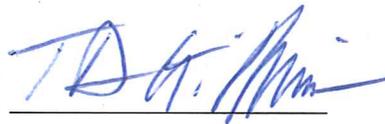


**BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.**

_____)
In re:)
)
City of Ruidoso Downs and) NPDES APPEAL No. 17-03
Village of Ruidoso WWTP)
)
NPDES Permit No. NM 0029165)
_____)

**RESPONDENT EPA REGION 6'S OPPOSED MOTION TO SUPPLEMENT THE
ADMINISTRATIVE RECORD**

Respectfully Submitted,



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The United States Environmental Protection Agency Region 6 (EPA Region 6) respectfully submits to the Environmental Appeals Board (EAB) this Opposed Motion to Supplement the Administrative Record.

EPA Region 6 issued the above-referenced National Pollution Discharge Elimination System (NPDES) permit to the City of Ruidoso Downs and Village of Ruidoso (“Ruidoso”) on July 25, 2017, based on a permit application submitted by Ruidoso for its waste water treatment plan in New Mexico pursuant to the Clean Water Act, 33 U.S.C. §1251 *et seq.* (CWA). The permit was based on a total maximum daily load (“TMDL”) developed by the New Mexico Environment Department (“NMED”), which was approved by the New Mexico Water Quality Control Commission on November 15, 2016, and approved by EPA via letter to NMED dated December 13, 2016 (A # 8).

It has been discovered by EPA counsel that the TMDL document in the Administrative Record for this matter titled “Final Draft Total Maximum Daily Load for the Rio Ruidoso,” dated November 3, 2016 (A # 7), and cited in EPA’s filings in this matter, was a document provided to EPA for technical review and that the TMDL document approved by EPA is titled “WQCC Approved Total Maximum Daily Load for the Rio Ruidoso,” dated November 15, 2016. EPA counsel has reviewed the two documents and found that there is no substantive difference between the documents. There is one correction in the WQCC Approved TMDL to a scrivener’s error in the Final Draft TMDL (a sentence on page 3 that mistakenly lists land use numbers that differ from Figure 2.1 in that same document). Otherwise, the nature of the differences between the two documents are ministerial edits and formatting changes. Of particular significance to

this matter, the flow assumptions in Part 3.2, the waste load allocations in Part 3.5.2, and the TMDL implementation section in Part 5.1 of the TMDL documents used for development of the NPDES permit remain unchanged.

Therefore, EPA respectfully moves the EAB to supplement the Administrative Record with the additional document "WQCC Approved Total Maximum Daily Load for the Rio Ruidoso" dated November 15, 2016, as Administrative Record # 42, and attached hereto. EPA counsel has contacted Mr. Steven Sugarman, counsel for Petitioner, and Petitioner stated that it opposes this motion.

Respectfully submitted this 29th day of October, 2018.

**UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 6**



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CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of October, 2018, copies of the foregoing were served upon the following via email.

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