

STATE OF NEW MEXICO
COUNTY OF HIDALGO
SIXTH JUDICIAL DISTRICT

STATE OF NEW MEXICO <i>ex rel.</i>	)	No. D-623-CV 2005-00054
NEW MEXICO STATE ENGINEER,	)	Honorable J.C. Robinson
)	
Plaintiff,	)	ANIMAS UNDERGROUND WATER
vs.	)	BASIN ADJUDICATION
)	
ROSETTE, INC., <i>et al.</i>,	)	Subfile No. AUB-012-0022
)	
Respondents.	)	Claimant(s): Connie Jean Hemphill
_____)	

**STATE OF NEW MEXICO’S RULE 1-060(A) MOTION
TO REVOKE JUDGMENT AND ENTER CORRECTED JUDGMENT**

The State of New Mexico (“State”) hereby moves the Court pursuant to Rule 1-060(A) NMRA for an Order revoking a Subfile Final Judgment entered by the Court and entering a corrected Subfile Final Judgment in the above-captioned subfile on the following grounds:

1. Connie Jean Hemphill is a claimant in the Animas Underground Water Basin Adjudication.
2. On January 15, 2016, the Court entered a Subfile Final Judgment: Licensed Water Rights (“Judgment”), in the above-captioned subfile. The Judgment intended to adjudicate a “No Right”, meaning that there are no water rights associated with the subfile. The map attached to the Judgment entered by the Court clearly shows that the right was a “No Right”.
3. After entry of the Judgment, the State determined that there were several errors with the Judgment entered by the Court which caused ambiguity in the Judgment, as follows:
 - (a) In paragraph 2 of the Findings and Conclusions, the following language was mistakenly included in the Judgment: “as of the date of this Judgment, the License(s) are valid and the water rights evidenced by the License(s) have not been abandoned and are not

subject to forfeiture.” The Judgment should have instead included the following language: “as of the date of this Judgment, the License(s) are no longer valid and the water rights evidenced by the License(s) have either been abandoned or forfeited.”

(b) Section 1(A)(3) of the adjudication Order and Decree states that the Purpose of Use of the water right is “Irrigation and Domestic.” This section should have instead described the Purpose of Use as “No Right.”

(c) Section 1(A)(5) of the adjudication Order and Decree states that the Location and Amount of Irrigated Acreage is 2.00 acres. This section should have instead described the Location and Amount of Irrigated Acreage as 2.00 “no right” acres.

(d) Section 1(A)(6) of the adjudication Order and Decree states that the Amount of Water is “Not to Exceed [a] Farm Delivery Requirement: 3.0 acre-feet per acre per year at the wellhead/Consumptive Irrigation requirement: 2.1 acre-feet per acre per year.” This section should have instead described the Amount of Water as “None”.

4. Despite the errors set forth above, the Judgment entered by Court was clearly intended to be a “No Right” as shown by map attached to the Judgment, and the description of the Priority of the water right as “None” in Section 1(A)(1) of the adjudication Order and Decree.

5. A corrected Judgment is attached hereto as Exhibit 1. The State has transmitted the corrected Judgment to Connie Jean Hemphill and has requested that she sign and return the Judgment to the State. The State also contacted Ms. Hemphill to determine if she concurs with the motion. At the time of filing this motion, the State had not received a response from Ms. Hemphill to the State’s request for concurrence.

For the forgoing reasons, the State respectfully requests the Court to revoke the Judgment entered by the Court on January 15, 2016, and enter a corrected Judgment as set forth in Exhibit 1 after it is executed by the State and the claimant.

Respectfully submitted,

UTTON & KERY, P. A.
Attorney for Plaintiff State of New Mexico
317 Commercial Street, N. E.
Albuquerque, NM 87102
(505) 379-4203

Electronically Filed
By: /s/Susan C. Kery
SUSAN C. KERY
susan@uttonkery.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed to the following claimant and served to parties of record via the Court's Odyssey File & Serve System this 20th day of October, 2017:

Connie Jean Hemphill
RR 2. Box 15
Cibola, AZ 85328

/s/Susan C. Kery
SUSAN C. KERY

STATE OF NEW MEXICO
COUNTY OF HIDALGO
SIXTH JUDICIAL DISTRICT COURT

STATE OF NEW MEXICO <i>ex rel.</i>	)	CV 2005-0054
NEW MEXICO STATE ENGINEER,	)	Hon. J. C. Robinson
)	
Plaintiff,	)	ANIMAS UNDERGROUND WATER
	)	BASIN ADJUDICATION
v.)	
	)	Subfile No. AUB-012-0022
ROSETTE, INC., <i>et al.</i> ,)	
	)	Claimant(s):
Respondents.	)	Connie Jean Hemphill
)	

SUBFILE FINAL JUDGMENT: LICENSED WATER RIGHTS

THIS MATTER COMES BEFORE the Court upon the stipulation, set forth below, between the State of New Mexico (the “State”) and the water rights claimant(s) named in the case caption above (collectively, the “Claimant”). The Court, based on the stipulation between the State and the Claimant and its examination of the Court's file, FINDS AND CONCLUDES THAT:

1. The Court has personal jurisdiction over the State and the Claimant and has *in rem* jurisdiction over all water rights in the Animas Underground Water Basin (the “Basin”). Notice of this Court’s *in rem* jurisdiction was served on all water rights claimants in the Basin in accordance with Rule 1-071.2(C) NMRA and the Case Management Order Mandating Basin-Wide Issue Proceeding and Expedited *Inter Se* Proceedings and Prescribing Procedure for Giving Notice of All Such Proceedings, filed August 9, 2012 (the “Case Management Order”).

2. The State and the Claimant have agreed that (a) the State issued the License(s) referenced below (License(s)) granting the licensee the right to appropriate water from the Basin and (b) as of the date of this Judgment, the License(s) are valid and the water rights evidenced by the License(s) have not been abandoned and are not subject to forfeiture.
3. Notice of the parties' request that the Court enter this Judgment and an opportunity to object to that request have been provided to water rights claimants in the Basin pursuant to this Court's Monthly Adjudication Report. Notice of the purpose and availability of the Monthly Adjudication Report was provided to all water rights claimants in the Basin pursuant to Rule 1-071.2(C) and the Case Management Order.
4. Any objections to the State's and Claimant's request that the Court enter this Judgment have been resolved in court proceedings pursuant to the Procedural Order Governing Expedited *Inter Se* Adjudication of State Law Water Rights.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT:

1. The water rights of the Claimant are as follows:

A. UNDERGROUND WATER (License: No. A-35)

Office of the State Engineer File No(s). A-00035

(1) Priority: NONE

(2) Source of Water: Animas Underground Water Basin

(3) Purpose of Use: No Right

(4) Point(s) of Diversion:

Well No.:A-00035

Location: X=2,397,702 Y= 387,355 Map: AUB-12

(5) Location and Amount of Irrigated Acreage:

Township 26S, Range 20W, Section 09, N.M.P.M.

Pt. NE¼

2.00

Total: 2.00 no right acres

Water right is appurtenant to 2.00 acres as shown on the attached Hydrographic Survey Map for Subfile No. AUB-012-0022.

(6) Amount of Water:

NONE

2. The conditions imposed by the Office of the State Engineer when granting the License(s) are confirmed by the Court and incorporated into this Judgment.
3. The Claimant has no right to divert and use the public waters of the Basin except in strict accordance with the water rights described herein. This restriction in no way affects any additional water rights the Claimant may have, as adjudicated in other subfiles in this proceeding.
4. If ownership of all or any part of the water rights described herein is transferred for any reason whatsoever, including by operation of law, the successor in interest shall file a notice of change of ownership with the Office of the State Engineer as required by NMSA 1978, Section 72-1-2.1 (1996). No successor in interest to the Claimant may participate in any aspect of this adjudication unless it first files a motion for substitution of parties in accordance with Rule 1-025 NMRA and attaches to the motion proof that it has filed the required change of ownership form with the Office of the State Engineer.

5. This Judgment adjudicates the water rights described herein as between both the State and the Claimant and the Claimant and all other claimants in the Basin. This Judgment binds the State, the Claimant and all other water rights claimants in the Basin regardless of whether all water rights claimants were served and joined as defendants, participated in or received actual notice of this subfile proceeding, or filed *inter se* objections to this Subfile Final Judgment.
6. The Claimant and all successors, representatives, heirs and assigns of the Claimant are enjoined from any diversion or use of the public waters of the Basin except in strict accordance with the water rights set forth in this Judgment.
7. Pursuant to Rule 1-054(B) NMRA, the Court determines there is no just reason for delay of the entry of a final judgment as to the water rights adjudicated hereby. The Court enters this Judgment as a final judgment as to all issues related to the nature, extent, elements and validity of the water rights adjudicated hereby. This Judgment may be modified or amended only to the extent permitted by Rule 1-060 NMRA.

IT IS SO ORDERED.

J. C. Robinson
District Judge

Approved by Special Master

Date

AGREED:

Plaintiff State of New Mexico

Susan C. Kery
Utton & Kery, P. A.
317 Commercial NE
Albuquerque, New Mexico 87102
(505) 379-4203
Attorney for the State of New Mexico

Date

AGREED:

CONNIE JEAN HEMPHILL

Signature

Mailing address

() _____

Phone number

E-mail address

Date