

STATE OF NEW MEXICO
COUNTY OF HIDALGO
SIXTH JUDICIAL DISTRICT COURT

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-007-0002A
)	
Defendants.	)	Claimants: Timothy McCants
	)	William McCants

STATE OF NEW MEXICO’S MOTION
FOR ENTRY OF SUBFILE DEFAULT JUDGMENT

The State of New Mexico (“State”), in accordance with the April 22, 2014 Procedural Order Governing Expedited *Inter Se* Adjudication of State Law Water Rights (“Procedural Order”), moves the Court to enter a default judgment against the following claimants, incorporating the terms set forth in the Proposed Subfile Final Judgment for the subfile referenced above:

TIMOTHY McCANTS
WILLIAM McCANTS

In support of this Motion, the State states as follows:

1. In accordance with the Procedural Order, each claimant listed above was served in this action by certified mail, return receipt requested, with an adjudication packet containing a summons, a description of the adjudication process and the claimant’s obligations, a proposed Subfile Final Judgment, and a Response and Request for Consultation form.
2. A Return of Service for the claimants was filed with the Court on April 7, 2026.

3. The claimants failed to respond to the adjudication packet as ordered by returning a signed Subfile Final Judgment, a Response and Request for Consultation, or another responsive pleading.

4. On May 19, 2026, the District Court Clerk of the Sixth Judicial District of the State of New Mexico filed a Certificate as to the State of the Record and Nonappearance, stating that process was issued to the claimants on March 27, 2026, that process was served on the claimants on March 31, 2026, and that the claimants have failed to appear in the action.

5. Upon the filing of this Motion, a proposed Order Granting Subfile Default Judgment will be submitted to the Court for posting to allow water rights claimants in the Basin with the opportunity to participate in an expedited *inter se* proceeding concerning the proposed Subfile Default Judgment. If no *inter se* notices are filed by the expiration of the notice submittal deadline, the proposed Order Granting Subfile Default Judgment will be submitted to the Court for review and entry.

WHEREFORE, the State respectfully requests that the Court enter an Order Granting Subfile Default Judgment incorporating the terms of the proposed Subfile Final Judgment served on the claimants, as set forth in the proposed Order Granting Subfile Default Judgment submitted with this Motion.

Respectfully submitted,

UTTON & KERY, P. A.
Attorney for Plaintiff State of New Mexico ex rel.
New Mexico State Engineer
500 Tijeras Ave. NW
Albuquerque, NM 87102
(505) 379-4203

By: *Electronically Filed*
/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 claimants and was served to parties of record via the Court's Odyssey File & Serve System this 9th day of June, 2026.

Timothy McCants
William McCants
P.O. Box 428
Eldorado, TX 76936-0428

/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>	)	No. D-623-CV-2005-00054
NEW MEXICO STATE ENGINEER,	)	Hon. Jarod K. Hofacket
)	
Plaintiff,	)	ANIMAS UNDERGROUND
	)	WATER BASIN ADJUDICATION
v.)	
	)	Subfile No. AUB-007-0002A
ROSETTE, INC., <i>et al.</i>,	)	Claimant(s):
	)	Timothy McCants
Respondents.	)	William McCants
<hr/>)	

ORDER GRANTING SUBFILE DEFAULT JUDGMENT

THIS MATTER COMING to be heard upon motion by Plaintiff State of New Mexico for entry of a Subfile Default Judgment against the following claimant(s):

**TIMOTHY MCCANTS
WILLIAM MCCANTS**

the Court, having considered the record and being otherwise fully advised in the premises, finds:

1. The Court has jurisdiction of the parties and the subject matter herein.
2. The claimant(s) have been legally served with process.
3. The claimant(s) have failed to timely respond to an adjudication packet or a Notice Terminating Water Rights Consultation.
4. The water rights of the claimant(s) to divert and use public waters of the Animas Underground Water Basin are as follows:

A. UNDERGROUND WATER (License: No. A-45 & A-45-ENLG)
Office of the State Engineer File No(s): FORMERLY A-00045

- (1) Priority: A-00045: NONE
- (2) Source of Water: Animas Underground Water Basin
- (3) Purpose of Use: No Right
- (4) Point(s) of Diversion:

Well No.:A-00045

Location: X=2,406,094 Y= 419,575 Map: AUB-07

on the New Mexico State Plane Coordinate System, West Zone, 1983 N.A.D.

- (5) Location and Amount of Irrigated Acreage:

Township 25S, Range 20W, Section 01, N.M.P.M.

Pt. SW $\frac{1}{4}$ 16.60

Township 25S, Range 20W, Section 01, N.M.P.M.

Pt. SE $\frac{1}{4}$ 80.40

Township 25S, Range 20W, Section 12, N.M.P.M.

Pt. NW $\frac{1}{4}$ 10.90

Township 25S, Range 20W, Section 12, N.M.P.M.

Pt. NE $\frac{1}{4}$ 55.10

Total: 163.00 no right acres

Water right is appurtenant to 163.00 acres as shown on the attached Hydrographic Survey Map for Subfile No. AUB-007-0002A.

- (6) Amount of Water:

NONE

B. UNDERGROUND WATER (License: No. A-45 & A-45-ENLG)

Office of the State Engineer File No(s). A-00045

- (1) Priority: A-00045: May 27, 1948
- (2) Source of Water: Animas Underground Water Basin
- (3) Purpose of Use: Non 72-12-1 Domestic

(4) Point(s) of Diversion:

Well No.:A-00045

Location: X=2,406,094 Y= 419,575 Map: AUB-07

on the New Mexico State Plane Coordinate System, West Zone, 1983 N.A.D.

(5) Place of Use: Lands of Thomas McCants

(6) Amount of Water: Historical beneficial use not to exceed 3.00 acre-feet per year.

5. All terms and conditions set forth or incorporated in the State of New Mexico's proposed Subfile Final Judgment served on the claimant(s) shall be incorporated into this Judgment.
6. There is no just reason for delay of the entry of a final judgment as to the elements of the claims of the claimant(s) adjudicated by this Judgment.

IT IS THEREFORE ORDERED that the rights of the claimants(s) are set forth above.

IT IS FURTHER ORDERED that the claimant(s) and all those in privity with the claimant(s) are enjoined from any diversion or use of the public underground waters of the Animas Underground Water Basin except in strict accordance with the water right(s) set forth in this Order and in other orders of this Court.

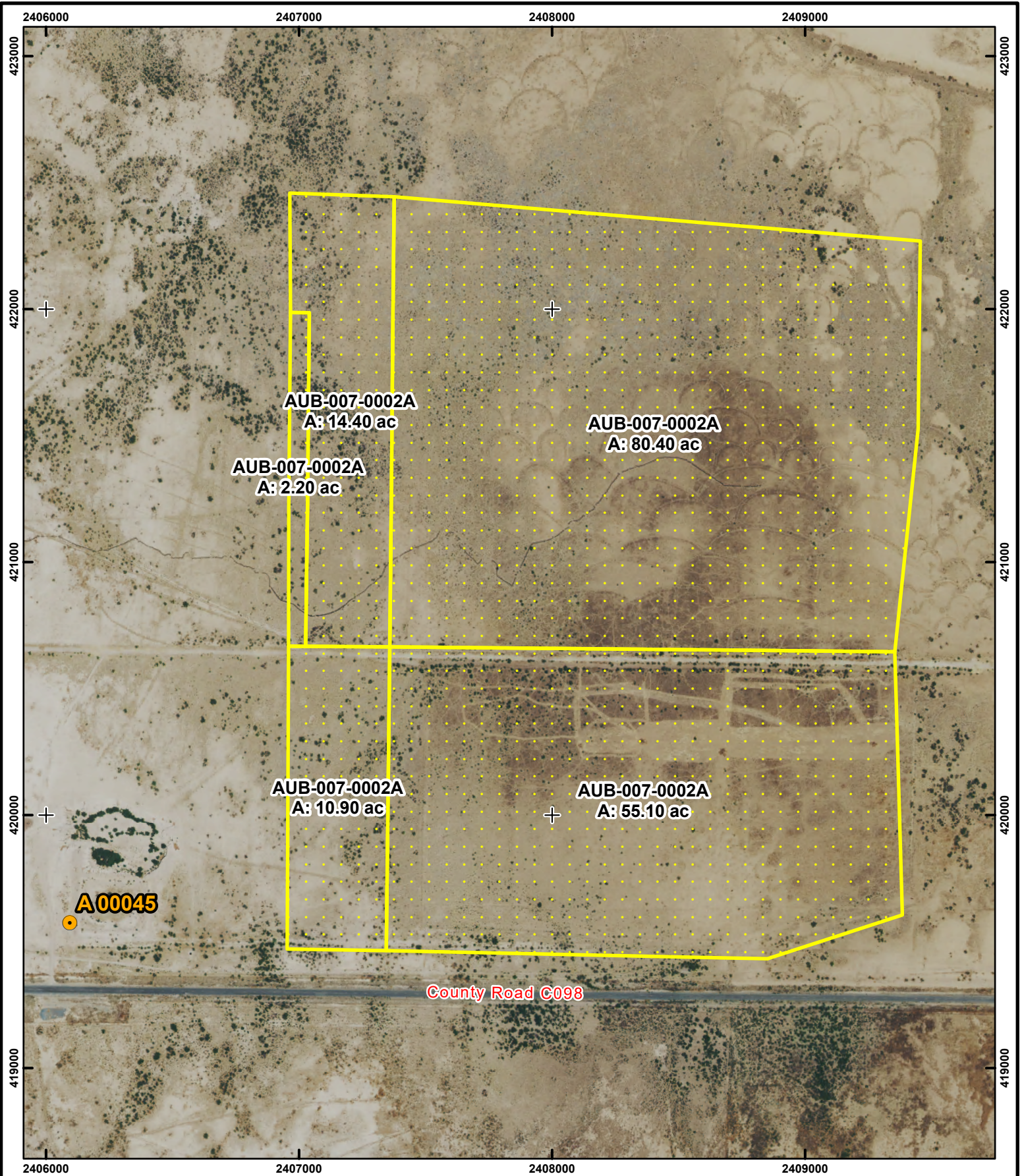
JAROD K. HOFACKET
DISTRICT COURT JUDGE

AGREED:

Plaintiff State of New Mexico

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

Date



Legend

- Point of Diversion
- No Right

New Mexico State Plane West NAD 83
2018 Aerial Imagery

1:6,000
1 inch equals 500 feet

0 200 400 600 800 Feet

N

State of New Mexico
Office of the State Engineer
Elizabeth K. Anderson, P.E., State Engineer

Animas Underground Water Basin
Hydrographic Survey
Cotton City Section

Subfile Number
AUB-007-0002-A
May 20, 2026