



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS TX 75202-2733

25 JUL 2017

CERTIFIED MAIL: RETURN RECEIPT REQUESTED (7014 0150 0000 2453 3252)

REPLY TO: 6WQ-NP

Isaac Garcia
WWTP Director
City of Ruidoso Downs and Village of Ruidoso WWTP
313 Cree Meadows Drive
Ruidoso, NM 88345

Re: Application to Discharge to Waters of the United States Permit No. NM0029165, City of Ruidoso Downs and Village of Ruidoso WWTP

Dear Mr. Garcia:

This package constitutes EPA's final permit decision for the above referenced facility. Enclosed are the responses to comments received during the public comment period and the final permit. According to EPA regulations at 40 CFR §124.19, within 30 days after a final permit decision has been issued, any person who filed comments on that draft permit or participated in the public hearing may petition the Environmental Appeals Board to review any condition of the permit decision.

Should you have any questions regarding the final permit, please feel free to contact Tung Nguyen of the NPDES Permits Branch at the above address or by telephone: (214) 665-7153, by fax: (214) 665-2191, or by E-mail: nguyen.tung@epa.gov. Should you have any questions regarding compliance with the conditions of this permit, please contact the Water Enforcement Branch at the above address or by telephone: 214-665-6468.

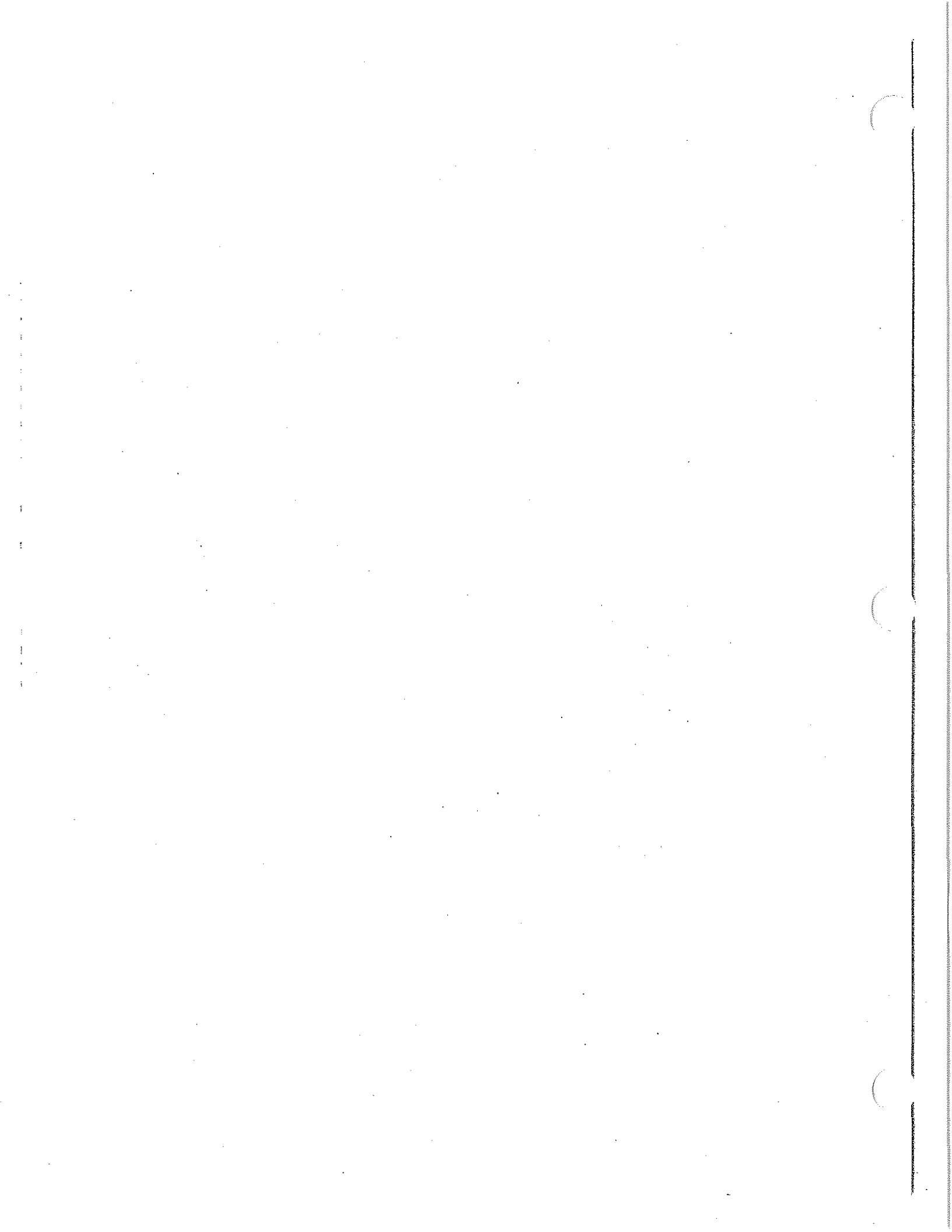
Sincerely yours,

A handwritten signature in black ink, appearing to read "WK Honker".

William K. Honker, P.E.
Director
Water Division

Enclosures

cc w/enclosures:
New Mexico Environment Department
Rio Hondo Land & Cattle Co.
Steven Sugarman, Attorney for Rio Hondo Land & Cattle Co.



NPDES PERMIT NO. NM00209165

RESPONSE TO COMMENTS

RECEIVED ON THE SUBJECT DRAFT NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) PERMIT IN ACCORDANCE WITH REGULATIONS LISTED AT 40 CFR §124.17

APPLICANT: City of Ruidoso Downs and Village of Ruidoso WWTP
313 Cree Meadows Drive
Ruidoso, NM 88345

ISSUING OFFICE: U.S. Environmental Protection Agency
Region 6
1445 Ross Avenue
Dallas, TX 75202-2733

PREPARED BY: Tung Nguyen
Environmental Engineer
NPDES Permitting Section (6WQ-PP)
Water Division
VOICE: 214-665-7153
FAX: 214-665-2191
EMAIL: nguyen.tung@epa.gov

PERMIT ACTION: Final permit decision and response to comments received on the draft reissued NPDES permit publicly noticed on May 6, 2017.

DATE PREPARED: July 11, 2017

Unless otherwise stated, citations to 40 CFR refer to promulgated regulations listed at Title 40, Code of Federal Regulations, revised as of July 1st, 2016.

DOCUMENT ABBREVIATIONS

In the document that follows, various abbreviations are used. They are as follows:

4Q3	Lowest four-day average flow rate expected to occur once every three-years
BAT	Best available technology economically achievable
BCT	Best conventional pollutant control technology
BPT	Best practicable control technology currently available
BMP	Best management plan
BOD	Biochemical oxygen demand (five-day unless noted otherwise)
BPJ	Best professional judgment
CBOD	Carbonaceous biochemical oxygen demand (five-day unless noted otherwise)
CD	Critical dilution
CFR	Code of Federal Regulations
cfs	Cubic feet per second
COD	Chemical oxygen demand
COE	United States Corp of Engineers
CWA	Clean Water Act
DMR	Discharge monitoring report
ELG	Effluent limitation guidelines
EPA	United States Environmental Protection Agency
ESA	Endangered Species Act
FCB	Fecal coliform bacteria
F&WS	United States Fish and Wildlife Service
mg/l	Milligrams per liter
ug/l	Micrograms per liter
MGD	Million gallons per day
NMAC	New Mexico Administrative Code
NMED	New Mexico Environment Department
NMIP	New Mexico NPDES Permit Implementation Procedures
NMWQS	New Mexico State Standards for Interstate and Intrastate Surface Waters
NPDES	National Pollutant Discharge Elimination System
MQL	Minimum quantification level
O&G	Oil and grease
POTW	Publically owned treatment works
RP	Reasonable potential
s.u.	Standard units (for parameter pH)
SWQB	Surface Water Quality Bureau
TDS	Total dissolved solids
TMDL	Total maximum daily load
TRC	Total residual chlorine
TSS	Total suspended solids
UAA	Use attainability analysis
USFWS	United States Fish & Wildlife Service
USGS	United States Geological Service
WLA	Wasteload allocation
WET	Whole effluent toxicity
WQCC	New Mexico Water Quality Control Commission
WQMP	Water Quality Management Plan

SUBSTANTIAL CHANGES FROM DRAFT PERMIT

There are changes from the draft NPDES permit publicly noticed on May 6, 2017:

- Monitoring requirement for the toxic pollutants has been changed to once/six months from once/quarter.
- Loadings have been increased to 37.8 lbs./day and 1.67 lbs./day for TN and TP, respectively.
- Languages in Part I.G has been revised regarding construction of 200 sewer connections; submitting scope of works, replacing onsite wastewater treatment systems, has been removed.

STATE CERTIFICATION

Letter from Shelly Lemon, New Mexico Environment Department (NMED) to William K. Honker (EPA) dated June 9, 2017.

CONDITIONS OF CERTIFICATION

None

COMMENTS RECEIVED ON THE DRAFT PERMIT

Letter from Shelly Lemon, New Mexico Environment Department (NMED) to William K. Honker, (EPA) dated June 9, 2017.

Letter from Gary Williams, Mayor, City of Ruidoso Downs cosigned with Tom Battin, Mayor, Village of Ruidoso (Ruidoso) to Evelyn Rosborough (EPA) dated June 2, 2017.

Letter from Steven Sugarman, Attorney for Rio Hondo Land & Cattle Co. (Rio Hondo) to Evelyn Rosborough (EPA) dated June 4, 2017.

RESPONSE TO COMMENTS

Comment 1: NMED supports reducing the monitoring for toxics to once during the first quarter using sufficiently sensitive methods, and then if not detected, ending monitoring requirements.

Response 1: EPA addresses this comment under Response 4 below.

Comment 2 (NMED): EPA-approved TMDL includes an allowance in the wasteload allocation for the WWTP for future flow increases up to the design flow. NMED encourages Ruidoso's efforts to add additional units to the collections and treatment system during this permit cycle and supports using the estimated future peak 30-day average flow during the 2017-2022 permit cycle of 2.1 MGD. The TMDL allowance for 2.1 MGD peak flow would establish the effluent discharge limit for the 30-day avg. as 41.5 lbs./day for total nitrogen (TN), and 1.84 lbs./day for total phosphorus (TP). The compliance schedule should include an annual progress report on design completion, construction start and completion throughout the permit period.

Response 2: EPA addresses this comment under Response 3 below.

Comment 3 (Ruidoso): The 37.1 pounds-per-day (lbs./day) effluent limit for total nitrogen (TN) based on a maximum month plant discharge of 1.88 MGD translates to a concentration of about 2.4 mg/L, which is unachievable for the plant. A one-year compliance schedule for TN is unreasonable. Ruidoso requests an interim technology-based limit for TN for the term of the renewed permit. The limit would apply to TN loadings and would be equivalent to a monthly average effluent concentration of 4.0 mg/L calculated for a projected effluent flow of 2.1 MGD. Total phosphorus (TP) loadings be also limited based on 2.1 MGD flow.

Response 3: Concentration for TN is not limited in this permit nor the only factor to control the load limit (concentration * flow = load). The permittees have committed to connect 200 (out of 1,216) additional customers by end of July 2022 (addressed in a letter dated July 5, 2017). After consultation with NMED, EPA increased the loadings for nutrients as follows in the final permit:

TN: $(1.88 + 0.03526) \text{ MGD} * 53.3 \text{ lbs./day} \div 2.7 \text{ MGD} = 37.8 \text{ lbs./day}$
TP: $(1.88 + 0.03526) \text{ MGD} * 2.36 \text{ lbs./day} \div 2.7 \text{ MGD} = 1.67 \text{ lbs./day}$

The loading increases agreed to by NMED are consistent with the TMDLs. DMRs show the newly established limit 37.8 lbs./day for TN has been met about 90% (25 out of 28 data points) from 1/2015 to 4/2017. In addition, the permittees have no plan to modify the treatment works/process in the permit term. EPA believes the 1-year compliance schedule for TN is reasonable and requested interim limit is not appropriate. The permittees have submitted the scope of works, replacing onsite wastewater treatment systems, described in the proposed permit (Part I.G). EPA revises language in this part to include an annual progress report on construction of the 200 sewer connections. Loading limits have been increased to 37.8 lbs./day and 1.67 lbs./day for TN and TP, respectively; the compliance schedule for TN is unchanged in the final permit. EPA also notes that more frequent monitoring, although not required, could provide a more accurate monthly average loading.

Comment 4: Ruidoso requests that 1 sample be collected during the first 3 months of the permit term and analyzed for the toxic pollutants (cadmium, cyanide (total recoverable), acrylonitrile, benzidine, benzo(a)anthracene, benzo(a)pyrene, 3,4-benzofluoranthene, benzo(k)fluoranthene, chrysene, hexachlorobenzene and heptachlor) in accordance with the approved EPA Method noted in the Fact Sheet. If these samples have non-detect results for any pollutant, the renewed permit should require no further testing for that pollutant. If any samples are confirmed above the laboratory reporting limit for the corresponding EPA Method, then quarterly sampling should be performed for that pollutant for the remainder of the permit term. Ruidoso notes that Appendix A of Part II of the draft permit is identical to the 5-year old Appendix A attached to the current permit. We request that Appendix A be updated to include the MQLs and Standard Methods desired by EPA.

Response 4: As stated in the Fact Sheet, if a discharge poses the reasonable potential to cause an in-stream excursion above a water quality criterion, the permit must contain an effluent limit for that pollutant. When an approved test method listed under 40 CFR 136.3 cannot detect an applicable Tribe/State WQS or no laboratory in the region can test a pollutant at the Tribe/State WQS level, EPA would consider this exception instead of establishing effluent limit(s). Submitted data in the application showed RPs exist and Sufficient Sensitive Method (SSM) requirements per 40 CFR 122.21(e)(3) were not met for those toxic pollutants. EPA gave the permittees opportunity to demonstrate compliance with this SSM requirement during the public comment period; however, EPA did not receive any new data by the end of the comment period nor information on unavailability of laboratories in the region performing SSM tests for one or more pollutants. In the last several months, EPA received retest results for similar pollutants (sampled and analyzed) within 30-day comment period for a different NPDES discharger in

New Mexico. Following the Technical Support Document for Water Quality based Toxics Control (TSD) (EPA/505/2 90 001), EPA reduces the monitoring frequency for these toxic pollutants to once per six months in the final permit.

When a pollutant is tested, requirements per 40 CFR 136.3 and 40 CFR 122.21(e)(3) for SSM must be met. The SSM rule overrides the MQLs when the MQL is not sufficiently sensitive. EPA does not include methods complying to the SSM in the permit because availability of technology and laboratory that can run sufficient tests is subject to change during 5-year permit term. EPA evaluates compliance of the SSM based on the availability at the time of writing a NPDES permit; so criteria (e.g., acceptable test method, detection level) maybe different from time to time.

Comment 5 (Rio Hondo): The proposed permits' reliance on mass loading limits for nutrients, in lieu of concentration-based discharge limits, is unacceptable since the mass loading limits are based on the arbitrary and capricious 2016 TMDLs for nutrients. The proposed permit constitutes impermissible backsliding in violation of the Clean Water Act. Rio Hondo respectfully submits that the proposed NPDES permit cannot be issued in its current form.

Response 5: The current TMDL for nutrients approved by EPA is the TMDL that must be implemented by the permit. EPA must ensure the permit conditions are consistent with the assumptions, requirements and WLAs in the approved TMDLs pursuant to 40 CFR 122.44(d)(1)(vii)(B). Newly established limits for nutrients are consistent with the current TMDL, developed by NMED following applicable notice and comment requirements approved by the WQCC on November 15, 2016 and then approved by EPA on December 13, 2016. As of the date of this permitting decision, that TMDL remains in force and effect. The content and approval of the TMDL was the subject of separate State and Federal actions and is beyond the scope of this permitting action. The limits relaxation in the final permit is consistent with independent exceptions to Antibacksliding at CWA 303(d)(4)(A) and CWA 402(o)(2). CWA 303(d)(4)(a) applies to water not in attainment with WQS and allows an antibacksliding exemption where existing permit limits were based on a TMDL and the cumulative effect of the new TMDL will assure attainment of WQS. CWA 401(o)(2)(B)(i) includes an exception where new information, in this case the new TMDL, was not available at the time of issuance of the existing permit and would have justified less stringent permit limits. The permit has a standard reopener clause (under Part II.C) that would allow the permit to be changed if at a later date new/revised TMDLs are approved or temporary standards are completed. There is no change in the final permit resulting from this comment.

EPA Comment: EPA has made changes in formatting the tables in Part I.A.1 of the final permit. Table headlines have the same meaning as intended in the draft permit. This changes are required pursuant to Section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794 (d)). For clarification, the 2.7 MGD design flow has been referenced in Part I.A.1.

Enclosures emailed to NMED, Ruidoso, Steven Sugarman:
NMED Certification
Letters from Ruidoso dated June 2, 2017 and July 5, 2017
Letter from Rio Hondo

