

STATE OF NEW MEXICO
COUNTY OF HIDALGO
SIXTH JUDICIAL DISTRICT COURT

STATE OF NEW MEXICO *ex rel.*
NEW MEXICO STATE ENGINEER,

Plaintiff,

v.

ROSETTE, INC., *et al.*,

Respondents.

CV 2005-0054

Hon. Jarod K. Hofacket

ANIMAS UNDERGROUND WATER
BASIN ADJUDICATION

Subfile No. AUB-009-0003B

Claimant(s):

Lightning Dock Geothermal, HI-01,
LLC

SUBFILE FINAL JUDGMENT: UNLICENSED 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 the Court should enter this Judgment adjudicating all elements of the Claimant's right to divert and place to beneficial use the public waters of the Basin, as set forth below.
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 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

Office of the State Engineer File No(s). A-00036-A

- (1) Priority: Priority dates for wells listed below:

December 31, 1936 for up to 156.000 acre-feet per annum diversion as measured at the wellhead, and for up to 81.952 acre-feet per annum consumptive use; and

May 27, 1948 for up to 374.256 acre-feet per annum diversion as measured at the wellhead, and for up to 196.609 acre-feet per annum consumptive use.

- (2) Source of Water: Animas Underground Water Basin.

(3) Purpose of Use: Irrigation and Commercial

(4) Point(s) of Diversion:

Well No.:A-00036-A

Location: X=2,413,351 Y= 418,052 Map: AUB-09

Well No.:A-00036-AS10

Location: X=2,404,832 Y= 419,279 Map: AUB-09

Well No.:A-00036-AS11

Location: X=2,404,883 Y= 419,184 Map: AUB-09

Well No.:A-00036-AS14

Location: X=2,404,851 Y= 419,158 Map: AUB-09

Well No.:A-00036-AS15

Location: X=2,414,174 Y= 420,656 Map: AUB-09

Well No.:A-00036-AS16

Location: X=2,414,629 Y= 420,779 Map: AUB-09

Well No.:A-00036-AS17

Location: X=2,414,266 Y= 420,937 Map: AUB-09

Well No.:A-00036-AS18

Location: X=2,414,408 Y= 420,669 Map: AUB-09

Well No.:A-00036-AS19

Location: X=2,414,291 Y= 420,642 Map: AUB-09

Well No.:A-00036-AS2

Location: X=2,414,086 Y= 417,698 Map: AUB-09

Well No.:A-00036-AS3

Location: X=2,412,962 Y= 418,524 Map: AUB-09

Well No.:A-00036-AS5

Location: X=2,413,078 Y= 418,044 Map: AUB-09

Well No.:A-00036-AS6

Location: X=2,413,191 Y= 417,555 Map: AUB-09

Well No.:A-00036-AS7

Location: X=2,413,579 Y= 417,272 Map: AUB-09

Well No.:A-00036-AS8

Location: X=2,413,569 Y= 417,675 Map: AUB-09

Well No.:A-00036-B

Location: X=2,413,704 Y= 418,249 Map: AUB-09

Well No.:A-00064

Location: X=2,412,418 Y= 416,529 Map: AUB-09

Well No.:A-00065-A

Location: X=2,412,424 Y= 415,415 Map: AUB-09

Well No.:A-00065-AS

Location: X=2,410,568 Y= 418,028 Map: AUB-09

(5) Place of Use:

Under permit no. A-00036-A, A-000360B, A-00064, A-00065-A COMB:

Within the boundaries of the lands owned by Lightning Dock Geothermal, HI-01, LLC.

Location and Amount of Irrigated Acreage:

Water has been placed to beneficial use and a water right perfected on 90.35 acres, as described below and shown on the attached hydrographic survey map.

Township 25S, Range 19W, Section 07, N.M.P.M.	
Pt. NW $\frac{1}{4}$	42.03
Township 25S, Range 19W, Section 07, N.M.P.M.	
Pt. SW $\frac{1}{4}$	48.32
Total:	90.35 acres

(6) Amount of Water:

Under permit no. A-00036-A, A-000360B, A-00064, A-00065-A COMB:

(i) Water has been placed to beneficial use and a water right perfected in an amount of 450.756 acre feet per annum, 236.797 acre feet per annum consumptive use.

(ii) Water may be placed to beneficial use in an additional amount up to 530.256 acre feet per annum as measured at the well, with 278.561 acre feet per annum consumptive use in accordance with the terms and conditions of the permit or as otherwise authorized by the New Mexico State Engineer.

2. All conditions imposed by the Office of the State Engineer in granting any permit relating to these water rights are incorporated into this Subfile Final 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 the water rights adjudicated by 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.

JAROD K. HOFACKET
DISTRICT COURT JUDGE

AGREED:

Plaintiff State of New Mexico

Susan C Kery

Susan C. Kery

Utton & Kery, P. A.

500 Tijeras Ave. NW

Albuquerque, New Mexico 87102

(505) 379-4203

Attorney for the State of New Mexico

11/09/2020

Date

AGREED:

LIGHTNING DOCK GEOTHERMAL HI-01, LLC

Nicholas Goodman

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10/28/20

Date