

RESPONSE TO COMPLAINT AGAINST SAMBRITO COMMUNITY WATER SYSTEM

The complaint was submitted to Catherine Conran, NMENV by John Dustin 9/29/2021

ELECTIONS:

Concern: “According to our Bylaws, Board members who are appointed to fill vacant Director positions are to serve only until the next annual meeting, at which time an election must be held to fill the respective remaining terms. Since SMDWCA has failed to call any such annual meetings, Members have been denied the opportunity to vote for replacements. We call for a special meeting to be scheduled within the next 30 days to have an election on the current appointed or vacant Director slots, and to discuss the items herein. As a means of providing important factual information to voting Members, we offer the attached candidate fact sheet, and encourage its use by those Members who are willing to run for vacant seats.”

Response: This endeavor has been a very large learning curve for those involved in the community. The strategy employed has been to proceed methodically and diligently to build a strong foundation so that when the ultimate transfer of the water and wastewater systems occurred the Board would be able to effectively and responsibly manage operations of the water and wastewater systems. The original Board members were elected at a community meeting as part of the Sambrito Community Association in 2019. As negotiations progressed with RJV to transfer the water and wastewater systems to a community mutual domestic, the Community Association voted to create a mutual domestic. In the Fall of 2020, at a community meeting, an organizational meeting was held at which training regarding requirements of the Sanitary Projects Act, Open Meetings Act, and other relevant statutes. At this meeting, the Board of Directors for the mutual domestic were also elected. Draft Articles of Association and Bylaws were reviewed. The draft Articles of Association needed to incorporate the mutual domestic were approved by the Board at the same meeting. There was discussion about amending the draft bylaws presented. It is unclear if the Bylaws were ultimately approved.¹ The Articles of Association were filed with the Secretary of State and approved on December 22, 2020. The following Board Member eligibility requirements were discussed by the Board and community members present: 1) Board Members must be in good standing and not in arrears; 2) Out of the 5 Board Member seats, at least 2 Board Members must be elected from each of the 2 subdivisions so that there is balanced representation of the subdivisions; and 3) as a community and volunteer run system, Board Members must live in one of the 2 community subdivisions. There was also concern expressed that members of the private water utility could become Board Members and that that would subvert the intention of the community to be a community-run water system. The original Board of Directors of the Mutual Domestic were Mike House (president), Doug Windolph (vice-president), Leslie McGownd (treasurer), Hiedi Lewis (secretary), and Rick Neuenschwander (member at large).

In the event of resignation, the draft bylaws, consistent with established practice, specify that board members may fill empty board seats and that such appointments will serve until the next annual meeting. Since the initial election, the following Board Members resignations/appointments were made:

¹ Since there is question about whether the bylaws were adopted, in an abundance of caution, the bylaws are on the Board’s Nov. 3, 2021 agenda for vote and also on the Annual Membership Meeting on Nov. 3, 2021 for vote.

1. Doug Windolph resigned as vice-president. This was noted at a public community meeting. One nomination only was forthcoming – Kyle Guire. Mr. Guire accepted the nomination and was voted in by the Board as vice-president at a community meeting.
2. Leslie McGownd resigned as treasurer. After several months, Deb Holder indicated interest in serving and was nominated and appointed at a community meeting. Ms. Holder accepted the nomination and was voted in by the Board as Treasurer at a community meeting.
3. Heidi Lewis resigned as secretary. After a few months, members of the community identified Cherie Young as potentially having interest to serve. Ms. Young was nominated, accepted the nomination, and was voted in by the Board as Secretary at a community meeting.

An annual membership meeting is being held on November 3, 2021 to elect Board Members to fill these seats. The information provided herein was discussed with community members at a public meeting on October 12, 2021. Please see attached draft minutes and letter to the community included in customer bills and mailed separately to Members who do not reside in the community.

MEETINGS:

Response: “Open Board meetings should be regularly scheduled, probably on a monthly basis at present. We understand that the currently pending legal matters will require executive sessions, but that does not reduce Members’ right to participate in and observe voting on policy items affecting their day-to-day lives.”

Answer: Sambrito absolutely agrees with this point and within the constraints of COVID and the fact that Sambrito did not have access to customer addresses, has worked hard to provide customers with information – even going door-to-door on multiple occasions and providing information in person at the entrance to the Subdivisions near the mailboxes. It should also be noted that Sambrito is not yet the owner/operator of the water and wastewater systems and does not yet have control over day-to-day operations.

During the past year, several public meetings have been noticed and held. It should be noted that due to Covid, the Board has followed the Attorney General’s guidelines to the best of their ability, which has excluded in-person meetings and offered call-in numbers to participate. The call-in information was posted and a Sambrito Facebook page was also created to help notify community members. At that time, Sambrito did not have access to customer addresses or funds for direct mailings. All community members have the ability to phone in to the meetings and ask questions or make statements. Information about developments with the transfer negotiations and activities were also posted on the Facebook page. Sambrito is working on providing meetings via Zoom or Google – but is still working out technical difficulties on that end.

Since Sambrito has taken over the billing beginning in April 2021, Sambrito has been providing meeting notices, agendas and updates with customer bills. Sambrito, through funds provided by the undersigned, has created a web page (<https://sambrito.myruralwater.com/>) in order to more effectively communicate

with customers. The vast majority of funds collected from customers by Sambrito have been expended hauling water.

FORWARD PLANNING AND TIMELY RESPONSES:

Response: “Many elements of the changeover have been apparent for months (e.g. transfer of land parcels and water rights). A more proactive approach to such items would have foreshortened the elapsed time necessary to conclude them, which would ultimately yield a corresponding reduction in Members’ misery resulting from poor water service, and many periods of no water at all. Items on the “to-do” list should be pursued concurrently, rather than one at a time. Wise delegation of responsibility for various items should be the rule rather than the exception.”

Response: Sambrito is, unfortunately, not in a position to control the shots with respect to transferring land parcels or water rights as such work must be ultimately undertaken by RJV as owners of those assets. Undersigned counsel has worked well with RJV’s counsel and engaged in discussion with RJV and the State Engineer’s Office regarding transfer of the water rights. It is my understanding that water rights have been transferred to the wells recently, however, this documentation has not yet been shared with me. Additionally, I do not believe the water rights have yet been transferred to Sambrito. With respect to land transfers, work has been ongoing with San Juan County to meet its transfer requirements, one of which is to obtain surveys of the subject properties. Inquiries by both undersigned counsel and RJV’s counsel of area surveyors has been delayed because area surveyors have had a backlog of work. Just this week, undersigned counsel was able to work with Souder Miller to begin the survey process.

With respect to obtaining a certified operator, the Board has been working with Souder Miller & Associates towards evaluating the system in order to identify current and potential problems. To this end, Marvin Martinez, Level 4 certified operator with 30 years’ experience, and Monica Lorenzo, representatives of Souder Miller conducted a field assessment of the water and wastewater systems. Some issues were identified, and a report is being drafted and will be submitted. Ultimately Mr. Martinez indicated that with the addition of water treatment capability to the system, the system was in sufficient shape, though needing repairs, that he would agree to be the certified water operator. In addition, the Board has arranged for an engineer from Souder Miller to do a more complete assessment which would include cost estimates for any repairs and/or upgrades required.

At this time, Sambrito is unable to commit to costly repairs and/or replacements until public funding is made available, which cannot occur until we have a full transfer of ownership and operation from Rosa Joint Ventures.

TRANSPARENCY:

Concern: “The only place for secrecy within SMDWCA deliberations should be in legal disputes and personnel matters. All other deliberations and every vote should be in open session, with frequent notifications provided to Members.”

Response: To the undersigned counsel’s knowledge, the only matters that have required any level of confidentiality have been limited to ongoing Attorney Client Privileged strategy/communications regarding the legal aspects of the transfer of the water and wastewater systems to Sambrito. Noteworthy

operational type matters are now communicated on the website, which can also provide alerts to registered users. Day-to-day business operations are not communicated to the community because of their mundane nature. Updates on transition and operational matters have been sent out via customer bill for several months. Additionally, matters requiring board vote are conducted pursuant to the Open Meetings Act in a noticed public meeting.

PURSUIT OF FUNDING OPPORTUNITIES:

Concern: “We have received a \$75,000 appropriation for certain elements necessary to get SMDWCA going, which is held in trust by NMED. Sadly, we cannot commit these funds to eligible projects, because NMED will not release them, with their current concerns that these funds will be diverted to private entities. Knowledgeable Members have previously expressed deep concern that SMDWCA will be severely hampered by a lack of working capital during the initial operating phase, which has proven to be true. We believe that a comprehensive search for favorable funding opportunities, including short term gap financing, is of major importance.”

Response: This is a catch-22/chicken and egg scenario. Until the transfer is complete and Sambrito is the owner/operator of the water and wastewater systems, it has no assets and thus Sambrito is a bit hamstrung in obtaining outside financing. Additionally, the community consists primarily of extremely low-income families that do not have the means to contribute. Members of the Board and undersigned counsel have chipped in to cover the most critical costs. The transition on customer billing and payments has stabilized. Sambrito has been diligent and conscientious with meter reading and billing and has worked through the majority of that learning curve. Currently there are about \$10,000 in receivables, attributable to customers who routinely do not pay. We have obtained permission from RJV to shut-off meters for non-payment and will seek permission from the PRC for this as well. Sambrito is preparing with Souder Miller’s help to provide a capital outlay request for this upcoming legislative session. Additionally, Sambrito will be applying for Water Trust Board funds so that it can commission a PER so that Sambrito can engage in better planning/prioritize needed repairs.

Sambrito’s bank as well as various state and federal agencies are available to provide low interest loans to rural entities once we own/operate the water and wastewater systems.

Please be advised that the Complaint filed by Mr. Dustin and this response have been place on Sambrito’s website.

We are available to answer any questions or discuss further if you would like.

Respectfully Submitted,



Germaine Chappelle

Attorney for Sambrito MDCWA

germaine@gchappellelaw.com

Meeting Minutes for Sambrito Mutual Domestic Water Consumers Association

President: Mike House
Secretary: Cherie Young

Date: October 12, 2021
Time: 6:30 PM

Attendees: Mike House (President), Kyle Guire (Vice-President), Debbie Holder (Treasurer), Cherie Young (Secretary), Rick Neuenschwander (member at large)
Germaine Chappelle (Legal Counsel)
John Dustin, Christine Dunn, Heidi Lewis, Clare Wingfield, Zar Neuenschwander, Tommy Saunders, Kristi Valesquez, Sandy & Leon Valdes (Community Members)

President's Report:

Mr. House had a conversation with Jean Phelps. Operators Lonnie & Theresa have been pulling water meter cans that have been consistently full of water and trying to identify any leaks and address any known issues. To date there is no further information on the Nob Hill Well.

Legal Counsel's Report (Regulatory & Transition):

- NMED, PRC and State Engineer met with RJV & their attorney and Ms. Chappelle to discuss what steps are to be taken going forward.

Regulatory entities expect water rights to be transferred prior to our takeover of the system.

PRC expressed interest in the repairs RJV agreed to make which are listed in the transfer agreement. This is what Lonnie and Theresa have been working on.

- Jim Jones came out to inspect the repairs done on the leaks and was satisfied with the work. He also questioned whether RJV had completed any required work and was informed by RJV that they had and sent photos to confirm.
- There are currently two outstanding issues to be resolved:
 - 1) Transfer of water rights. (RJV is working with their lawyer)
 - 2) Transfer of property; this is being held up due to the difficulty in obtaining a surveyor. Souder Miller will provide us with a timeline and an estimate of cost.
- The RJV attorney will be working with Ms. Chappelle to expedite the process. Water rights transfer is a long process and could potentially take months to complete. If we can show that RJV have complied with other regulatory orders, we may be able to access funds sooner.
- The Souder Miller report should be finished and available to us within two or three weeks.
- John Dustin questioned whether a lease to purchase option was a possibility. He was informed we currently do have a lease but will not purchase as the water rights will come with the transfer of the system.

Legal Counsel's Report (Souder Miller Operator):

- Regulatory entities expressed support for bringing Souder Miller on as operator. Marvin Martinez is a Level 4 operator with 30 years experience.
- Mr. Martinez has seen deficiencies in the system, but feels once we have access to funds, we can get the system up and running efficiently. His first stated priority is to ensure the water is consistently treated with chlorine. With a system design such as ours, with no flow through, disinfectant is imperative.
- He located a couple of leaks, which RJV is currently attempting to remedy.
- Mr. Martinez noted there are issues with the pump and check valve at the Nob Hill well. It appears water is not going into the system but is being circulated back into the aquifer.
- He expressed concerns that pump size and capacity may not be sufficient to deal with the pressure gradient to the upper system. He also stated the pump house needs to be upgraded.
- He said automation is the way to go. He also said, our concerns can all be addressed once we have control of the system.

Legal Counsel's Report (Additional issues with the system):

- There are only two functioning pumps at present. RJV has confirmed that one pump which was supposed to be taken offline has been taken offline. Ms. Chappelle would like confirmation.
- We won't know the extent of the pump problems until we have ownership of the system and are able to pull the pumps and assess them properly. We don't know at this time if the pumps are commercial or residential.
- Mr. Guire has been monitoring the pumps every night. Jamie is there most mornings to reroute water if required.
- Ms. Lewis had questions about the upper tank. It is in service, but we don't know if the pump is able to send water to that location, or even if there is a check valve to maintain levels. Once we have the Souder Miller report, we will know more.

General Discussion

- The Complaint filed by John Dustin and other community members and the Response drafted by Ms. Young was discussed. In particular, the concern about filling vacant Board Member seats was discussed and it was clarified that those seats were filled by vote of Board Members at public meetings.
- Mr. Dustin asked about release of funds and was informed that PRC and NMED not release any funds until the System was fully transferred to Sambrito. New Mexico has a prohibition on anti-donation, which means that public funds cannot be used for private purposes. Since RJV is a private entity, as long as RJV remains at least part operator/owner of the System, public funds cannot be used. Once Sambrito both owns and operates the water system, funds can be utilized.
- There are a handful of members who are in arrears with their water bills. Currently, we are showing \$10,000 in arrears. This leaves the remaining community members holding the ball. We may have to consider shutting off service to those members who are several months behind. John suggested we impose sanctions on delinquent accounts. The Board agreed, but we need to speak to PRC, NMED, and RJV before any action is taken.

- **ACTION:** On a motion by Rick Nuenschwander, seconded by Cherie Young the Board voted unanimously to authorize Ms. Chappelle to pursue authorization to shut-off water meters for those customers in arrears.

Bylaws and Association Articles Report and Discussion

- Response to complaints was discussed and will be posted and sent to complainant as well as PRC and NMED.
- The board is in learning mode and training will be provided.
- The draft bylaws we currently have came from a larger mutual domestic. Because of this, the percentages noted would give a small number of people too much influence on community decisions.
- It was recommended we keep the language on both elections, Board Member eligibility and resignations.
- There was a discussion as to whether we had confirmed bylaws or not.
- Ms. Chappelle indicated that in order to form Sambrito that the Articles of Association must first be filed and approved by the Secretary of State, which has been done. Bylaws are not required for formation of the Association.
- The requirement that a Member must live within the community in order to be eligible as a Board Member was also discussed. Mr. House and Mr. Neuenschwander stated they recalled discussing this matter at a public meeting of the Association when the Board was first elected and that Mr. Dustin was present for that discussion. Ms. Lewis agreed and read from her notes and indicated that she believed the Bylaws had been approved with the requirement that in order to be eligible to be a Board Member that a Member must live in the community served by the Association. Ms. Lewis stated that the bylaws were voted on, but when asked for documentation to support that statement, she said she had not received any training and was unable to provide minutes from her term as secretary.
- Ms. Chappelle stated that she has received concerns from staff of the regulatory agencies about language in the bylaws that could allow for private interests to control the Association. Ms. Chappelle explained that due to the use of governmental funds and the anti-donation clause that concern had been raised about the potential ability of the previous private utility being able to control and run the Association. Of particular concern is making sure that the eligibility of Board Members is limited to customers in the community and the number of Members that can effectively control votes.
- A motion was put forward to modify the percentages. John Dustin objected, but Ms. Chappelle stated as a board, we produce the initial bylaws and as they are not final, we can make necessary changes up to the point they are voted on and adopted. After further discussion, Mr. Dustin and other community members agreed that the percentages should be modified.
- In the interim, under articles of incorporation, we are allowed to operate without finalized bylaws.
- Ms. Lewis asked if training was required but was informed that as we are not the actual owners of the water system, no training is required. Going forward, training will be scheduled for board members.
- The final draft of the bylaws will be presented to the community at the annual meeting. The meeting is scheduled for November 3, 2021, at the Grange at 6:00 PM.

- Rick suggested 25% required to call a special meeting. The board agreed on 25%. Feedback was taken from community participants and they indicated they agreed with that change.
- Regarding elections, it was decided to eliminate vote by mail as too onerous, but was agreed for in person, call in, and proxy. Any proxy must be registered with the board no later than one week prior to the vote. For any who do not receive water bills, a mailed notice of upcoming votes will be sent.
- Any member not in good standing cannot vote or appoint a proxy.
- The usual quorum for a meeting is 50%. It was agreed to maintain that percentage. Feedback was taken from community participants and they indicated they agreed.
- Removal of a board member should be 2/3.
- A notice is to be posted for the 3 positions to be voted on at the annual meeting. These positions are; vice-president, treasurer, and secretary. Nominations must be received with all pertinent information on the nominee no later than October 27th and will subsequently be posted on the website one week prior to the vote. Feedback was taken from community participants and they indicated they agreed.
- **ACTION**: On a motion by Rick Nuenschwander seconded by Kyle Guire the Board voted unanimously to finalize the Bylaws with the changes discussed above.

ACTION: On a motion by Rick Nuenschwander, seconded by Cherie Young the Board voted unanimously to adjourn the meeting.

Meeting was adjourned at 8:35

Minutes submitted by Cherie Young, Secretary

10/24/2021

Dear Sambrito consumers,

Here is a brief update on where we are with the water system:

- Our operator team from Souder Miller is completed its evaluation from the field visit, which should be ready in the coming week. Additionally, next week Souder Miller will be conducting surveys needed to complete the land transfers.
- By way of reminder, once we obtain approval from NMED, we will be working with NMED to access the funds appropriated to us by the Legislature. The first priority will be to conduct well tests and begin implementing priorities provided by Souder Miller. At the same time we will apply for funds from the NM Water Trust Board to conduct an Engineering Study. The Operator Evaluation document and Engineering Study are crucial documents not only for us to being making crucial improvements for the system, but also will enable us to better quality for grant funds as well as additional legislative appropriations.
- The best way to help us all in this process is to make sure your account is paid up in a timely manner. So please keep your account current or make some arrangements for payments. Please also continue to conserve water – special thank you to those who have been conserving!

ANNUAL MEMBERSHIP MEETING: Please save the date for the annual membership meeting on November 3, 2021 at 6:30 at the Grange Hall. Key topics will be: voting in of board members filling vacant board seats; updates on transition; Bylaws voted on by the Board at September meeting. An agenda, virtual participation instructions, and the bylaws will be posted on the website prior to the meeting.

Three Board positions previously nominated and elected at publicly noticed meetings eligible for nominations/voting are as follows:

Kyle Guire filled the vacancy by Doug Windolph; Deb Holder filled the vacancy by Leslie McGownd; and Cherie Young filled the vacancy by Hiedi Lewis.

Mike House (member in good standing and resides in lower subdivision) and Rick Neuenschwander (member in good standing and resides in the upper subdivision) each have 2 years remaining on their terms and are not up for membership vote at this time.

The Board nominates the following slate of members:

Kyle Guire: Kyle has taken time to learn about the water system and has been very diligent in sharing daily activities with RJV regarding system monitoring, water hauling, pump re-setting and other operational activities. He has also worked hard in identifying and helping fix leaks, including obtaining needed parts. Kyle also has IT experience which is helpful to the overall business function of the water system. Kyle is a member in good standing and resides in the lower subdivision.

Deb Holder: Deb has demonstrated great experience and knowledge as Treasurer. She is a stickler for detail and documentation, which is exactly what is needed in this role. Deb is very organized and diligent with customer payments, expenses and receipt documentation. Deb has also been an important part of the team in making sure that customer bills are accurate. Deb is a member in good standing and resides in the upper subdivision.

Cherie Young: Cherie comes to us with previous experience as a regulator of water systems and also has experience as a board member in nonprofits. Even though Cherie just recently joined the Board, she has already contributed a great deal to the efficiency and productivity of the Board. Cherie has excellent writing skills, knowledge of the industry, and is a very effective communicator with the community. Cherie is a member in good standing and resides in the lower subdivision.

The Board nominates these three individuals because the Board has developed a strong team that works well together. This stability and collective skill set is needed to weather the challenges that come with a transition as complex and difficult as the transition from RJV to Sambrito is.

Nominations can also come from members in good standing. Members in good standing are property owners that are current with their Sambrito billing. Members are eligible to be a Board Member if they are: 1) an owner AND resident of either the upper or lower subdivisions; 2) current on Sambrito billing; and 3) originally membership decided that at least 2 Board Members must come from each subdivision – as a result, at least 1 nominee must come from the upper subdivision and at least 1 nominee must come from the lower subdivision.

AS PREVIOUSLY NOTICED ON THE WEBSITE <https://sambrito.myruralwater.com/>: IN ORDER TO BE CONSIDERED FOR VOTE AT THE MEMBERSHIP MEETING NOMINATIONS MUST BE RECEIVED BY OCTOBER 27, 2021 VIA EMAIL, MAIL OR THE LOCKBOX.

AGENDA

SAMBRITO MUTUAL DOMESTIC WATER CONSUMERS' ASSOCIATION

and

SAMBRITO MUTUAL DOMESTIC WATER CONSUMERS' ASSOCIATION ANNUAL MEMBER MEETING

**PUBLIC MEETING at the Grange Hall with opportunity to participate by video/phone consistent with NM
Attorney General's Office on Social Distancing**

Wednesday, November 3, 2021

6:00 P.M.

Video call link: Annual Membership Meeting

Wednesday, November 3 · 6:00 – 8:00pm

Google Meet joining info Video call link: <https://meet.google.com/ysn-vqvu-gni>

Or dial: (US) +1 617-675-4444 PIN: 586 076 332 9108#

Board Meeting:

- 1. Call to Order**
- 2. Roll Call and Establishment of Quorum**
- 3. Approval of Minutes**
- 4. Approval of Agenda**

Membership Meeting:

- 1. Roll Call of Members and Establishment of Quorum**
- 2. Officer Reports**
- 3. Transition Update Report**
- 4. Formation of Community Volunteer Brigade**
- 5. Discussion Bylaws voted on and finalized by Board at October Board Meeting**
- 6. Nomination and Vote of Board Members**
- 7. Set Date for Next Annual Meeting**
- 8. Adjournment**