

**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. 01CV00072-MV/WPL
)	
ZUNI INDIAN TRIBE, NAVAJO NATION,)	ZUNI RIVER BASIN
)	ADJUDICATION
Plaintiffs in Intervention,)	
)	Subfile No. ZRB-4-0168
v.)	
)	
A & R PRODUCTIONS, et al.,)	
)	
Defendants.)	
)	
_____)	

CORRECTED MOTION FOR DEFAULT JUDGMENT

The Plaintiffs United States of America and New Mexico ex rel. State Engineer, pursuant to Fed. R. Civ P. 55(b)(2), move the Court to enter its order granting default judgment against the following Defendants:

JOHN TOLMAN and EARNESTINE TOLMAN	Subfile No. ZRB-4-0168
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and as grounds therefor Plaintiffs state:

1. The Court has jurisdiction over the above-named defendants as shown by the Order Granting Motion for Substitution of Party (Doc. No. 3149) and the Notice of Filing

Proof of Service of Summons of JOHN TOLMAN (Doc. No. 3227) and EARNESTINE TOLMAN (Doc. No. 3227).

2. JOHN TOLMAN and EARNESTINE TOLMAN were provided the documents listed in the Declaration of Karmen Miller (Exhibit 1) on the dates indicated.

3. With respect to Subfile ZRB-4-0168, Defendants JOHN TOLMAN and EARNESTINE TOLMAN were subject to the Federal Rules of Civil Procedure and the Procedural and Scheduling Orders entered in this case.

4. Defendants JOHN TOLMAN and EARNESTINE TOLMAN did not appear or defend as required, were never excused from the requirement to so appear, and have not otherwise shown good cause for their failure to appear.

5. Defendants JOHN TOLMAN and EARNESTINE TOLMAN are in default for failure to appear or otherwise defend in Subfile No. ZRB-4-0168 within the time limitations imposed by the Orders of the Court and the Federal Rules of Civil Procedure, as shown by the Clerk's Certificate of Default filed April 25, 2016 (Doc. No. 3256).

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 JOHN TOLMAN and EARNESTINE TOLMAN 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:

JOHN and EARNESTINE TOLMAN
Subfile No. ZRB-4-0168

WELL

Map Label: 3C-4-W006
OSE File No: G 01666
Priority Date: 3/7/1994

Purpose of Use: NON 72-12-1 DOMESTIC

Well Location: As shown on Hydrographic Survey Map 3C-4

S. 17 **T.** 11N **R.** 15W **1/4, 1/16, 1/64:** NW SW NE

X (ft): 2,539,192 **Y (ft):** 1,523,929

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

Amount of Water: 0.7 ac-ft per annum

WHEREFORE, the Plaintiffs request the Court to enter an order granting default judgment against JOHN TOLMAN and EARNESTINE TOLMAN, incorporating the terms of the Consent Order proposed for Subfile ZRB-4-0168 and in conformance with the *Zuni River Basin Adjudication Hydrographic Survey Report: Sub-area 1, 2, and 3 (Excluding Ramah)*, as amended.

Dated: May 12, 2016

Respectfully submitted,

/s/ Samuel D. Gollis
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Approved: 5/12/2016

EDWARD BAGLEY

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on May 12, 2016, 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:

John Tolman
Earnestine Tolman
515 W. Greens Rd
8th Floor
Houston, TX 77067

/s/ Samuel D. Gollis
Samuel D. Gollis