

STATE OF NEW MEXICO  
SECRETARY OF ENVIRONMENT

NEW MEXICO ENVIRONMENT DEPARTMENT  
ENVIRONMENTAL HEALTH DIVISION,

Complainant,

v.

Case. No. DWB 13-09

VILLAGE OF RUIDOSO,

Respondent.



**STIPULATED FINAL ORDER**

Pursuant to authority vested under the Environmental Improvement Act (“EIA”), NMSA 1978, §§ 74-1-1 to 74-1-17, the Drinking Water Rules (“Rules”), 20.7.10 NMAC, and 20.1.5.600.B(2) NMAC, the Secretary of Environment hereby issues this Stipulated Final Order to resolve the Administrative Compliance Order issued to the Village of Ruidoso (“Ruidoso”) on July 11, 2013.

Pursuant to 20.1.5.600.B NMAC, the Environmental Health Division (“Division”) of the New Mexico Environment Department (“NMED”) and Ruidoso have entered into a Settlement Agreement, which is included as Attachment 1. The Settlement Agreement is a compromise of a disputed claim and resolves the Administrative Compliance Order issued to Ruidoso and the violations of the EIA and the Rules alleged in the Administrative Compliance Order.

For the purposes of this Stipulated Final Order, the parties admit to the jurisdictional allegations of the Administrative Compliance Order and the Settlement Agreement and consent to the relief specified in the Settlement Agreement.

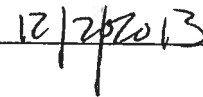
**IT IS THEREFORE ORDERED** that the Settlement Agreement is hereby approved and the Parties shall comply with the terms and conditions of the Settlement Agreement, which are hereby incorporated into this Stipulated Final Order.

BY: \_\_\_\_\_

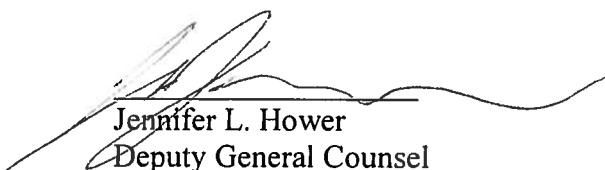


Ryan Flynn, Secretary-Designate  
New Mexico Environment Department

DATE: \_\_\_\_\_



Submitted by:



Jennifer L. Hower  
Deputy General Counsel  
New Mexico Environment Department  
5500 San Antonio Dr. NE  
Albuquerque, NM 87109  
Ph: (505) 222-9550

Attorney for Environmental Health Division

Approved by:

Electronically approved:  
Dan Bryant, Esq.  
The Bryant Law Office, L.L.C.  
159 Mescalero Trail, Suite 8  
Ruidoso, NM 88345  
Ph: (575) 258-2202

Attorney for the Village of Ruidoso

**CERTIFICATE OF SERVICE**

I hereby certify that on December 2, 2013, a true and accurate copy of the Stipulated Final Order was served on the parties as indicated:

**VIA ELECTRONIC MAIL AND FIRST CLASS MAIL**

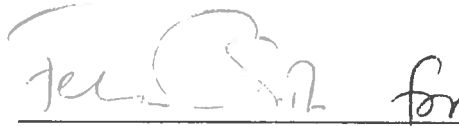
Dan Bryant, Esq.  
The Bryant Law Office, L.L.C.  
159 Mescalero Trail, Suite 8  
Ruidoso, NM 88345  
E-mail: dan@bryantlaw.org

Attorney for the Village of Ruidoso

**VIA ELECTRONIC MAIL AND HAND DELIVERY**

Jennifer L. Hower  
Deputy General Counsel  
New Mexico Environment Department  
5500 San Antonio Dr. NE  
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E-mail: jennifer.hower@state.nm.us

Attorney for Environmental Health Division

  
\_\_\_\_\_  
Sally Worthington, Hearing Clerk  
New Mexico Environment Department

# **ATTACHMENT 1**

## **SETTLEMENT AGREEMENT**

This Settlement Agreement is made by and between the Environmental Health Division (“Division”) of the New Mexico Environment Department (“NMED”) and the Village of Ruidoso (“Ruidoso”). This Settlement Agreement is entered into for the purpose of resolving the alleged violations of the Environmental Improvement Act (“EIA”), NMSA 1978, §§ 74-1-1 to -17, and the Drinking Water Regulations (“Regulations”), 20.7.10 NMAC, as described in the Administrative Compliance Order issued by the Division on July 11, 2013.

### **FINDINGS OF FACT**

#### **A. PARTIES**

1. Pursuant to Department of Environment Act, NMSA 1978, §§ 9-7A-1 to -15, NMED is an executive agency within the government of the State of New Mexico.
2. NMED is charged with the administration and enforcement of the EIA and the Regulations.
3. Pursuant to NMSA 1978, § 9-7A-6(B)(2), the Secretary of Environment may delegate authority to subordinates as he deems necessary and appropriate. The Division is an organizational unit of NMED that was created pursuant to the authority granted the Secretary of Environment under NMSA 1978, § 9-7A-6(B)(3). Pursuant to a delegation of authority from the Secretary of Environment, the Director of the Division has the authority to seek administrative enforcement, including injunctive relief and civil penalties, for violations of the EIA and the Regulations.
4. The Village of Ruidoso owns and operates a public drinking water system (“system”) located in Lincoln County, New Mexico.

5. The system is a community water system as defined by 20.7.10.100 NMAC, incorporating 40 C.F.R. 141.2.

**B. NATURE OF DISPUTE**

6. On July 11, 2013, the Division Director, through a delegation of authority from the Secretary of Environment, issued an Administrative Compliance Order to Ruidoso.

7. The Administrative Compliance Order alleged the following violations:

(1) Ruidoso violated 20.7.10.100 NMAC, incorporating 40 C.F.R. 141.175, by failing to submit turbidity measurements to the Division that were representative samples of the water provided to its customers for the dates of June 1 through June 8, 2012.

(2) Ruidoso submitted turbidity data from a 1720C turbidimeter that, despite calibration, consistently provided readings lower than Ruidoso's 1720E turbidimeter. Lacking a scientific justification for believing that the 1720C was more accurate, neither Ruidoso nor NMED were able to determine whether the 1720C turbidity readings were sufficiently accurate or reliable to protect public health.

**COMPROMISE AND SETTLEMENT**

8. Ruidoso filed a response denying the material substance of the allegations including the existence of any threat to public health by virtue of the turbidimeter readings and challenged the imposition of the civil penalty contained in the Administrative Compliance Order issued by the Division on July 11, 2013.

9. Ruidoso requested a hearing before the Secretary of Environment pursuant to its right to do so under the Environmental Improvement Act and the Drinking Water Regulations.

10. The Parties have conducted extensive discovery, both formal and informal, including depositions, interviews of various witnesses and exchange of documents.

11. The Division and the Village believe that settlement of this matter would be beneficial to both Parties.

12. The Parties have engaged in settlement discussions and conducted a settlement conference in an effort to resolve the Administrative Compliance Order.

13. As a result of these discussions, the Parties have entered into this Settlement Agreement.

14. In order to settle the alleged violations as set forth in the Administrative Compliance Order, the Parties agree to the following conditions:

(a) The civil penalty of \$48,000 issued against the Village of Ruidoso in the Administrative Compliance Order is withdrawn in exchange for the compliance actions to be taken by Ruidoso pursuant to this agreement.

(b) The Village of Ruidoso has already determined the need for and shall participate in a mandatory Comprehensive Performance Evaluation (“CPE”) commencing within six (6) months of the effective date of this Settlement Agreement.

(1) Ruidoso shall contract with a third party to conduct the CPE.

The Division must approve the CPE contractor and scope of work prior to the contract being finalized and any CPE work commencing.

(2) Division representatives shall attend any exit briefings or findings meetings held by the contractor at the conclusion of the

CPE.

(3) Ruidoso shall submit to the Division a CPE findings implementation plan within 90 days after receipt of the final CPE report.

(c) The Division shall conduct a Sanitary Survey of the Village of Ruidoso public drinking water system within six (6) months of the effective date of this Settlement Agreement. Ruidoso will be required to correct any significant deficiencies resulting from the Survey in accordance with the Regulations. The Village of Ruidoso has provided written documentation that \$1,529,459 has been invested in the water system since July 2013 and has attested that many of the deficiencies identified in the September 5, 2012 Sanitary Survey report have been corrected or are being corrected.

(d) Ruidoso shall participate in the Division's Area Wide Optimization Program ("AWOP") for a minimum of five (5) years which will allow the Village to meet its goal of prioritizing and improving the Ruidoso water system. Ruidoso shall contact AWOP program administrator Angela Cross at (505) 841-5376 within 30 days of the effective date of this Settlement Agreement.

(e) Ruidoso currently prepares and shall continue to prepare Daily Operating Reports for a period of three (3) years. The Daily Operating Reports shall, at a minimum, include combined filter turbidities, individual filter turbidities, finished free chlorine residual readings, daily CT and log removal calculations. Ruidoso shall make the Daily Operating Reports available to the Division upon request.

(f) Ruidoso shall include in its 2014 annual ethics training a



component that addresses regulatory and environmental ethics. Ruidoso shall coordinate with the Division regarding specific topics to be addressed.

(g) Ruidoso shall communicate with the Division via electronic mail or U.S. Postal Service no later than the last day of January, April, July and October of each year for the term of this Settlement Agreement regarding its progress in completing the agreed upon components.

(h) If Ruidoso fails to complete any component of this Settlement Agreement, it will remit stipulated penalties of \$1,000 per week until the component has been completed.

(i) All communications regarding the components of this Settlement Agreement shall be sent to:

Maria Medina, Enforcement Coordinator  
Drinking Water Bureau  
New Mexico Environment Department  
P.O. Box 5469  
Santa Fe, New Mexico 87502  
Phone: (505) 476-8629  
E-mail: maria.medina@state.nm.us

Additionally, all communications regarding the AWOP program shall be sent to:

Angela Cross  
Technical Services Coordinator  
Drinking Water Bureau  
New Mexico Environment Department  
1052 Main NE, Suite C  
Los Lunas, NM 87031  
Phone: (505) 841-5376  
E-mail: angelafaye.cross@state.nm.us

**OTHER TERMS AND CONDITIONS**

**A. ENFORCEMENT**

15. NMED retains the right to pursue any relief authorized by the Environmental Improvement Act, the Drinking Water Regulations, or other law for any violation not addressed herein.

16. NMED retains the right to enforce this Settlement Agreement by administrative or judicial action.

17. In the event that NMED elects to file a judicial action to enforce this Settlement Agreement, the Parties agree that the First Judicial District Court of Santa Fe County, New Mexico shall have exclusive jurisdiction over the Parties and the Settlement Agreement. The Parties agree to waive any right to challenge that jurisdiction or venue lies with the First Judicial District Court of Santa Fe County, New Mexico.

18. The laws of the State of New Mexico shall govern the construction and interpretation of this Settlement Agreement.

**B. BINDING EFFECT**

19. This Settlement Agreement shall be binding upon NMED and its successor agencies and shall be binding upon the Village of Ruidoso and its officers, directors, employees, agents, subsidiaries, successors, heirs, assigns, trustees, or receivers.

**C. EFFECTIVE DATE**

20. This Settlement Agreement shall become effective upon execution of a Stipulated Final Order by the Secretary of NMED.

**D. INTEGRATION**

21. This Settlement Agreement merges all prior written and oral

communications between the Parties concerning the subject matter of this Settlement Agreement and contains the entire agreement between the Parties.

**E. MODIFICATION**

22. This Settlement Agreement shall not be modified except by express written agreement of both Parties.

**F. RESERVATION OF RIGHTS AND DEFENSES**

23. This Settlement Agreement shall not be construed to prohibit or limit NMED in any way from requiring the Village of Ruidoso to comply with any state or federal requirements that are applicable to Ruidoso in the State of New Mexico.

24. This Settlement Agreement shall not be construed to prohibit or limit NMED in any way from seeking any relief authorized by the Environmental Improvement Act or the Drinking Water Regulations for violations of any state or federal requirements that occur in the future regarding the Village of Ruidoso.

25. This Settlement Agreement shall not be construed to prohibit or limit Ruidoso in any way from raising any defense to any action by NMED for violations of the Environmental Improvement Act or the Drinking Water Regulations.

**G. WAIVER OF STATE LIABILITY**

26. The Village of Ruidoso shall assume all costs and liabilities incurred in performing any obligation under this Settlement Agreement.

27. The NMED, on its own behalf, and on behalf of the State of New Mexico, shall not assume any liability for the performance of any obligation under this Settlement Agreement.

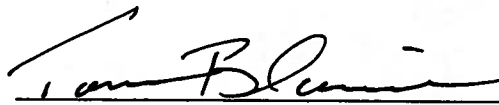
**H. DISCLOSURE TO SUCCESSORS-IN-INTEREST**

28. The Village of Ruidoso shall disclose this Settlement Agreement to any successor-in-interest and shall advise such successor-in-interest that the Settlement Agreement is binding on the successor-in-interest.

**J. AUTHORITY OF SIGNATORIES**

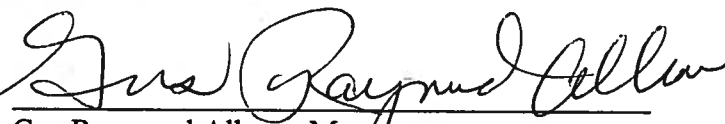
29. The persons executing this Settlement Agreement represent that they have the requisite authority to bind either NMED or the Village of Ruidoso, as appropriate, to this Settlement Agreement, and that their representation shall be legally sufficient evidence of actual or apparent authority to bind NMED or the Village of Ruidoso to this Settlement Agreement.

**ENVIRONMENTAL HEALTH DIVISION  
NEW MEXICO ENVIRONMENT DEPARTMENT**

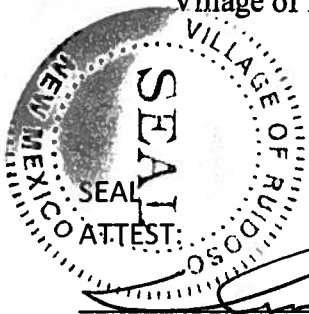
BY:   
Tom Blaine, P.E., Division Director  
Environmental Health Division  
New Mexico Environment Department

DATE: 11/12/13

**VILLAGE OF RUIDOSO**

BY:   
Gus Raymond Alborn, Mayor  
Village of Ruidoso

DATE: 11/19/13



  
Irma Devine, Village Clerk