

ENVIRONMENTAL APPEALS BOARD  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C.



In re: )

City of Ruidoso Downs and Village of )  
Ruidoso WWTP )

NPDES Permit No. NM 0029165 )

NPDES Appeal No. 17-03

**ORDER ON BRIEFING SCHEDULE**

On November 7, 2017, the Board received a joint motion from the permit issuer EPA Region 6 (“Region”), the City of Ruidoso Downs and Village of Ruidoso WWTP (“City of Ruidoso”), and Petitioner Rio Hondo Land & Cattle Company (“Rio Hondo”) requesting an extension of time to file the response and reply briefs in this matter. Currently, the response motions are due Tuesday, November 14, 2017.<sup>1</sup> The reply brief is due 15 days following service of the response briefs, pursuant to 40 C.F.R. § 124.19(c)(2). The parties jointly request that the Board extend the time for filing the response briefs by more than two months to January 18, 2018, and for the reply brief an additional six weeks to March 3, 2018.

In support of the motion, the parties state that the issues raised by this petition require EPA Region 6 to closely consult and coordinate with the EPA Office of Water and the EPA Office of General Counsel and that more time “would allow for a better opportunity to

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<sup>1</sup> Although the Petition for Review was filed on August 22, 2017, Petitioners sought and the Board granted an extension of time to file their brief in support of the petition. Petitioner’s brief was filed October 12, 2017, and, based on that filing date, the Region’s Response is currently due November 14, 2017.

coordinate these efforts.” The parties also state that Petitioner Rio Hondo supports this motion because EPA Region 6 has agreed to an adjustment of the due date for its reply “which is necessitated by the requested extension [of the response brief deadline].” Motion at 2-3. The parties also state that “no party will be adversely affected by the proposed revision to the briefing schedule.

The parties do not indicate whether EPA’s Office of Water and Office of General Counsel have been consulted on this briefing schedule or this matter to date. *See Procedures for Coordination OE-OGC-Regions Environmental Appeals Board* (Jan. 25, 1993) (articulating the importance of initiating consultation with Headquarters offices as early as possible on the issues raised in permit appeals as well as the Agency’s long-standing policy that consultation typically occurs during the 30-day period following the petitioner’s substantive filing). Nor do the parties indicate why more than six weeks is “necessitated” for the reply brief, given that a reply brief is normally due 15 days following service of the response brief and that a petitioner may not raise new issues or arguments in its reply. 40 C.F.R. § 124.19(c)(2).

To assist the Board in its consideration of the joint motion, the Board requests that the parties jointly supplement their filing with: (1) stating whether the Region has initiated consultation with EPA’s Office of Water and Office of General Counsel and that these offices concur in the briefing schedule; and (2) an explanation for why the extension of the response briefs necessitates an additional six weeks for Rio Hondo’s reply. This additional information must be filed no later than **Tuesday, November 14, 2017**. Additionally, the Board suspends the

current response deadline in this matter pending the Board's resolution of the pending joint motion.

So ordered.

Dated: November 8, 2017

ENVIRONMENTAL APPEALS BOARD

By: Mary Kay Lynch  
Mary Kay Lynch  
Environmental Appeals Judge

**CERTIFICATE OF SERVICE**

I certify that copies of the forgoing *Order on Briefing Schedule* in the matter of City of Ruidoso Downs and Village of Ruidoso WWTP, NPDES Appeal No. 17-03, were sent to the following persons in the manner indicated:

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Dated: NOV 06 2017

  
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Annette Duncan  
Administrative Specialist