

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

UNITED STATES OF AMERICA, and)	
STATE OF NEW MEXICO, ex rel. STATE)	
ENGINEER,)	
)	
Plaintiffs,)	
)	
and)	No. 01-cv-0072 MV/WPL
)	
ZUNI INDIAN TRIBE, NAVAJO NATION,)	ZUNI RIVER BASIN
)	ADJUDICATION
Plaintiffs in Intervention,)	
)	
v.)	Subfile No. ZRB-3-0121
)	
A & R PRODUCTIONS, et al.,)	
)	
Defendants.)	

ORDER GRANTING MOTION FOR SUMMARY JUDGMENT

This matter is before the Court on Plaintiffs’ Joint Motion for Summary Judgment filed in this Subfile Proceeding. (Doc. 2967.) Subfile Defendant Joseph F. Neas & Susan S. Neas Revocable Trust (“the Trust”) did not take a position on the instant motion (*see id.* at 6) and did not file a response. Having considered the parties’ filings and the relevant law, the Court finds that the Plaintiffs’ motion is well-taken and should be granted.

The Court finds as follows:

1. The Court has jurisdiction of the parties and the subject matter herein.
2. On March 10, 2014, Plaintiffs filed a Notice that the Consultation Period Has

Ended for this Subfile Proceeding. (Doc. 2935.)

3. On March 18, 2014, the Trust filed a timely subfile answer for this Subfile Proceeding. (Doc. 2939.) The subfile answer indicates that the only dispute the Trust has with the Consent Order offered to them by Plaintiffs is that the Trust believes that “the well identified as ZRB-3-0022,” *i.e.* Well 7A-3-W17, should be included in this Subfile Proceeding because the Trust now owns the property that contains that well.

4. The portions of the *Zuni River Basin Adjudication Hydrographic Survey Report for Subarea 7* (January 2006, as amended), prepared by Natural Resources Consulting Engineers, Inc., under contract to the United States, relating to the water rights of the Trust for this Subfile Proceeding have been introduced into the record, are not disputed by the Trust except as noted above, and the same are hereby incorporated as the evidentiary basis of the water rights described in this Order.

5. The Court entered default judgment as to the subfile defendants in Subfile No. ZRB-3-0022 on March 1, 2010. (Doc. 2532.) Although the Trust now asserts that two of the subfile defendants in that proceeding granted their interest in the property in question to the Trust in May 2007, the Court has previously concluded that Subfile No. ZRB-3-0022 appropriately continued against the Trust’s predecessor in interest in that property and that the default judgment in that proceeding was proper. (*See* Doc. 2987.) Accordingly, the Court denied the Trust’s motion to vacate the default judgment in Subfile No. ZRB-3-0022. (*Id.*)

6. As the water rights relating to Well 7A-3-W17 *vis-à-vis* Plaintiffs and the subfile defendants (or any successors in interest) in Subfile No. ZRB-3-0022 have already been adjudicated in that proceeding, those water rights may not be the subject of adjudication in this Subfile Proceeding.

7. No genuine dispute as to material fact exists between Plaintiffs and the Trust with respect to the water rights of the wells and impoundments associated with this Subfile Proceeding. *See* FED. R. CIV. P. 56(a); *see also Celotex Corp. v. Catrett*, 477 U.S. 317, 322-24 (1986).

8. Except as noted above, no legal dispute exists between Plaintiffs and the Trust in this Subfile Proceeding. As such, pursuant to N.M. STAT. ANN. §§ 72-4-15 through -19, Plaintiffs are entitled as a matter of law to judgment against the Trust consistent with the facts shown in the *Zuni River Basin Hydrographic Survey Report for Subarea 7*.

9. In accordance with the *Zuni River Basin Hydrographic Survey Report for Subarea 7*, as amended, the rights of the Trust to divert and use the public waters of the Zuni River Stream System, Sub-Area 7, should be as set forth below:

JOSEPH F. NEAS & SUSAN S. NEAS REVOCABLE TRUST
Subfile No. ZRB-3-0121

STOCK POND

Map Label:	7A-4-SP07
Purpose of Use:	Livestock
Priority Date:	1/1/1961
Source of Water:	Surface Runoff
Point of Diversion:	Not Applicable
Amount of Water:	
Depth (ft):	4.0
Surface Area (sq.ft):	3,044
Storage Impoundment Volume (ac-ft):	0.168
Pond Location:	As shown on Hydrographic Survey Map 7A-4

S. 27 T. 08N R. 16W 1/4, 1/16, 1/64: NW NW NE

X(ft): 2,517,646 Y(ft): 1,419,473

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

STOCK POND

Map Label: 7A-4-SP08

Purpose of Use: Livestock

Priority Date: 1/1/1961

Source of Water: Surface Runoff

Point of Diversion: Not Applicable

Amount of Water:

Depth (ft): 5.0

Surface Area (sq.ft): 36,600

Storage Impoundment Volume (ac-ft): 2.521

Pond Location: As shown on Hydrographic Survey Map 7A-4

S. 27 T. 08N R. 16W 1/4, 1/16, 1/64: NW NW NE

X(ft): 2,518,150 Y(ft): 1,419,617

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

STOCK POND

Map Label: 7A-4-SP39

Purpose of Use: Livestock

Priority Date: 1/1/1972

Source of Water: Surface Runoff

Point of Diversion: Not Applicable

Amount of Water:

Depth (ft): 2.0

Surface Area (sq.ft): 1,486

Storage Impoundment Volume (ac-ft): 0.041

Pond Location: As shown on Hydrographic Survey Map 7A-4

S. 28 T. 08N R. 16W 1/4, 1/16, 1/64: NE NE NW

X(ft): 2,515,680 **Y(ft):** 1,419,886

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

WELL

Map Label: 7A-3-W19

OSE File No: None

Priority Date: 1/1/1976

Purpose of Use: NON 72-12-1 DOMESTIC & LIVESTOCK

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

S. 22 T. 08N R. 16W 1/4, 1/16, 1/64: SE SW NW

X(ft): 2,519,734 **Y(ft):** 1,421,070

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


WHEREFORE IT IS HEREBY ORDERED AND ADJUDGED that the water rights of Subfile Defendant Joseph F. Neas & Susan S. Neas Revocable Trust are as set forth herein, subject to the rights of any other water rights claimants with standing to object prior to the entry of a final decree.

IT IS FURTHER ORDERED that to the extent that Subfile Defendant Joseph F. Neas & Susan S. Neas Revocable Trust's affidavit of September 27, 2011 (Doc. 2713) should be construed as a motion, that motion is denied as MOOT;

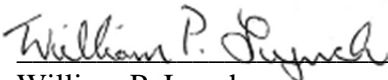
IT IS FURTHER ORDERED that Subfile Defendant Joseph F. Neas & Susan S. Neas Revocable Trust, and its successors, representatives, heirs and assigns, are HEREBY ENJOINED from any diversion or use of the waters of the Zuni River Stream System, except in strict accordance with this Order or other orders of the Court in this civil action.

IT IS FURTHER ORDERED that the United States mail a copy of this order to Subfile Defendant Joseph F. Neas & Susan S. Neas Revocable Trust.

IT IS SO ORDERED.


UNITED STATES DISTRICT JUDGE

Approved:


William P. Lynch
United States Magistrate Judge

A true copy of this order was served on the date of entry--via mail or electronic means--to counsel of record and any pro se party as they are shown on the Court's docket.