

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)
BE FOUND IN VIOLATION OF THE PUBLIC UTILITY) Docket No. 18-00214-UT
ACT AND COMMISSION RULES)

_____)

SAMBRITO’S RESPONSE TO BENCH REQUEST

COMES NOW, Sambrito Mutual Domestic Water Consumers Association (“Sambrito”) through undersigned counsel and provides the following information responsive to the Bench Request filed in this matter on April 18, 2025:

1. **The Mediation in this matter has not been formally terminated:** On October 10, 2024, Hans Muller, the PRC appointed mediator for the subject mediation emailed the parties’ respective counsel that “this mediation will be assigned to an alternate mediator or arbitrator” because Mr. Muller accepted another position. See Attachment 1. As such, the subject mediation has not been terminated. However, a replacement mediator has not yet been appointed.

2. **Bench Request questions pertaining to mediation outcomes:**

As a threshold matter, the Mediation Procedures Act, NMSA 1978, § 44-7B-1 *et seq.*, specifies that mediation proceedings are generally confidential, are not subject to disclosure and cannot be used as evidence. Additionally, based on the Notice Regarding Representation of Rosa Joint Venture filed by Amy Huff on April 22, 2025, and the email from Dan Najjar on April 23, 2025, see Attachment 2, it appears that RJV is not currently

represented by counsel.¹ Given that these developments occurred in the last approximately 24 hours, undersigned counsel has not had sufficient time to confer with RJV, which now appears to be *pro se*, on what, if any, aspects of mediation it is willing to waive confidentiality on. As such, undersigned counsel concludes that the following Bench Request questions regarding mediation outcomes can only be provided in a confidential setting such as mediation:

- a. A list detailing any initial disagreements,
- b. New requests that emerged since the mediation began, and
- c. Identification of unresolved document requests.

3. **Bench Request questions pertaining to information that is not subject to the confidentiality of mediation:**

- a. Contrary to the Transfer Agreement between the parties, RJV continues to exclude Sambrito from joint operation of the subject water and sewer systems. See, Attachment 3.
- b. Sambrito continues to read meters and bill customers for corresponding water and sewer system charges. Funds collected by Sambrito are used to pay Sambrito's portion of engineering and surveying fees and water delivery charges.
- c. Despite the inability of the water system's wells to produce an adequate water supply for residents, RJV continues to sell lots in the subject subdivision and hook-up new water and sewer connections. See Attachment 3.
- d. Sambrito has a significant amount of customers who are delinquent on their water and sewer bills. RJV refuses to work cooperatively with Sambrito to lock meters

¹ Undersigned counsel will continue to provide *pro bono* legal representation to Sambrito.

of delinquent customers and refuses to allow Sambrito access to do so. See Attachment 3.

- e. RJV has not made improvements to the water and sewer system required by previous Commission Orders. As a result, ongoing concerns exist because only one of the water system's wells appears to be producing water and significant and expensive potable water deliveries are ongoing. See Attachment 3.
- f. RJV does not appear to be in compliance with NMED sanitary survey requirements. See Attachment 4.
- g. Concerns about health, safety and sanitation are ongoing with respect to RJV's maintenance and operation of the sewer system and lagoons. See Attachment 3.
- h. RJV has provided email versions of the water rights and real property deeds and easements to undersigned counsel that are needed to close on the Transfer Agreement. See Attachment 5. Original deeds are required for recording. Despite numerous requests, RJV has not provided the original deeds and easements for recording.
- i. With respect to the subject plat in this matter, undersigned counsel worked with San Juan County and the surveyor to finalize the plat. The remaining items needed to complete the plat were payment of the plat service fee to San Juan County, which undersigned counsel offered to donate, an owner's authorization signature by RJV, and payment of unpaid property taxes owed by RJV. Despite numerous requests to resolve the matter, the plat has not been finalized.
- j. In order to pursue legislative appropriations and other available funding to repair and improve the subject water and sewer systems, Sambrito successfully obtained

funding to conduct a Preliminary Engineering Report (PER) from the Water Trust Board. See Attachment 3.

- k. As a result of not being provided originals of the subject deeds and easements, Sambrito is unable to establish even equitable ownership for purposes of obtaining appropriations from the State of New Mexico or any other potential funding source to repair and improve the system. As a result of RJV's failure to provide originals of the subject deeds and easements, Sambrito was unable to utilize the legislative appropriation of \$75,000 in 2021 and, despite support from the San Juan legislative delegation, has not been eligible to receive appropriations or other grants since 2021 due the failure of RJV to provide original deeds and easements.
- l. Based on information sent to the Sambrito Board President, it appears that RJV is seeking input from community members to form a separate mutual domestic controlled by the partners of RJV. In this communication, RJV claims that it will be able to obtain public appropriations under the guise of an RJV-run mutual domestic to improve the water and sewer systems. See Attachment 3. Not only is such an effort contrary to the Sanitary Projects Act, NMSA 1978, § 3-29-1 *et seq.*, and a violation of the Anti-Donation clause of the New Mexico Constitution, it signifies that **RJV does not intend to:**
 - i. Abide by its own agreements in this matter as set forth in the Transfer Agreement and Stipulation;
 - ii. Comply with Commission Orders in this matter; or
 - iii. Adhere to RJV's obligations as a public utility under the Public Utility

Act.

4. **Sambrito's Position:**

- a. The remaining items needed to effectuate closing of the Transfer Agreement, namely the provision of original deeds by RJV to Sambrito, completion of the plat, and Commission-ordered system repairs and improvements, are solely in RJV's control.
- b. Sambrito reiterates its request that the Commission enforce the terms of the Commission-approved Transfer Agreement and Stipulation transferring the subject water and sewer systems from RJV to Sambrito, as well as Commission Orders requiring RJV to make system improvements.
- c. Sambrito remains concerned that mediation in this matter will not be productive for the following reasons:
 - i. Continual and ongoing delay by RJV to provide the original deeds and easements, along with the plat, which are necessary to effectuate closing;
 - ii. Repeated failure by RJV to adhere to the agreements it made in the Transfer Agreement, Stipulation and relevant Commission Orders;
 - iii. The stated intention of RJV to form its own mutual domestic; and
 - iv. Continuous attempts by RJV to re-negotiate the terms of the Transfer Agreement and Stipulation.
- d. Sambrito has not been supportive of the issuance of fines against RJV in this matter because it has been concerned that the issuance of fines would undermine the ability of RJV to improve the subject water and sewer systems. Additionally, Sambrito has viewed receivership as a method of resolving RJV's failure to

comply with the Public Utility Act as a last resort because of the amount of time involved in such a procedure and the desire to create an amicable solution for the betterment of the community.

- e. Unfortunately, even in the face of potentially significant fines for failure to comply with the Public Utility Act and Commission Orders, RJV continues to ignore the obligations it agreed to in the Transfer Agreement and Stipulation, as well as relevant Commission Orders.
- f. Due to RJV's continued failure to meet its agreements and obligations, RJV's ongoing actions to obfuscate and delay, and the dire need for the community to have these issues resolved, Sambrito is now, in the alternative of paragraph 4(b) above, supportive of establishing receivership for the subject water and sewer systems.

RESPECTFULLY SUBMITTED,

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