

**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)	
)	

**JOINT SUPPLEMENT TO JOINT MOTION BY ALL PARTIES FOR AN EAB ORDER
ESTABLISHING A REVISED BRIEFING SCHEDULE AND JOINT NOTICE BY ALL
PARTIES OF AGREEMENT TO ELECTRONIC SERVICE BETWEEN ALL PARTIES**

The parties, Respondent, The United States Environmental Protection Agency Region 6 (“EPA Region 6”), the City of Ruidoso Downs and Village of Ruidoso WWTP (collectively “Ruidoso”), and Petitioner, Rio Hondo Land & Cattle Company (“Rio Hondo”), hereby respectfully file this Joint Supplement to the joint motion for a briefing schedule originally filed by all parties.

All parties filed a Joint Motion by All Parties for an EAB Order Establishing a Revised Briefing Schedule and Joint Notice by All Parties of Agreement to Electronic Service Between

All Parties on November 7, 2017 (“Joint Motion”). In this Joint Motion all parties requested a revised briefing schedule for this appeal as follows:

1. Respondent EPA Region 6 and Ruidoso will both file their responses to Rio Hondo’s Memorandum Brief in Support of Petition for Review by January 18, 2018.
2. Rio Hondo will file its reply to the EPA Region 6 and Ruidoso responses by March 3, 2018.

In response to the Joint Motion, the Board issued an Order on November 8, 2017, requesting that the parties provide further information to the Board regarding the Joint Motion. The Order states that, “[t]o 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.”

EPA Region 6 has initiated consultation with EPA’s Office of Water and EPA’s Office of General Counsel. The consultation and coordination efforts regarding the positions of the Agency between the Office of Regional Counsel and the Office of General Counsel have increased in amount and scope since EPA was informed of the specifics of the issues raised by Petitioner in its Memorandum Brief in Support of Petition for Review, which was filed on October 12, 2017. The Office of Water and the Office of General Counsel have specifically concurred with the dates agreed to by all parties in the joint motion for a revised briefing schedule. EPA also confirms its previous statement in the Joint Motion that the issues raised in this Petition concern matters central to the Agency’s implementation of the National Pollutant Discharge Elimination System program, including “anti-backsliding” under the Clean Water Act;

the additional time for briefing in this permit appeal is to ensure that the views presented on these issues to the Board will reflect the well-considered views of EPA as a whole.

Counsel for Petitioner represents that he will be working on a manatee conservation project in the Yum Balam Nature Reserve off the coast of Quintana Roo, Mexico for the first three weeks of February, 2018. Upon his return from the Yum Balam Nature Reserve, Petitioner's counsel will turn immediately to finalizing the merits reply memorandum in this NPDES appeal. While it is theoretically possible that Petitioner's counsel might be able to complete the reply memorandum in this NPDES appeal between the January 18 submission of the response memoranda and his departure for the Yum Balam Nature Reserve, he is concerned that the arguments raised by the EPA and the permittee in their respective memorandum briefs will require a careful response to legal and factual issues that might consume more than two weeks of attorney time. Petitioner's counsel will also be required to attend to other matters on his docket during the interim between submission of the response memoranda and his departure for the Yum Balam Nature Reserve. Additionally, upon his return from the Yum Balam Nature Reserve, and concurrently with drafting the reply memorandum in this NPDES appeal, Petitioner's counsel will be drafting a reply merits memorandum in *WildEarth Guardians v. U.S. Army Corps of Engineers*, Civil No. 14-666-RHB/SY (D.N.M.). The reply memorandum in that case is due on March 8, 2018. So as to obviate the need for yet another procedural motion in this NPDES appeal, Petitioner's counsel requested -- and counsel for the EPA and the permittee agreed to -- an extension of the reply memorandum due date until March 3, 2018. Petitioner's counsel asserts and certifies that he will be able to complete the reply memorandum by this due date without the need for a further extension.

Ruidoso confirms its previous statement in the Joint Motion that the additional time is necessary to allow the two Ruidoso towns sufficient opportunity to coordinate with each other and with other entities in order to file a more complete response. Ruidoso has reviewed and approves the language added by Rio Hondo and EPA Region 6 in this Joint Supplement to Joint Motion.

All parties also want to inform the Board that they all have worked together in this matter to accommodate each other's needs with respect to the requested revised briefing schedule. For the reasons stated above, all parties respectfully request that the Board issue an Order establishing the revised briefing schedule contained herein and in the Joint Motion.

Respectfully submitted this 14th day of November, 2017

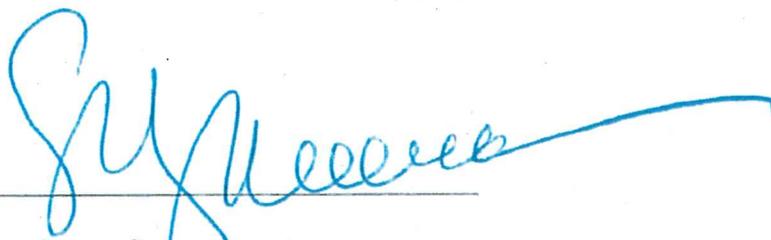
**UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 6**



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CITY OF RUIDOSO DOWNS AND VILLAGE OF RUIDOSO



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CERTIFICATE OF SERVICE

I, David Gillespie, hereby certify that on this 14th day of November, 2017, I served a copy of the foregoing Joint Motion on the parties identified below by electronic mail.

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