

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

_____)
)
In re:)
) NPDES Appeal No. _____
City of Ruidoso Downs and Village of)
Ruidoso WWTP)
)
NPDES Permit No. NM 0029165)
)
_____)

PETITION FOR REVIEW

Pursuant to 40 C.F.R. § 124.19(a), Petitioner Rio Hondo Land & Cattle Company (“Rio Hondo”) hereby respectfully petitions the Environmental Appeals Board for review of the terms and conditions of the NPDES permit issued to the Village of Ruidoso and the City of Ruidoso Downs on July 25, 2017, which permit is designated as NPDES Permit No. NM 0029165. The NPDES permit at issue in this proceeding authorizes the Village of Ruidoso and the City of Ruidoso Downs (collectively “Ruidoso”) to discharge effluent from its wastewater treatment plant (“WWTP”) into a water quality impaired reach of the Rio Ruidoso in Lincoln

County, New Mexico. The subject permit replaces an expiring NPDES permit of the same number which was issued to Ruidoso on July 17, 2012.

In its opening brief in support of its petition, Rio Hondo will demonstrate that the EPA's July 25, 2017 decision to re-issue NPDES permit No. NM 0029165 – with significantly relaxed water quality based effluent limitations for nutrients – is based on clearly erroneous findings of fact and conclusions of law. Specifically, Rio Hondo will show (1) that the EPA's deletion of concentration limits for phosphorous and nitrogen from the 2017 NPDES permit constitutes illegal antibacksliding and (2) that the subject permit's mass loading limitation for nutrients is impermissibly based on a Total Maximum Daily Load that is irrational, arbitrary, and capricious.¹

Filed concurrently with this Petition for Review is an Unopposed Motion for Extension of Time to File an Opening Brief in Support of Petition for Review.

¹ Additionally, in its opening brief in support of its petition Rio Hondo will demonstrate that it has standing to petition for review of the July 25, 2017 decision to issue NPDES Permit No. NM 0029165 and that the issues raised by this petition were preserved for appeal. Rio Hondo participated in the public comment period on the permit by submitting written comments to the EPA on the draft NPDES permit on June 4, 2017. The issues to be raised by Rio Hondo in this proceeding were specifically and expressly raised in its comment letter to the EPA, and the EPA responded to Rio Hondo's substantive comments in the "Response to Comments" document issued by the EPA concurrently with the permit decision. The issues were, therefore, preserved for review. 40 C.F.R. § 124.19(a).

As stated in the concurrently filed motion for an extension , counsel for the EPA and counsel for the permittees have both stated that they do not oppose a 45 day extension of time for the filing of this opening brief. As the current deadline for the opening brief in support of the petition is August 28, 2017, the extended deadline – assuming that this Board grants the unopposed extension motion – would be October 12, 2017.

Dated: August 22, 2017

Respectfully submitted,

/s/ Steven Sugarman

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CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing Petition for Review in the matter of NPDES Permit No. NM 0029165 were served by Federal Express on the following persons on August 22, 2017:

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