
25-00054-UT - 2026.01.20 - Staff - Staff's Response to Motion for Commission Intervention, Finding of Unauthorized Operation, and Appointment of a Receiver or Seizure of All Company Assets

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 1 attachment (341 KB)

25-00054-UT - 2026.01.20 - Staff - Staff's Response to Motion for Commission Intervention, Finding of Unauthorized Operation, and Appointment of a Receiver or Seizure of All Company Assets.pdf;

Attached is **Staff's Response to Motion for Commission Intervention, Finding of Unauthorized Operation, and Appointment of a Receiver or Seizure of All Company Assets** in Case No. 25-00054-UT, electronically filed today.

Peggy Martinez-Rael
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BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF MELODY RANCH)	
WATER COMPANY LLC’S WATER SYSTEM)	Docket No. 25-00054-UT
BREAKDOWN AND DISRUPTION OF SERVICE)	
_____)	

STAFF’S RESPONSE TO MOTION FOR COMMISSION INTERVENTION, FINDING OF UNAUTHORIZED OPERATION, AND APPOINTMENT OF A RECEIVER OR SEIZURE OF ALL COMPANY ASSETS

The Utility Division Staff (“Staff”) of the New Mexico Public Regulation Commission (the “Commission”) submits Staff’s response to Roy McClellan’s January 2, 2026, Motion for Commission Intervention, Finding of Unauthorized Operation, and Appointment of a Receiver or Seizure of All Company Assets (“Motion”), and would show the Commission as follows:

1. The central tenet of Mr. McClellan’s Motion is his assertion that Melody Ranch’s nominal manager, Tracey Padilla, has not “been granted lawful authority to operate the utility, manage its assets, or bind the Company in regulatory proceedings.”¹
2. The Motion avers that the “New Mexico Secretary of State lists C.E. Smith as the registered agent and owner of record” for the utility and that “[n]o amendments, ownership transfers, or Power of Attorney filings naming Ms. Padilla exist in the state’s corporate records.”²
3. The Motion then contends that “[t]he absence of any legally recognized authority for Ms. Padilla to act on behalf of the Company constitutes unauthorized operation, justifying immediate Commission intervention.”³

¹ See Motion at page 1, para. 4.

² *Id.* at page 1, para. 2.

³ Motion at page 2, Section III, fourth bullet point. It should be noted that while the Motion cites “NMSA 1978, § 62-10-3” as authority for the proposition that “the Commission may appoint a receiver or otherwise assume operational control of a utility where mismanagement, abandonment, or unauthorized operation threatens public welfare,” *id.* at page 3, the correct citation is NMSA 1978, Section 62-13-15 (2005). That statute provides that the Commission may commence an action to appoint a receiver in district court (not itself appoint a receiver

4. Pivotaly, Melody Ranch, via its manager, has issued a Letter of Intent to transfer the utility and all of its assets to EMWT Regional Water Association (“EMWT”) at a point in the future once EMWT has satisfactorily completed its due diligence review and other prospective requirements attendant to the transfer.⁴

5. As part of the contemplated transfer, the Letter of Intent acknowledges that the transfer will have to be approved by the NMPRC in an abandonment proceeding.⁵

6. To be more precise, the required NMPRC proceeding will necessarily consider the propositions of abandonment and transfer under the auspices of NMSA 1978, Sections 62-9-5 (Abandonment of Service), 62-6-12 (Acquisitions, Consolidations, etc.; Consent of Commission), and 62-6-13 (Application; Approval of Commission), as well as other principles of law.⁶

7. Bearing the foregoing in mind and the trajectory and intent previously communicated by Melody Ranch in this matter, the assertion leveled in the Motion at bar regarding Melody Ranch’s manager’s ability to bind or otherwise effectively act for and on behalf of the utility, if proven true, could carry material implications towards effectively realizing what is countenanced in the September 24, 2025, Letter of Intent. It is no understatement to say that the prospective transfer of the utility to EMWT has been a central and critical component to everything

directly) after determining “after notice and hearing, that a public utility is unable or unwilling to adequately service its customers or has been actually or effectively abandoned by its owners or operator, or consistently violates the rules or orders of the commission.” *Id.*

⁴ See Legal Division’s Oct. 2, 2025, Notice of Filing Regarding Melody Ranch Letter of Intent to EMWT, September 24, 2025, Letter of Intent attached thereto.

⁵ *Id.*

⁶ See, e.g., *In the Matter of the Verified Application of Eileen Acres Service Corporation to Abandon all Regulated Utility Service and to Transfer Assets and Operation to Eileen Acres Mutual Domestic Water Consumers Association Upon Transfer*, NMPRC Case No. 25-00005-UT, June 6, 2025, Recommended Decision at pages 6-12.

that the parties to this case and other stakeholders have been working towards since inception of this proceeding.

8. Accordingly, Staff anticipates that Melody Ranch will respond to the Motion with documents, information and/or other admissible and verified items regarding whether Melody Ranch's manager as well as its owner or owners in fact and law possess the capacity to bind the utility and effectively participate in the eventual abandonment and transfer proceedings necessary to realize the aims set forth in the Letter of Intent.

9. Should Melody Ranch's response to the Motion not adequately address this vital issue, then Staff recommends that the Commission order Melody Ranch to make a verified and appropriately supported offer of proof in this docket addressing this particular factual contention. At any rate, this is an issue that should be addressed and resolved now rather than later.

10. Regarding the Motion's requested remedies and determinations, these depend on the establishment of the alleged predicate of incapacity on the part of utility management and ownership. Because the facts remain undetermined at this time, those requests should be held in abeyance, pending examination and resolution of the material factual allegation central to the Motion.

Dated this 20th day of January, 2026.

Respectfully submitted,

/s/ John Bogatko

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BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

**IN THE MATTER OF MELODY RANCH WATER)
COMPANY LLC'S WATER SYSTEM BREADOWN) Docket No. 25-00054-UT
AND DISRUPTION OF SERVICE)**

CERTIFICATE OF SERVICE

I **CERTIFY** that on this date I sent a true and correct copy of **Staff's Response to Motion for Commission Intervention, Finding of Unauthorized Operation, and Appointment of a Receiver or Seizure of All Company Assets**, to the following:

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DATED January 20, 2026

NEW MEXICO PUBLIC REGULATION COMMISSION

/s/ Peggy Martinez-Rael, (Electronically signed)

Peggy Martinez-Rael, Paralegal