

**STATE OF NEW MEXICO
COUNTY OF HIDALGO
SIXTH JUDICIAL DISTRICT COURT**

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|---|---|------------------------------------|
| STATE OF NEW MEXICO <i>ex rel.</i> |) | No. D-623-CV-2005-00054 |
| NEW MEXICO STATE ENGINEER, |) | Honorable Jarod K. Hofacket |
| |) | |
| Plaintiff, |) | ANIMAS UNDERGROUND WATER |
| vs. |) | BASIN ADJUDICATION |
| |) | |
| ROSETTE, INC., <i>et al.</i>, |) | Subfile No. AUB-021-1003 |
| |) | |
| |) | Claimant(s) |
| |) | Jay Marcus Mitchell |
| |) | Lenna Kaye Mitchell |
| Respondents. |) | |
| _____ |) | |

STATE'S MOTION TO VACATE SUBFILE FINAL JUDGMENT

COMES NOW the State of New Mexico, *ex rel.* Office of the State Engineer ("State"), by and through its undersigned counsel, and hereby moves this Court pursuant to Rule 1-060(B)(1) NMRA for an Order to vacate the Subfile Final Judgment: Unlicensed Water Rights ("Judgment") entered in the above-referenced subfile on August 26, 2025, on the following grounds:

1. On August 23, 2025, counsel for the State submitted to the Court the Judgment, which had been stipulated to by the State and the Claimants Jay Marcus Mitchell and Lenna Kaye Mitchell. Counsel for the State requested that the Court review and approve the Judgment.
2. The Court entered the Judgment on August 26, 2025.
3. After the Judgment was entered, counsel for the State determined that the Judgment had been entered prematurely. Pursuant to the April 22, 2014 Procedural Order Governing Expedited *Inter Se* Adjudication of State Law Water Rights, Section F, a proposed Subfile Judgment must be posted for inspection on the Court's website for forty-five days in order to allow other claimants to object to or participate in the final resolution of the proposed

Subfile Judgment. Counsel for the State inadvertently failed to request that the Court post the Judgment for the requisite period of time prior to entering it as a final judgment.

4. In order to correct this mistake, the Judgment must be vacated and posted on the adjudication website. Once the deadline to object to the Judgment expires with no objections having been submitted, counsel for the State will resubmit the Judgment for entry by the Court.

For the foregoing reason, the State respectfully requests that the Judgment entered on August 26, 2025 be vacated.

Respectfully submitted,

UTTON & KERY, P. A.
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Electronically Filed
By: /s/Susan C. Kery
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was e-mailed to the following claimants and served to the parties of record via the Court's Odyssey File & Serve System this 22nd day of September, 2025.

Jay Marcus Mitchell
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/s/Susan C. Kery
SUSAN C. KERY