

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF AN ORDER TO)
SHOW CAUSE AS TO WHY ROSA)
JOINT VENTURE, A NEW MEXICO)
PARTNERSHIP, SHOULD NOT)
BE FOUND IN VIOLATION OF THE)
PUBLIC UTILITY ACT AND)
COMMISSION RULES)
_____)

Case No. 18-00214-UT

CERTIFICATION OF STIPULATION

May 27, 2021

TABLE OF CONTENTS

I. STATEMENT OF THE CASE	1
II. SUMMARY	9
III. DISCUSSION.....	10
A. The evolution that led to the stipulation and transfer agreement	10
B. Issues resolved by the stipulation	12
1. CCN, Abandonment and Transfer	12
2. Rate base, revenue requirement and rates	13
3. System improvements	13
4. Administrative penalties	14
5. Transfer agreement	14
a. Water system assets	14
b. Wastewater system assets	15
c. Operational, financial transfer/transition and regulatory approvals	15
C. Testimony supporting the stipulation.....	16
1. Sambrito Mutual Domestic Water Consumers Association	16
a. The water and wastewater systems	16
b. Customer service and rates	18
c. Water and wastewater operations	19
d. Regulatory requirements and support	20
e. Board governance	20
f. Administrative penalties	21
2. Rosa Joint Venture	21
3. Staff.....	22
IV. RECOMMENDATIONS	23
A. Legal standard	23
B. Approval of the stipulation	24
D. Mr. Dustin’s Memorandum of May 17, 2021	25

V. FINDINGS OF FACT AND CONCLUSIONS OF LAW	26
VI. DECRETAL PARAGRAPHS	26

Ashley C. Schannauer, Hearing Examiner for this case, submits this Certification of Stipulation to the New Mexico Public Regulation Commission ("Commission" or "NMPRC") pursuant to NMSA 1978, §8-8-14 and NMPRC Rules of Procedure §1.2.2.20(B)(5)NMAC. The Hearing Examiner recommends that the Commission adopt the following statement of the case, discussion, and findings of fact, conclusions of law and decretal paragraphs in a final order.

I. STATEMENT OF THE CASE

On July 18, 2018, the Commission issued an Order to Show Cause and Order Appointing Hearing Examiner establishing the current docket. The Commission's Order found that it appeared that Rosa Joint Venture ("RJV") is a public water utility as defined by NMSA1978, §62-3-3(G)(3) and that RJV has operated and continues to operate without a Certificate of Public Convenience ("CCN") from the Commission and without Commission approval of its rates, terms, and conditions of service.

The Commission ordered RJV to file a response within 45 days from the date of the Order showing why its operations should not be found to have violated the following requirements of the Public Utility Act ("PUA") and related administrative rules:

a. Why RJV should not be found to have violated the requirement of the PUA, NMSA 1978, Section 62-9-1, that "[n]o public utility shall begin the construction or operation of any public utility plant or system or of any extension of any plant or system without first obtaining from the commission a certificate that public convenience and necessity require or will require such construction or operation....," as well as Commission rule 17.12.1.9.D NMAC requiring any water utility subject to the Commission's jurisdiction to obtain a certificate of public convenience and necessity prior to commencing construction or operation, and to apply for such a certificate in the form required by Commission rule 17.12.740 NMAC.

b. Why RJV should not be found to have violated the requirements of Commission rule 17.12.1.9.E NMAC, implementing design, construction and operation requirements as described in Commission rule 17.12.750 NMAC,

c. Why RJV should not be found to have violated the requirement of 17.12.750.11 NMAC, to "furnish and maintain sufficient facilities to provide a continuous and adequate supply of water... [etc]."

d. Why RJV should not be found to have violated the requirement of the PUA, NMSA 1978, Section 62-8-1, that "[e]very rate made, demanded or received by any public utility shall be just and reasonable."

e. Why RJV should not be found to have violated the requirement of the PUA, NMSA 1978, Section 62-8-3, that "[u]nder such rules and regulations as the commission may prescribe, every public utility subject to the jurisdiction of the commission, shall file with the commission, within such time and in such form as the commission may designate, schedules showing all rates established by it and collected or enforced, or to be collected or enforced, with the jurisdiction of the commission. The utility shall keep a copy of such schedules open to public inspection under such rules and regulations as the commission may prescribe," and Commission Rule 17.1.210 NMAC, prescribing the Commission's requirements for "Schedule of Rates, Rules, and Forms."

f. Why RJV should not be found to have violated the requirement of Commission rule 17.12.1.9.A NMAC to file annual report forms with the Commission, the requirement of Commission rule 17.12.1.9.B NMAC to maintain financial accounts as specified therein, and the requirement of Commission rule 17.12.1.9.F NMAC to adopt customer service rules and regulations in conformance with the requirements of that rule.

g. Why RJV should not be assessed an administrative penalty of up to \$100,000 for each of any such violations and, if a continuing violation, for each day of any such violations, pursuant to NMSA 1978, §§62-12-4, 62-12-5 and 62-12-6.11. In the event the Commission finds statutory or administrative violations, it is authorized by NMSA 1978, §§62-12-4, 62-12-5 & 62-12-6 to assess monetary penalties against RJV of between one hundred (\$100.00) and one hundred thousand (\$100,000.00) dollars per offense. Each such violation constitutes a separate and distinct offense and in event of a continuing violation following a conviction, each day's continuing violation shall be deemed a separate and distinct offense and all such penalties shall be cumulative.

The Commission's July 18, 2018 Order found further that, if RJV files a sufficient application for a CCN and a sufficient application for approval of rates along with RJV's substantive response to the Order to Show Cause, the Commission may consider such remedial efforts by RJV as mitigating factors when considering potential penalties.

The Commission also ordered Staff to file, within 20 days of RJV's filing, its evaluation of RJV's Response.

RJV did not file a Response within the deadline established in the July 18, 2018 Order. After status conferences held on September 18 and October 18, 2018, RJV filed its Response on December 3, 2018.

From the issuance of the July 18, 2018 Show Cause Order through November, 2018 several status updates were held with RJV, PRC Staff and the Hearing Examiner. During this time, as documented by affidavit of PRC Staff Engineer Timothy A. Martinez on November 17, 2018, in consultation with staff from the Drinking Water Bureau of the New Mexico Environment Department, PRC Staff evaluated the RJV water and wastewater systems,

identified areas of concern and noted that RJV made several needed improvements and was making a “good faith effort to maintain adequate service while also improving the water system.” Mr. Martinez recommended that an engineering report be prepared to analyze the condition of RJV’s water and wastewater system.¹

After discussion at the status conference held on December 11, 2018, the Hearing Examiner ordered that RJV provide “an engineering report analyzing the condition of Rosa’s water and wastewater systems, their physical viability, recommended improvements and potential alternatives and schedules for implementing the improvement.”²

A further status conference was held on February 22, 2019 to discuss next steps for RJV to come into compliance with the various requirements of the PUA. At the February 22, 2019 status conference, the participants agreed on a hearing schedule to address the PUA violations alleged in the Show Cause Order, with RJV filing testimony by March 15, 2019, Staff and Intervenor filing testimony by March 29, 2019, and an evidentiary hearing to be held on April 8, 2019.

On March 14, 2019, RJV submitted a response to the Hearing Examiner’s procedural order, which included substantive documentation regarding, *inter alia*, RJV partnership, subdivision, and water and wastewater system documents; Engineer Evaluation of the Water and Wastewater Systems by Molzen-Corbin; NMED Drinking Water Bureau documentation; and proposed rules for water and wastewater services.

Prior to the scheduled hearing, two RJV customers (Carolyn Wood and John Dustin) and the Rosa Meadows/Lake View Heights Water Users Association filed to intervene.

¹ See, *Affidavit of Timothy A. Martinez*, November 17, 2018.

² See, *Order Scheduling Engineering Report and Status Conference*, December 11, 2018.

On April 1, 2019, RJV, with the consent of all parties, filed a motion asking that the April 8, 2019 hearing be postponed, that the Hearing Examiner appoint a mediator, schedule a settlement conference and hold the procedural schedule in abeyance until a reasonable time after the settlement conference has been held. The Hearing Examiner thereafter converted the April 8, 2019 hearing date to a status conference, at which the parties agreed and the Hearing Examiner approved the following:

-- That the parties would engage in discovery and informal information exchange for the balance of the month of April 2019 in preparation for settlement discussions to be conducted in the first two weeks of May 2019.

-- That among the issues to be addressed in the settlement discussions would be capital improvements to be undertaken by RJV and RJV's intent to proceed with an Application for a CCN or with the transfer of the water and sewer systems to a Mutual Domestic Water Consumers Association.

-- That a status conference to report on the progress of the settlement discussions would be held on May 13, 2019.

-- That a hearing would be held on July 10, 2019.³

On May 13, 2019, the Hearing Examiner issued Procedural Order No. 3 setting a procedural schedule and setting a public hearing to begin July 10, 2019 and ordering RJV to provide updated testimony responsive to the first Procedural Order issued on February 22, 2019. On May 31, 2019, RJV filed its Response to Procedural Order No. 3, providing updated information responsive to the first Procedural Order;

³ On April 11, 2019, RJV filed a notice withdrawing its request for mediation.

Prior to the scheduled hearing in July, the parties began discussing the formation of a mutual domestic water consumers association. As a result, on July 9, 2019, the Hearing Examiner issued an order vacating the hearing and scheduling a meeting to discuss the formation of a mutual domestic water consumers association.

On July 9, 2019, following RJV's discussions with its customers, RJV filed a Notice of its intent to form a Mutual Domestic Water Consumers Association. Pursuant to the Notice, the Hearing Examiner converted the July 10, 2019 scheduled hearing into a status conference to enable the parties to discuss the details of the formation of the mutual domestic. The Hearing Examiner rescheduled the hearing for August 19, 2019.

The August 19, 2019 hearing was thereafter rescheduled several times (i.e., to September 24, 2019 and to November 19, 2019, at the request of RJV and the Lake View Heights and Rosa Meadows Community Water Association to enable RJV and the Association to continue their discussions on the formation of a mutual domestic. The parties were ordered to continue to file weekly status reports on the progress of their efforts. During this period, the Sambrito Mutual Domestic Water Consumers Association ("Sambrito") was formed, and, on the basis of that progress, the Hearing Examiner postponed the November 19, 2019 hearing, pending further discussions among the parties on the potential transfer of the RJV system to the mutual domestic.

After a March 17, 2020 status conference during which negotiations appeared to have stalled, the Hearing Examiner issued an Order on March 19, 2020 setting forth a structure for the parties' exchange of proposed terms for a transfer and settlement negotiations to be held between April 7 and April 20, 2020.

Settlement discussions and further status conferences continued beyond April 20, 2020, until a status conference held on June 19, 2020, at which progress toward a hoped-for transfer to

the mutual domestic appeared to have ended. The Hearing Examiner accordingly scheduled a further, final hearing schedule solely to address the PUA violations alleged in the Show Cause Order, with RJV testimony due by July 31, 2020, Staff and Intervenor testimony due by August 21, 2020, rebuttal testimony due by September 18, 2020 and a hearing to be held on October 5, 2020. The Hearing Examiner's Order, however, stated that the establishment of the procedural schedule shall not be construed as barring or discouraging the parties from pursuing during the course of the schedule an application for a CCN or a transfer of the RJV system to a third party.

Early on the morning of October 5, 2020, the Hearing Examiner was informed that the parties had reached agreement on a term sheet for the transfer of the RJV system to the mutual domestic. They asked that the hearing be continued with the expectation of negotiating an uncontested stipulation. In the afternoon of October 5, 2020, the Hearing Examiner met with the parties by videoconference and an agreement was reached on a schedule to finalize the parties' efforts. The schedule included the filing of an uncontested stipulation by October 16, 2020, the filing of testimony in support of the stipulation by October 30, 2020 and a hearing on the reasonableness of the stipulation on November 6, 2020.

In the interim, on August 26, 2020, the Hearing Examiner granted intervention status to Judy A. Phelps, one of the partners of RJV.

The parties proved unable to meet the schedule established in October 2020, but after filings with the state Corporation Bureau and a series of discussions with NMED, the parties informed the Hearing Examiner that they were ready to proceed. On March 5, 2021, the Hearing Examiner issued a Prehearing Order scheduling proceedings on this stipulation.

On April 8, 2021, RJV and Sambrito filed an Uncontested Stipulation addressing the transfer of the RJV system to Sambrito, providing for the abandonment of RJV's ability to

provide service to the Rosa Meadows and Lake View Heights subdivisions and excusing RJV of liability for the violations alleged in the Show Cause Order. The stipulation included a transfer agreement between RJV and Sambrito that is subject to the Commission's approval. RJV filed the testimony of RJV's managing partner, Ralph Phelps, in support of the stipulation. Sambrito filed the testimony of its President, Mike House, in support of the stipulation.

On April 26, 2021, Staff filed the testimony of Timothy Martinez and Milo Chavez in support of the stipulation.

On May 18, 2021, a telephonic hearing was held on the stipulation and supporting testimony. Ralph Phelps and Mike House testified in support of the stipulation. Intervenor, Judy A. Phelps and John Dustin, an RJV customer, did not present testimony, but they stated their support for the stipulation in opening arguments. Staff witnesses, Timothy Martinez and Milo Chavez, testified in support of the stipulation with the condition discussed below that the transfer includes water rights sufficient for the buildout of the unsold lots in the subdivisions.

The parties introduced into evidence the following exhibits:

RJV Exhibit A -- Direct testimony of Ralph Phelps

RJV Exhibit B -- Proposed Comprehensive Stipulation

RJV Exhibit C -- Transfer Agreement

Sambrito Exhibit 1 -- Direct testimony of Mike House

Sambrito Exhibit 2 -- Sambrito Initial Rate Schedule

Staff Exhibit 1 -- Direct testimony of Timothy Martinez

Staff Exhibit 2 -- Direct testimony of Milo Chavez

II. SUMMARY

This case involves a stipulation that would transfer a water and wastewater system from its current owner, Rosa Joint Venture (“RJV”) to the Sambrito Mutual Domestic Water Consumers Association (“Sambrito”).

RJV has provided water and wastewater service in the Lakeview Heights and Rosa Meadows subdivisions, comprising approximately 125 lots, since approximately 1993. RJV currently serves 82 customers. The subdivisions are located in north San Juan County, north of Navajo Lake at the border of New Mexico and Colorado.

RJV has registered its system with the New Mexico Environment Department (“NMED”) and has been providing the drinking water testing required by NMED since the systems were built. But it claims it was not aware that it was also subject to the regulation of the Commission. It says it was unaware that it needed to obtain a CCN and Commission approval of its rates and rules.

The Commission’s Show Cause Order of July 18, 2018 ordered RJV to explain why it has not complied with the requirements under the Public Utility Act for the provision of water and wastewater services. The proceeding that ensued has been long but the proposed stipulation reaches a good result. Under the stipulation, RJV will donate the water and wastewater system to the Sambrito Mutual Domestic Water Consumers Association.

Sambrito is a duly incorporated mutual domestic water association organized pursuant to and governed by the New Mexico Sanitary Projects Act. It was created by residents of the Subdivisions for the purpose of accepting ownership of the assets and operation of the RJV water and wastewater system.

The stipulation states that, based on negotiations between the parties, rather than pursue a CCN, RJV has decided to transfer the water and wastewater system assets to Sambrito. Upon approval of the stipulation by the Commission, the water and wastewater system currently owned by RJV will be transferred to Sambrito and RJV will receive abandonment authority. Sambrito will own and operate the subject systems pursuant to the Sanitary Projects Act and will be regulated going forward by NMED. Most important, unlike RJV, Sambrito will be eligible to apply for public funds needed for capital improvements.

Rather than litigate the issues articulated in the Commission's Show Cause Order and impose fines, the parties agree instead that the transfer and abandonment of the water and wastewater system assets from RJV to Sambrito will be in the public interest and consistent with the goals of the Public Utility Act.

Staff recommends approval of the stipulation subject to the condition that RJV transfers water rights sufficient for the full buildout of the 125 lots of the subdivisions.

The Hearing Examiner recommends approval of the stipulation, along with the condition proposed by Staff.

III. DISCUSSION

A. The evolution that led to the stipulation and transfer agreement

Cases involving small water utilities are notoriously difficult, but this case has been even more difficult than the typical case. RJV is a New Mexico partnership that operates a small water and wastewater system. It provides water and sewer service to 82 customers. It is located in a rural area north of Navajo Lake and just south of the Colorado border -- distant from any other utility that might acquire it.

RJV is a partnership of local family members. The partnership developed the Rosa Meadows and Lake View Heights subdivisions, and, as part of the development and sale of lots, it installed and has been operating the water and sewer system since 1993. The infrastructure is aging and in need of improvements. The water supply also appears to be in decline. The partnership is engaged in several additional businesses, including a farming and cattle operation, the Ho Navajo subdivision (at an unspecified location), a gravel pit operation, and the Valley View Mobile Home Park in Eagar, Arizona. But RJV does not appear to have the financial resources to fund the necessary improvements for the water and wastewater system here.

The owners and its customers have historically been involved in billing disputes and disputes regarding the adequacy of service.

The operator certification of one of the partners also lapsed during the pendency of the case (and RJV hired a certified operator to replace him). One of the managing partners recently passed away.

In addition, the partnership consists of aging family members, who are embroiled in a partnership dispute and a partnership dissolution proceeding in the Colorado courts.

All of these issues have made the resolution of the case difficult. But, over the course of the proceedings, progress has been made on each issue one step at a time, and the parties have arrived at a reasonable settlement that suggests a promising path forward. The first step consisted of the hiring of an attorney by RJV to assist it in responding to the Commission's Show Cause Order. The partners mistakenly believed that their registration with NMED and the periodic filing of test results with NMED provided them with the authorization required to provide service in New Mexico.

Next, RJV contracted with an engineering firm to evaluate the system and identify and prioritize needed improvements. RJV hired a certified operator to replace the lapsed certification of the managing partner. Then, the partnership contracted with an accountant to organize the partnership's financial accounts.

Customers, who initially intervened as individuals, eventually organized the Rosa Meadows/Lake View Heights Water Users Association. They also finally organized the Sambrito Mutual Domestic Water Consumers Association. The Water Users Association was important initially as an organizing tool to identify and articulate customers' concerns. The mutual domestic is important as the organization to which the water and sewer system can be transferred and operated with community control. Most important, the mutual domestic will have access to funding provided by public bodies for the necessary repairs.

Finally, the partnership (all partners) have agreed to transfer the water and sewer system to the mutual domestic association. The mutual domestic has presented testimony that it has the technical and financial resources to operate the systems. Staff agrees.

B. Issues resolved by the stipulation

Although the parties dispute each other's legal positions, they agree that the stipulation is a global solution that settles all disputed issues in the proceedings and represents a full, complete, fair, just and reasonable resolution of the past and present issues that it addresses.

1. CCN, Abandonment and Transfer

The parties agree that pursuant to NMSA 1978, §62-9-1, RJV will not be required to obtain a CCN. The Parties agree that the Commission should approve pursuant to NMSA 1978, §§62-6-12 and 62-9-5, the transfer and abandonment of the water and wastewater systems by RJV to Sambrito in conformance with the Transfer Agreement attached to the stipulation.

The parties also agree that the approval of the stipulation, including Commission approvals of the release of the requirement to obtain a CCN, abeyance of fines and penalties, and transfer and abandonment, is expressly conditioned on the closing of the Transfer Agreement and the completion of the list of repairs agreed to by RJV at the status conference between the parties with the Hearing Examiner held on December 4, 2020 (attached to the stipulation). They request that the Commission keep continuing jurisdiction over this docket until Sambrito and RJV file a report certifying that all the requirements of the Transfer Agreement and the stipulation have been met and attaching copies of all related documents.

2. Rate base, revenue requirement and rates

Because the water and wastewater systems are being transferred to a mutual domestic, which is not regulated by the Commission or the PUA, the parties agree that a rate base and revenue requirement do not need to be established in this case. The parties agree to the current rates reflected in Sambrito Exhibit 2. Sambrito agrees to adopt this rate schedule as its initial rate schedule.

3. System improvements

Once the water and wastewater systems are transferred to Sambrito, Sambrito agrees to have the water and wastewater systems evaluated for water service and quality issues. Sambrito agrees to prioritize the implementation of capital improvements consistent with consistent with sound water system operation and maintenance practices and business principles. To this end, Sambrito has been working with an engineering firm to evaluate the systems and to prioritize projects to help improve the system as quickly and economically as possible. Sambrito has secured legislative appropriations for repair and maintenance of the water and wastewater

systems and will be seeking additional governmental funding sources to continue these improvements.

4. Administrative penalties

Rather than litigate the issues articulated in Section II, Paragraphs 6(a) through (h) of the stipulation and impose fines, the parties agree instead that the transfer and abandonment of the water system and wastewater system assets from RJV to Sambrito, as well as the revenue and expense sharing transition and inclusion of real property assets contained in the Transfer Agreement, is in the public interest and consistent with the goals of the Public Utility Act.

5. Transfer agreement

The assets of the domestic water and wastewater systems will be conveyed to Sambrito at the closing at no cost. Sambrito acknowledges that it is accepting the assets “as is” and “where is” without warranty of any kind.

The transfer is conditioned upon the Commission approving the transaction without additional conditions and the approval of the transfer of the water and wastewater system to Sambrito and abandonment by RJV of its operating authority without cost, liability or penalty to be paid.

The stipulation provides that the closing will take place after Commission approval of the Transfer Agreement and Commission confirmation that the domestic water and wastewater systems are transferred and abandoned for purposes of Commission regulation and jurisdiction.

a. Water system assets

With respect to the water system assets, the Transfer Agreement concerns only the potable domestic ground water system that has been used to serve the Lake View Heights and Rosa Meadows subdivisions. The parties acknowledge that RJV also owns and operates an

irrigation water supply system for its agricultural holdings and understand that other than as is set forth in the agreement, the transfer will not affect RJV's irrigation and agricultural water from the Pine River Basin.

RJV agrees to negotiate with Sambrito and the New Mexico Office of State Engineer to ensure that Sambrito has sufficient water rights to supply domestic potable ground water for the subdivisions. RJV believes that the State Engineer has approved a legal water supply for the subdivisions. But if the State Engineer requires additional water rights to be transferred to supply full buildout of the subdivisions, RJV agrees to transfer the required New Mexico water rights that it currently owns for that purpose.

b. Wastewater system assets

RJV will transfer ownership of the wastewater lagoons, all existing underground wastewater gathering pipelines with shared right-of-way easements.

c. Operational, financial transfer/transition and regulatory approvals

RJV will operate, repair and maintain the water and wastewater system until Sambrito has received regulatory approval. Sambrito and RJV will cost share (50/50) for all expenses associated therewith for the month of June, 2021, with reasonable extensions of time should regulatory approvals not yet be finalized. Sambrito will operate, repair and maintain the water and wastewater system as soon as it has appropriate regulatory approvals;

RJV agrees to cooperate with Sambrito and its consultant/engineering/legal team to obtain all necessary transfer approvals from the pertinent regulatory agencies, including but not limited to the Commission, NMED, NM State Engineer and San Juan County. During the transition, RJV also agrees to cooperate with Sambrito and its consultant/engineering/legal team to provide needed information for loan, grant and other funding applications.

C. Testimony supporting the stipulation

1. Sambrito Mutual Domestic Water Consumers Association

Mike House, President of Sambrito, testified that he and his wife have been homeowners in the Lake View Heights Subdivision since 1999. He said the Sambrito Board unanimously supports the stipulation and Transfer Agreement and believes that the transaction is in the best interest of the water and wastewater needs of the community and more broadly the public interest.

a. The water and wastewater systems

Mr. House said he is a Lease Operator for a natural gas producer and has been in that field and in the construction field for more than 20 years. As part of his job, he works with transmission and distribution systems as well as water production and pressure. He has toured the water and wastewater system with RJV and an engineer from Souder Miller and have reviewed the Molzen Corbin engineering report prepared in March 2019. Through the years, he has also helped make various repairs on the systems and believe that he has a good working knowledge of the system.

He said there do not appear to be any significant challenges with the operation or infrastructure of the wastewater system and capacity appears to be more than adequate. The water system appears to be adequate but is in need of maintenance and repair due to deferred maintenance issues. There are issues with pressure at some points in the system and the potential need for looping in the system to resolve issues with dead end lines and to enable system flushing.

He said, based on the report prepared by Molzen Corbin and statements made by Ralph Phelps, there appears to be sufficient production capacity with the wells. Based on conversations

with Souder Miller, he believes that, with a few minor improvements to automate the system with respect to water production and storage, the water system can be run more efficiently and also meet demand without experiencing so many water outages or need for water hauling.

Upon the water and wastewater systems being transferred to Sambrito, Sambrito will adopt the following prioritized approach to obtaining an adequate and economic potable water supply:

1. Use a portion of the \$75,000 appropriated by the legislature to the NMED for use by Sambrito (SB 377, Section 6(G)(1)) to conduct well tests, including pulling each pump, pump evaluation, inserting video camera to document the status of the well, and conducting pump tests in order determine well productivity; aquifer recharge; pump capacity; pump issues; well casing adequacy, water quality, etc.

2. Using this information, Sambrito will automate the system to help maximize well productivity so that storage can be built up in the system's two storage tanks.

3. Monitor customer usage and put in place procedures to quickly address customer and/or system leaks in order to conserve water supply, including but not limited to quick turnaround on fixing system and meter leaks and shutting down the connection if on the customer side until fixed by customer.

4. Apply for planning funds from the Local Government Planning Fund administered by New Mexico Finance Authority to utilize Souder Miller to conduct a Preliminary Engineering Report ("PER"). The PER will be the document that helps Sambrito evaluate, plan and prioritize system improvements. Based on the PER findings, Sambrito will apply for additional governmental funding to address system needs in a systematic and prioritized manner. A focus of this work will be on addressing water quality concerns, pressure

concerns and distribution network issues, like dead-end lines, system segmentation/isolation, clean-outs, and flushing capability.

5. These actions will benefit the community and serve the public interest in that publicly available funds and customer payments will be used to improve the system such that the system provides adequate, consistent and economic water and wastewater services.

b. Customer service and rates

Mr. House said Sambrito will keep the current rates in place while it evaluates whether the rates are adequate for operations. He said the Sambrito community is comprised of many elderly, fixed-income and low-income families and every effort will be made to keep rates affordable.

Sambrito will strictly adhere to consistent reading of meters every month on or near the same time frame. Photos will be taken of every meter depicting the meter reading as back-up. Customer bills will include the date of meter reading, the meter reading itself, the date of customer bill and other information typically found on bills, the amount of gallons used and allocations of use in accordance with the rate schedule so that customers have a better understanding of their water usage and charges.

Sambrito will have a dedicated phone number, email and website and will have a dedicated on-call board member answering customer calls and emails. Sambrito will also have a dedicated lockbox for customer payments located at Mr. House's residence until Sambrito can build its own office. The lockbox is under video surveillance and is well protected.

Sambrito will hold regular meetings in compliance with the Open Meetings Act.

Sambrito will apply for government funding for improvements of the system as much as possible to keep rates low for community members.

Sambrito is committed to transparent and proactive rules and regulations that apply to all customers equally and balance the business side of the water and wastewater systems with the needs of customers. As such, Sambrito is adopting rules and regulations consistent with industry standards and NMED and other legal requirements.

Each customer will be required to sign a customer service agreement in order to obtain services and will be required to abide by all Sambrito rules and regulations.

c. Water and wastewater operations

Mr. House said Sambrito is working with Wesley Lewis so that he can become certified as a water and wastewater operator for Sambrito on a part-time basis. Mr. Lewis spent a great deal of time working on the systems with his grandfather Cecil Phelps and lives near the community. Additionally, Sambrito is currently negotiating with a certified operator to serve as operator until Mr. Lewis is certified. As a back-up, Sambrito has discussed working with Souder Miller to obtain these services.

With respect to a budget, based on information submitted by RJV in this docket, Mr. House said an average of \$6,000 is received from customers monthly. Fixed monthly expenses, such as electricity, water testing lab fees, operator costs, mailing and other office expenses and insurance run about \$3,000. The transition agreement with respect to expense sharing during the first few months of operation by Sambrito appears to provide sufficient funds for operation of the water and wastewater Systems until the legislative funding is available, likely in the July/August timeframe and can be accessed for needed repairs and maintenance.

He said the greatest expense appears to be for water hauling, which is not included in the above cost calculation. But because Sambrito is a mutual domestic, San Juan County has indicated they can donate water to Sambrito for water hauling. Sambrito will comply with all

NMED water hauling requirements and is looking at cost-effective strategies regarding water hauling, including potentially obtaining its own water hauling equipment and getting it certified by NMED.

Mr. House said that, initially, there may be an adjustment period prior to automation that makes water hauling necessary. The goal, however will be to minimize, if not remove, this need entirely through better understanding of the wells, pumps, pumping capacity and automation. Mr. House said the elimination of water hauling costs would enable Sambrito to put aside revenues each month for repairs and would enable Sambrito to have funding available for low-interest loan repayment if needed for system improvements. These factors, together with the real property being donated by RJV as part of the Transfer Agreement that Sambrito can use as collateral, create an adequately capitalized entity that Sambrito believes will be able to succeed.

d. Regulatory requirements and support

Mr. House said Sambrito believes it is crucial to work very closely with NMED so that it is in compliance with all applicable statutes, rules, regulations, requirements and board training. He said Sambrito is committed to proactively comply with and adhere to all governmental requirements in order to provide adequate, consistent and economic water and wastewater services.

e. Board governance

Mr. House said the Sambrito board has been working well together for about a year. Each board member brings a needed skill set to the board. The board has conducted training regarding applicable statutes, rules and regulations with its Board Attorney, Germaine Chappelle. Mr. House said the board will continue training with her and through the training opportunities with NMED and other rural water systems. Ms. Chappelle has agreed to provide pro bono legal

services and training as needed going forward. He said Sambrito is also working with Rural Community Assistance Corporation for guidance and as a resource for ongoing board development and training and operational experience. Mr. House said board members are also networking with other boards of rural water systems in order to develop greater understanding of being effective board members and to join the broader community of rural water systems.

f. Administrative penalties

Given RJV's voluntary transfer of the water and wastewater system to Sambrito at no cost, Mr. House said Sambrito supports the suspension of fines and approval by the Commission of RJV's request to transfer and abandon the water and wastewater systems to Sambrito.

2. Rosa Joint Venture

Ralph Phelps, as a managing partner of Rosa Joint Venture, testified that the partnership owns and operates the domestic water and wastewater systems that serve the Lake View Heights and Rosa Meadows subdivisions. He said all three current partners of RJV support the stipulation and Transfer Agreement that would transfer the water and wastewater systems to Sambrito. He said RJV also agrees to assist Sambrito in transitioning to become the owner and operator of the systems.

Mr. Phelps said RJV should not be assessed fines for RJV's alleged violation of the Public Utility Act and Commission rules. He said RJV has acted in good faith and has been steadfast in its obligations to provide water and wastewater service. Mr. Phelps requests that any and all fines and/or penalties be waived, given RJV's continued dedication to its customers and its voluntary uncompensated transfer of the systems to Sambrito. He said RJV also seeks approval to transfer the systems to Sambrito and to abandon its right to operate the systems as regulated utilities.

3. Staff

Staff witness, Timothy Martinez, said the stipulation is in the public interest, provided the parties satisfy the condition Staff recommends. In addition to the reports to the Commission required by the Signatories as conditions to the effectiveness of the Commission's approval of the stipulation and transfer, Staff recommends that the Commission require that the filing of the water rights transfer approval obtained from the State Engineer's office be included as a condition to the ultimate effectiveness of the Commission's approval. Mr. Martinez said the transfer agreement provides that RJV will transfer its water rights to Sambrito, but there is no requirement that the parties show to the Commission that the water rights have been transferred. He said it is important that the Commission know that the water rights have been transferred because without those water rights Sambrito will not have a water utility. He said the water rights should be sufficient to provide for full buildout of the subdivisions and should be for domestic use.

Mr. Martinez said the stipulation, as a whole, benefits RJV, Sambrito, the customers and the public interest. The stipulation provides RJV an opportunity to transfer the utility to Sambrito thereby eliminating the need to come under compliance with the PUA. Furthermore, it would avoid litigation and the potential issuance of fines. He said Staff believes fines are justified and could be administered if this case were litigated. He said RJV has been and continues to operate in blatant disregard for and in violation of the Public Utility Act. Staff believes very strongly that it could convince the Commission to issue fines against RJV for their noncompliance. Nevertheless, Staff witness, Milo Chavez, said the issue of the violations and penalties can be held in abeyance and finally waived, upon Sambrito acquiring the RJV water and wastewater system and satisfying the conditions set forth by Staff.

Mr. Martinez said the stipulation provides for the transfer of the assets of the water and wastewater system and, though significant repairs are needed, the transfer will allow Sambrito to operate the utility successfully. As a not for profit, Sambrito will have access to public funds to repair and rehabilitate the water system. Public funds are not available to RJV.

He said the transfer to a mutual domestic water consumers association also provides customers with an opportunity of representation on the board of Sambrito. The customers can engage in the operation of their utility. Also, customers will have rate stability at least in the short term while improvements are started on the utility.

Mr. Martinez said the stipulation is a product of serious bargaining among capable, knowledgeable parties. He said the parties and their legal representation engaged in serious discussions to find a reasonable resolution of this matter. The discussions involved frank exchanges about their relative positions and resulted in a compromise which was acceptable to RJV and Sambrito.

Finally, Mr. Martinez said the stipulation, as a whole, does not violate any regulatory principle or practice.

IV. RECOMMENDATIONS

A. Legal standard

The standard applied by the Commission in its review of uncontested stipulations is: (a) whether the settlement is a product of serious bargaining among capable, knowledgeable parties; (b) whether the settlement, as a whole, benefits ratepayers and the public interest; and (c) whether the settlement, as a whole, violates any important regulatory principle or practice.⁴

⁴ Final Order Partially Approving Stipulation, Case No. 10-00086-UT, p. 8, *citing* Case No. 08-00273-UT, Final Order Conditionally Approving Stipulation at 10.

B. Approval of the stipulation

The Hearing Examiner finds that, subject to the conditions proposed by the parties, the stipulation satisfies the legal standard set forth above.

The record indicates that the settlement is a product of serious bargaining among capable, knowledgeable parties. Over the course of the proceedings, all participants gained the knowledge and resources to arrive at the terms of the settlement.

The settlement, as a whole, benefits the ratepayers of the Rosa Meadows and Lake View Heights subdivisions and is in the public interest. The water and wastewater system will be transferred to the Sambrito mutual domestic, which will likely be more responsive to the needs of the ratepayers. As a mutual domestic, Sambrito will also have access to public funds through the NMED needed to gradually make the capital improvements needed to provide adequate water and wastewater services to the residents.

The conditions proposed by the Signatories and Staff are also reasonable. They include the following filings subsequent to the closing of the Transfer Agreement (1) a report by the Signatories certifying that all the requirements of the Transfer Agreement and the stipulation have been met and that the State Engineer has approved the transfer of water rights sufficient for the full buildout of the Lakeview Heights and Rosa Meadows subdivisions and attaching copies of all related documents in this docket and (2) a report filed by Staff certifying that the requirements in (1) above have been satisfied. At the May 18, 2021 hearing, the Signatories stated their agreement with Staff's proposed condition.⁵

Finally, the settlement does not violate any important regulatory principle or practice. RJV had been operating as a public utility without the required authorizations under the PUA,

⁵ Tr. 15-16 (Ralph Phelps); 40-41 (Mike House).

but it cooperated with the Commission Staff and RJV's ratepayers to transfer the system without cost to Sambrito. As a result, administrative penalties for the violations alleged in the Show Cause Order may properly be waived.

D. Mr. Dustin's Memorandum of May 17, 2021

On May 17, 2021, John Dustin filed a Memorandum regarding Section IV.2 of the stipulation, which states in part that "Any statements made or position taken by any of the signatories during the course of the negotiations will not be admissible before any regulatory agency or court." He said this language could be construed to include statements made, evidence presented or answers to interrogatories made going back as early as 2019. He said the language would work a major and unfair hardship on him as he pursues his remedies in the complaint case he brought and has pending against RJV at Case No. 19-00240-UT.

Mr. Dustin's Memorandum was discussed by the parties at the end of the evidentiary hearing on May 17, 2021. During the discussion, all parties agreed that the language would not be interpreted or applied against him in Case No. 19-00240-UT.⁶

The Hearing Examiner finds the resolution of Mr. Dustin's concerns reasonable and finds, based upon the parties' commitments, that section 1.2.2.16.D NMAC should also not be interpreted or applied against Mr. Dustin in Case No. 19-00240-UT. Section 1.2.2.16.D NMAC would similarly prohibit the admissibility of statements made in the course of settlement discussions unless the provision is waived.⁷

⁶ Tr. 74-80.

⁷ Section 1.2.2.16.D provides as follows:

D. Inadmissibility of settlement offers: Offers of settlement and statements made in furtherance of them made in the course of a settlement conference are privileged and, except by agreement among all parties and staff, shall not be admissible as evidence in any formal public hearing before the commission or presiding officer nor disclosed by the mediator voluntarily or through compulsory process.

V. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Statement of the Case, Discussion, and all findings and conclusions therein, whether or not separately stated, numbered, or designated as findings and conclusions, are incorporated by reference herein as findings and conclusions. Based on the foregoing Statement of the Case and Discussion, the Hearing Examiner recommends that the Commission further **FIND** and **CONCLUDE** as follows:

1. RJV provides water and sewer utility services within the state of New Mexico, and, as such, it is a public utility as defined in the Public Utility Act.
2. RJV has been providing water and sewer utility services without authorization from the Commission in violation of the Public Utility Act.
3. The terms of the stipulation, the Transfer Agreement and the condition recommended by Staff are reasonable and in the public interest.
4. The abandonment of RJV's right to provide water and wastewater service and the transfer of the water and sewer system to Sambrito are reasonable and in the public interest.
5. RJV should not be assessed administrative penalties for its violation of the Public Utility Act, contingent upon its compliance with the terms of the stipulation, including the transfer of the water and sewer system to Sambrito as provided in the stipulation.
6. The Commission has jurisdiction over the parties and the subject matter of this case.

VI. DECRETAL PARAGRAPHS

Based upon the record, the Findings of Fact and Conclusions of Law set forth herein and, or the reasons stated above, the Hearing Examiner recommends that the Commission **ORDER** as follows:

A. The findings, conclusions, decisions, rulings, and determinations made and construed herein are hereby adopted and approved as the findings, conclusions, rulings, and determinations of the Commission.

B. The stipulation, including the transfer of the water and wastewater system to Sambrito, the abandonment of RJV's ability to provide public utility service to the Rosa Meadows and Lake View Heights subdivisions and the excusal of administrative penalties for the violations alleged in the Show Cause Order, is approved, subject to RJV's compliance with the conditions subsequent below.

C. The Commission's approval of the stipulation, including Commission approvals of the release of the requirement to obtain a CCN, abeyance of fines and penalties, and transfer and abandonment, is expressly conditioned on (i) the closing of the Transfer Agreement and the completion of the list of repairs agreed to by RJV at the status conference between the parties with the Hearing Examiner held on December 4, 2020 (attached to the stipulation) and (ii) the transfer of water rights sufficient for the full buildout of the Lakeview Heights and Rosa Meadows subdivisions.

D. The Commission shall keep continuing jurisdiction over this docket until (1) the Signatories file a report certifying that all the requirements of the Transfer Agreement and the stipulation have been met and that the State Engineer has approved the transfer of water rights sufficient for the full buildout of the Lakeview Heights and Rosa Meadows subdivisions (and attaching copies of all related documents in this docket) and (2) Staff files a report certifying that the requirements in (1) above have been satisfied.

E. Section IV. 2 on page 13 of the stipulation and 1.2.2.16.D NMAC shall not be interpreted or applied to bar John Dustin from using in the complaint proceeding in Case No. 19-00240-UT the parties' statements made during settlement discussions in this case.

F. Upon the filing of Staff's report in decretal paragraph D, this docket shall be closed.

G. This Order is effective immediately.

H. A copy of this Order shall be served on all parties listed on the official service list for this case.

ISSUED at Santa Fe, New Mexico this 27th day of May, 2021.

NEW MEXICO PUBLIC REGULATION COMMISSION

/s/ Ashley C. Schannauer

Ashley C. Schannauer
Hearing Examiner

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF AN ORDER TO)
SHOW CAUSE AS TO WHY ROSA)
JOINT VENTURES, LLC, SHOULD NOT) Case No. 18-00214-UT
BE FOUND IN VIOLATION OF THE)
PUBLIC UTILITY ACT AND)
COMMISSION RULES)
_____)

CERTIFICATE OF SERVICE

I CERTIFY that on this date I sent to the parties listed here, via email only, a true and correct copy of the **Certification of Stipulation**.

Amy Huff	Amy@waterland-law.com ;
Alice McKaughn	Alicemckaughn@gmail.com ;
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DATED this May 27, 2021.

NEW MEXICO PUBLIC REGULATION COMMISSION

/s/ Ana C. Kippenbrock

Ana C. Kippenbrock, Law Clerk