1,420,425

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 summary judgment against Defendants SHIRLEY SWEET & MICHAEL SWEET, incorporating the terms of the Consent Order proposed for Subfile ZRB-3-0171, and in conformance with the *Zuni River Basin Hydrographic Survey Report for Subarea 7*, as amended.

Dated: April 29, 2013

Electronically Filed

/s/ Bradley S. Bridgewater

BRADLEY S. BRIDGEWATER

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COUNSEL FOR THE UNITED STATES

(approved 4/23/2013)

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on April 29, 2013, I filed the foregoing *Unopposed Motion for Summary 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:

SHIRLEY SWEET & MICHAEL SWEET
HC 61 Box 3016
RAMAH, NM 87321

 /s/
Bradley S. Bridgewater