

**STATE OF NEW MEXICO
COUNTY OF LINCOLN
TWELFTH JUDICIAL DISTRICT COURT**

TIERRA REALTY TRUST, LLC, a New Mexico
Limited Liability Company and all other residential
wastewater and sewer customers of the Village of Ruidoso,
New Mexico who are similarly situated,

Plaintiffs,

vs.

No. D-1226-CV-2009-00316

VILLAGE OF RUIDOSO, NEW MEXICO,
a New Mexico incorporated municipality,

Defendant.

**NOTICE OF:
(I) PROPOSED SETTLEMENT; AND
(II) SETTLEMENT FAIRNESS HEARING**

A State Court authorized this Notice. This is not a solicitation from a lawyer.

**Please read this Notice carefully.
Your rights may be affected by the proposed settlement.**

**STATE OF NEW MEXICO, COUNTY OF LINCOLN,
TWELFTH JUDICIAL DISTRICT COURT**

In Re Village of Ruidoso Litigation

No. D-1226-CV-2009-00316

**NOTICE OF (I) PROPOSED SETTLEMENT AND
(II) SETTLEMENT FAIRNESS HEARING**

If you are a past or present residential wastewater and sewer customer of the Village of Ruidoso from the date of adoption of Village Ordinance Number 2007-11 (November 27, 2011) through the date of preliminary approval of the Settlement Agreement (November 3, 2014) you are a Class Member.¹

A State Court authorized this Notice. This is not a solicitation from a lawyer.

- This Notice relates to the above captioned class action (the “Lawsuit”) brought by Tierra Realty Trust, LLC (“Named Plaintiff”) involving claims that the Village of Ruidoso (“Ruidoso”) set its residential wastewater and sewer rates improperly high in violation of state statute and common law.
- Named Plaintiff has reached a proposed Settlement that, if approved, will resolve all claims in the Lawsuit on behalf of Named Plaintiff and the other Class Members (as defined in the response to Question 4 below) against Ruidoso.
- The Settlement provides for the payment of \$70,000 in cash (the “Settlement Amount”) by or on behalf of Ruidoso to the Named Plaintiff and its attorney’s to offset fees incurred in this action.
- Named Plaintiff and Ruidoso disagree as to both liability and damages.
- Named Plaintiff and the Class are being represented by Kurt Wihl and Tina Muscarella Gooch of Keleher & McLeod, PA, the Court-appointed Lead Counsel (“Lead Counsel”). Any questions regarding the Settlement should be directed to Kurt Wihl kw@keleher-law.com or Tina Muscarella Gooch tmg@keleher-law.com, at Keleher & McLeod, P.A., P.O. Box AA, Albuquerque, NM 87103, 505.346.4646.
- **If you are a Class Member and the Settlement is approved, your legal rights will be affected whether you act or do not act. Read this Notice carefully and in its entirety to see what your options are in connection with the Settlement.**

YOUR LEGAL RIGHTS AND OPTIONS IN THE SETTLEMENT	
Opt Out of the Settlement so that it is received no later than February 2, 2015	This is the only option that allows you to ever be part of any other lawsuit against Ruidoso concerning claims that were, or could have been asserted in this case.
Object to the Settlement by Submitting a Written Objection so that it is Received No Later Than February 2, 2015	If you have not excluded yourself, but you wish to object to any part of the Settlement, you may write to the Court about your objections.
Attend the Hearing on April 13, 2015 and File a Notice of Intention to Appear so that it is Received No Later Than February 2, 2015	Filing a written objection and notice of intention to appear by February 2, 2015 allows you to speak in Court at the discretion of the Court about the fairness of the proposed Settlement. If you submit a written objection, you may (but do not have to) attend the hearing and speak to the Court about your objection.
Do Nothing.	If you are a Class Member, you will remain a member of the Class, which means that you gave up your right to sue about the claims that are resolved by the Settlement, and you are bound by any judgments orders entered by the Court in the Lawsuit

- These rights and options - **and the deadlines to exercise them** - are explained in this Notice.

¹ All capitalized terms that are not defined in this Notice have the meaning ascribed to them in the Settlement Agreement dated October 29, 2014 (the “Agreement”), which is available on the Village of Ruidoso’s website, <http://www.ruidoso-nm.gov/utility-billing.html>.

- The Court in charge of this case still has to decide whether to approve the Settlement.

WHAT THIS NOTICE CONTAINS

BASIC INFORMATION

1. Why did I get this Notice?
2. What is a class action?
3. What is this Lawsuit about?

WHO IS THE CLASS

4. How do I know whether I am part of the Class?
5. Are there exceptions to being included in the Class?

SUMMARY OF THE SETTLEMENT

6. How and when was the Settlement reached?
7. What does the Settlement provide?
8. What are the reasons for the Settlement?
9. What is the potential outcome of the lawsuit without the Settlement?

REQUESTING EXCLUSION FROM THE CLASS

10. May I now request exclusion from the Class?

THE LAWYERS REPRESENTING YOU

11. Do I have a lawyer in this case?
12. How will the lawyers be paid?

OBJECTING TO THE SETTLEMENT

13. How do I tell the Court that I do not like the Settlement?
14. What is the difference between objecting and requesting exclusion?
15. When and where will the Court decide whether to approve the Settlement?
16. Do I have to come to the Settlement Hearing?
17. May I speak at the Settlement Hearing?

IF YOU DO NOTHING

18. What happens if I do nothing at all?

GETTING MORE INFORMATION

19. Are there more details about the Settlement?
20. How do I get more information?

BASIC INFORMATION

1. Why did I get this Notice?

You were or are a residential wastewater and sewer of customer of Ruidoso between November 27, 2011 and the date of preliminary approval of the Settlement Agreement (November 3, 2014) and the Court ordered that this Notice be sent to you because, as Class Member, you have a right to know about the proposed Settlement and about all of your options before the Court decides whether to approve the Settlement.

This Notice describes the Settlement, the Lawsuit, your legal rights, what benefits are available, who is eligible for them, and how to get them.

The Court in charge of this case is the Twelfth Judicial District Court, County of Lincoln, State of New Mexico.

2. What is a class action?

In a class action, one or more persons, called “plaintiffs” sue on behalf of people who have similar claims. The court must certify the action to proceed as a class action and it will appoint a “class representative.” All of the individuals and entities on whose behalf the class representative are suing are known as class members. One court resolves the issues in the case for all class members, except for those who choose to exclude themselves from the class if exclusion is permitted by applicable rules of procedure. In this Lawsuit, the Court has appointed Tierra Realty to serve as the class representative and has appointed Lead Counsel to serve as class counsel.

3. What is this lawsuit about?

The Lawsuit is a class action alleging that Ruidoso set its residential wastewater and sewer rates improperly high in violation of state statute and common law. Specifically, Lead Plaintiff alleges that Ruidoso’s base rates for wastewater and sewer services far exceed comparable charges by publicly regulated private utilities in violation of state law. The suit claimed Ruidoso’s base rate charges vary between \$46.85 and \$76.41, while the average charge for comparable services through private utilities in New Mexico is \$20.13.

Ruidoso denies any allegations of fault, wrongdoing, or liability with respect to the allegations in the complaint, and the Court has not ruled on the merits of the allegations.

4. How do I know whether I am part of the Class?

The Court has certified a Class of the following individuals and entities:

All past and present residential wastewater and sewer customers of the Village of Ruidoso from the date of adoption of the Village Ordinance No. 2007-11(Nov. 27, 2011) through the date of preliminary approval of the Settlement Agreement (November 3, 2014).

5. How and when was the Settlement reached?

Named Plaintiff reached an agreement-in-principle to settle with Ruidoso on October 8, 2014. Thereafter, the terms and conditions of the Settlement were formalized in the Agreement.

The Settlement was reached only after arm’s-length negotiations between Lead Counsel and Ruidoso’s Counsel.

6. What does the Settlement provide?

The Settlement provides that, over the next five (5) years, before Ruidoso passes any ordinance increasing water or wastewater and/or sewage rates, Ruidoso will hire an independent consultant to

assist in establishing rates that are reasonable considering the regulatory environment in which Ruidoso must operate its sewer treatment plant and consistent with amounts charged by private enterprise in the operation of similar facilities. The Settlement also provides for Ruidoso to cause a total of \$70,000 to be paid to Tierra Realty and Lead Counsel to offset fees incurred in this action.

If the Court approves the Settlement, then as of the Effective Date, all members of the Class will be deemed to have released all Named Plaintiff's Claims against Ruidoso. This means, among other things, that, upon the Effective Date, all Class Members will be permanently barred from asserting any of the Named Plaintiff's Claims against Ruidoso. In addition, upon the Effective Date, Ruidoso will be precluded from suing Named Plaintiff, the other members of the Class, or Lead Counsel in connection with the institution, prosecution, or resolution of the Lawsuit.

If the Settlement is approved by the Court and becomes effective, the Lawsuit will be over.

7. What are the reasons for the Settlement?

Named Plaintiff agreed to the Settlement because of certain, substantial, and immediate benefits it will provide to the Class, compared to the risk of a lesser or no recovery that might be achieved after a contested trial and likely appeals, possibly years into the future. If the Lawsuit were to proceed to trial, Named Plaintiff would have to overcome significant defenses asserted by Ruidoso. Among other things, Ruidoso contended that: (a) the claims are barred by the New Mexico Tort Claims Act, NMSA 1978, § 41-4-1 *et seq.*, (b) the claims are moot, (c) Ruidoso's base rate charges are presumed to be reasonable, (d) the claims are barred by the voluntary payment rule, (e) there is no contract between plaintiffs and Ruidoso, and (f) the statute of limitations bars the claims.

Ruidoso denies any wrongdoing, maintains that the claims in the Lawsuit are without merit, and believes that it would ultimately prevail. Nevertheless, Ruidoso also recognizes the uncertainty, risks, and costs of complex litigation. Ruidoso agreed to resolve the matter solely to eliminate the burden, expense, and risk of further litigation.

8. What is the potential outcome of the lawsuit without the Settlement?

The outcome of any litigation is always uncertain. On the one hand, if there were no Settlement and Named Plaintiff failed to establish any essential legal or factual element of its claims, neither Named Plaintiff nor the Class Members would recover anything from Ruidoso. On the other hand, the Class could prevail in whole or in part at trial, which would result in some or all of the relief requested in the Amended Complaint being awarded by the Court.

THE BENEFITS OF THE SETTLEMENT - WHAT YOU GET

The Settlement will ensure that, over the next five (5) years, before Ruidoso passes any ordinance increasing water or wastewater and/or sewage rates, Ruidoso will hire an independent consultant to assist in establishing rates that are reasonable considering the environment in which Ruidoso must operate its sewage and wastewater treatment plant and consistent with amounts charged by private enterprise in the operation of similar facilities.

9. As a Class Member, what am I giving up in the Settlement?

If you are a Class Member, you will be bound by the orders and judgments entered by the Court in the Lawsuit. If the Settlement is approved, the Court will enter a judgment (the "Judgment"). The Judgment will dismiss the claims against Ruidoso with prejudice and will provide that Named Plaintiff and all other Class Members, by operation of the Judgment, shall release and forever discharge Ruidoso Releasee's (as defined below) from any and all of the Named Plaintiff's Claims (as defined below); however, Ruidoso must still comply with the terms of the Settlement. Class Members

will not be able to sue, or be part of any other lawsuit involving any claims released in the Settlement. Class Members will be bound by the orders of the Court.

“Ruidoso Releasee’s” means jointly and severally, Ruidoso and its respective past, present, and future officers, directors, employees, agents, attorneys, representatives, insurers and all other persons, partnerships, or corporations with whom any of the former have been, or are now, affiliated, and the predecessors, successors, heirs, executors, administrators, and assigns of each of the foregoing and their respective present and former parents, subsidiaries, divisions, joint ventures and affiliates, and each of their respective present and former employees, member, partners, principals, officers, directors, attorneys, advisors, accountants, auditors, and insurers (but only in such insurers’ capacity as insurers’ capacity as insurers of the foregoing); and the predecessors, successors, estates, heirs, executors, trusts, trustees, administrators, agents, fiduciaries, consultants, representatives and assigns of each of them, in their capacity as such.

“Named Plaintiff’s Claims” means any and all claims, demands, actions, suits, causes of action, whether class, individual, or otherwise in nature, damages whenever incurred, liabilities of any nature whatsoever, including costs, expenses, penalties, attorney’s fees, known or unknown, derivative or direct, suspected or unsuspected, asserted or unasserted in law or equity, which have been, or could have been, asserted in the Lawsuit.

REQUESTING EXCLUSION FROM THE LAWSUIT

10. May I request exclusion from the Class?

Yes. A form of “Opt Out” Notice is attached to the end of this Notice of Proposed Settlement and Settlement Fairness Hearing.

11. If I am a Class Member and don’t exclude myself, can I sue Ruidoso or Other Defendants’ Releasees for the same thing later?

No. Unless you followed the procedure outlined in the Class Notice, you have given up any right to sue Ruidoso or Ruidoso’s Releasee’s for the claims that the Settlement resolves. If you have a pending lawsuit against Ruidoso or Ruidoso’s Releasee’s, speak to your lawyer in that case immediately. You must exclude yourself from the Settlement to continue your own lawsuit against the Ruidoso or Ruidoso’s Releasee’s.

THE LAWYERS REPRESENTING YOU

12. Do I have a lawyer in this case?

The Court has appointed the law firm of Keleher & McLeod, P.A. as Lead Counsel to represent Named Plaintiff and all other Class Members in the Lawsuit. If you have any questions about the proposed Settlement, you may contact Lead Counsel as follows: Kurt Wihl, Esq., or Tina Muscarella Gooch, Esq., Keleher & McLeod, P.A., P.O. Box AA, Albuquerque, NM 87103 (505) 346.4646.

If you want to be represented by your own lawyer, you may hire one at your own expense.

13. How will the lawyers be paid?

You will not be charged directly for the fees or expenses of Lead Counsel. Instead, Lead Counsel has been, and will be, paid by Tierra Realty. Tierra Realty will be paid, as part of the Settlement to recover these costs and fees.

OBJECTING TO THE SETTLEMENT

14. How do I tell the Court that I don’t like the Settlement?

Any Class Member who did not submit a request for exclusion from the Class in connection with the Class Notice can object to the Settlement or any part of it, and give reasons why the Court should not approve them. To object, you must send a letter or other filing saying that you object to the proposed Settlement in *Tierra Realty Trust, LLC v. Village of Ruidoso*, Civil Action No. D-1226-CV-2009-00316. Any objection (a) must state the name, address, and telephone number of the person or entity objecting and must be signed by the objector; (b) must contain a statement of the Class Member's objection or objections, and the specific reason(s) for each objection, including any legal and evidentiary support the Class Member wishes to bring to the Court's attention; and (c) must include documents sufficient to prove the objector's membership in the Class such as a Ruidoso utility bill. The written objection must be filed with the clerk of the Lincoln County Court and sent to Lead Counsel and Ruidoso's Counsel at the addresses set forth below so that the papers are *received* by the clerk of the Court and counsel **no later than February 2, 2015**:

<u>Clerk of the Court</u>	<u>Lead Counsel</u>	<u>Ruidoso's Counsel</u>
Lincoln County Courthouse PO Box 725 Carrizozo, NM 88301-0725	Kurt Wihl Tina Muscarella Gooch Keleher & McLeod, PA PO Box AA Albuquerque, NM 87103	Bryan Evans Carla Williams Atwood, Malone, Turner & Sabin, PA PO Drawer 700 Roswell, NM 88202-0700 Daniel A. Bryant Bryant Schneider-Cook Law Firm, P.A. PO Box 2300 Ruidoso, NM 88355-2300

Persons who intend to object and present evidence at the Settlement Hearing must include in their written objection the identity of any witnesses they may call to testify, and any exhibits they intend to introduce into evidence at the hearing.

You may file a written objection without having to appear at the Settlement Hearing. You may not, however, appear at the Settlement Hearing to present your objection unless you have first filed and served a written objection in accordance with the procedures described above, unless the Court orders otherwise.

Any Class Member who does not object in the manner provided above will be deemed to have waived all objections to the Settlement.

15. What's the difference between objecting and requesting exclusion?

Objecting is simply telling the Court what you do not like about the Settlement. You can object only if you are a Class Member.

Excluding yourself is telling the Court that you do not want to be part of the Class. If you exclude yourself, you have no basis to object, because the case no longer affects you. If you did not exclude yourself, you will be bound by the Settlement and all orders and judgments entered by the Court regarding the Settlement, regardless of whether the Court accepts or denies your objection.

16. When and where will the Court decide whether to approve the Settlement?

The Court has scheduled a hearing on the proposed Settlement for **April 13, 2015 at 10:00 a.m.**, before the Honorable Karen L. Parsons in the Twelfth Judicial District Court, Lincoln County, New Mexico. At the Settlement hearing, the Court will consider whether the Settlement is fair,

reasonable, and adequate. If there are objections, the Court will consider them. At or after the Settlement Hearing, the Court will decide whether to approve the Settlement.

Please note that the date of the Settlement Hearing is subject to change without further notice. If you plan to attend the hearing, you should check with Lead Counsel to be sure that no change to the date and time of the hearing has been made.

17. Do I have to come to the Settlement Hearing?

No. Lead Counsel will answer any questions the Court might have but you are welcome to come at your own expense. If you send an objection, you do not have to come to Court to talk about it. As long as you mailed your written objection so that it was received by the deadline, it will be before the Court when the Court considers whether to approve the Settlement. You may also pay your own lawyer to attend the Settlement Hearing, but attendance is not necessary.

18. May I speak at the Settlement Hearing?

If you are a Class Member, you may ask the Court for permission to speak at the Settlement Hearing. To do so, you must send a letter or other paper called a "Notice of Intention to Appear at Fairness Hearing in *In re Tierra Realty Trust, LLC v. Village of Ruidoso*." Be sure to include your name, address, telephone number, and your signature. Your Notice of Intention to Appear must be filed with the Clerk of the Court and sent to the counsel listed above in the answer to Question 14 so that it is *received* by the Court and counsel **no later than February 2, 2015**. You cannot speak at the Settlement Hearing if you have asked to be excluded from the Class.

IF YOU DO NOTHING

19. What happens if I do nothing at all?

If you are a Class Member and do nothing in response to this Notice, you will be bound by the Settlement which means that you will not be able to start, continue, or be part of any other lawsuit or arbitration against Ruidoso or Ruidoso's Releasees based on the Named Plaintiff's Claim in the Lawsuit.

GETTING MORE INFORMATION

20. Are there more details about the Settlement?

This Notice contains only a summary of the proposed Settlement. The complete terms of the Settlement are set out in the Settlement Agreement dated October 29, 2014. You may request a copy of the Agreement in writing to *In re Tierra Realty Trust, LLC v. Village of Ruidoso*, P.O. Box AA, Albuquerque, NM 87103. There may be a charge for copying and mailing the Agreement. Copies of the Agreement may be obtained for free at <http://www.ruidoso-nm.gov/utility-billing.html>.

PLEASE DO NOT CALL OR WRITE THE COURT OR THE OFFICE OF THE CLERK OF COURT REGARDING THIS NOTICE

Dated: November 3, 2014

BY ORDER OF THE TWELFTH
JUDICIAL DISTRICT COURT
LINCOLN COUNTY, NEW MEXICO

