

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

STATE OF NEW MEXICO, *ex rel.*  
State Engineer,  
Plaintiff,

v.

No. Civ. 66-06639 WJ/WPL

R. LEE AAMODT *et al.*  
Defendants,

and

UNITED STATES OF AMERICA,  
PUEBLO DE NAMBÉ,  
PUEBLO DE POJOAQUE,  
PUEBLO DE SAN ILDEFONSO,  
and PUEBLO DE TESUQUE,  
Plaintiffs-in-Intervention.

**ORDER GRANTING MOTION FOR SUMMARY JUDGMENT  
ON THE CLAIMS OF YIWEN JIANG AND DAVID S. ROSEN  
UNDER SUBFILE PM-89224 [DOC. NO. 10437]**

**THIS MATTER** is before the Special Master pursuant to Fed. R. Civ. P. 53 and the Order of Reference [Doc. No. 6336], as amended [Doc. No. 7736].

On January 11, 2016, Plaintiff the State of New Mexico filed a motion for summary judgment regarding the claims of Defendants Yiwen Jiang and David S. Rosen under subfile PM-89224 [Doc. No. 10437]. Under Local Rule D.N.M.LR-Civ. 7.4, a response was due on January 28th, unless the parties agreed to an extension of time. On February 1, 2016 the Special Master amended the scheduling order for this subfile, extending the deadline for Defendants to respond to the motion for summary judgment until February 3, 2016 [Doc. No. 10512]. No objection was filed

to the Special Master's amended scheduling order.

The Order of Reference [Doc. No. 6336] directs the Special Master, in relevant part, to “determine all claims and contentions of the parties, including related issues of joinder, relating to.... all the elements of state-law based domestic use rights to the underground waters of the stream system encompassed by this case.” The Special Master is to hear and determine all motions, except that the Special Master is not authorized to hear or determine any motion that presents only legal issues and no contested factual matters, unless directed by the Court. *Id.* Further, under the Order of Reference, the Special Master may not hear or determine any matters arising directly from the Settlement Agreement. *Id.*

Defendants Jiang and Rosen did not file a responsive brief to Plaintiff the State's motion. Defendants Jiang and Rosen did not file a notice that the parties had agreed to an extension of time to file a responsive brief, as is allowed under local rules. *See* D.N.M.LR-Civ. 7.4(a).

“The failure of a party to file and serve a response in opposition to a motion within the time prescribed for doing so constitutes consent to grant the motion.” D.N.M.LR-Civ. 7.1(b). In this case, Defendants' failure to file a response to Plaintiff the State's motion, or to establish on the record that an extension of time had been sought and agreed to by the parties, mandates the application of Local Rule 7.1(b) and warrants the granting of Plaintiff the State's motion.

THEREFORE,


IT IS HEREBY ORDERED that Plaintiff's Motion for Summary Judgment on the Claims of Defendants Yiwen Jiang and David S. Rosen under subfile PM-89224 [Doc. No. 10437] be, and hereby is, **granted**.

IT IS FURTHER ORDERED that Plaintiff the State of New Mexico shall prepare a form of order addressing the rights of Defendants Jiang and Rosen consistent with the relief requested in its

motion, and submit that proposed form of order to the Special Master for review and recommendation to the Court.

**THE PARTIES ARE NOTIFIED THAT WITHIN 20 DAYS OF SERVICE** of a copy of this order, report, or recommendations, they may file written objections with the Clerk of the Court pursuant to Federal Rule of Civil Procedure 53(f)(2). **A party must file any objections with the Clerk of the Court within the twenty-day period if that party wants the District Judge to hear their objections. If no objections are filed within the twenty-day period, the District Judge may adopt the order, report or recommendations in whole.**


IT IS SO ORDERED.

  
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Pierre Levy, Special Master

March 9, 2016

**CERTIFICATE OF SERVICE**

I hereby certify that on the date of filing, I caused the foregoing to be filed electronically through the CM/ECF system which caused the parties on the electronic service list, as more fully set forth in the Notice of Electronic Filing, to be served via electronic mail.

  
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Pierre Levy