

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

In the matter of:	)	
	)	
J. Phillip Adams	)	
Bannock County, Idaho	)	Docket No. CWA-10-2004-0156
	)	
	)	MOTION FOR SECOND
	)	EXTENSION OF TIME
Respondent.	)	
	)	
_____	)	

**INTRODUCTION**

Pursuant to 40 C.F.R. §§ 22.16(a), 22.7(b) and 22.30(e), Region 10 of the Environmental Protection Agency ("EPA") moves for a second extension of time to file its Notice of Appeal and Brief in this matter. Because the Region has shown good cause and lack of prejudice to Respondent, the Environmental Appeal Board ("EAB") should grant the Region's request. Respondent has stipulated to the granting of this extension.<sup>1</sup>

**BACKGROUND**

The Presiding Officer filed his Initial Decision in this matter on October 18, 2006. Under 40 C.F.R. § 22.30(a), Complainant has 30 days from the date of the Initial Decision to file

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<sup>1</sup>Counsel for Respondent graciously agreed during a telephone call on December 6, 2006 to stipulate to this motion.

its Notice of Appeal. On November 9, 2006, the EAB granted EPA's Motion for Extension of Time to file its Notice of Appeal and Supporting Brief, setting a new deadline of December 18, 2006.

### **COMPLAINANT HAS SHOWN GOOD CAUSE FOR THE EXTENSION**

The Presiding Officer's Initial Decision covers a large number of factual and legal issues with respect to the Clean Water Act ("CWA") § 404(f) farm road exemption. As noted in its first Motion for Extension of Time, the Region has identified numerous potential issues for appeal to the Environmental Appeals Board ("EAB"). Since the filing of that Motion, the Region has been working diligently with various offices within EPA Headquarters and with the U.S. Army Corps of Engineers on a possible appeal of the Initial Decision. Because of the broad implications of the Presiding Officer's ruling in this matter, EPA regional counsel will need to continue to consult with EPA Headquarters and the Corps, which shares regulatory authority under § 404 of the CWA. Consequently, Region 10 respectfully submits that it can not effectively brief these important issues by December 18, 2006.

The EAB has the authority to grant the requested extension of time pursuant to 40 C.F.R. § 22.7(b). Under that subsection, a motion for extension can be granted for good cause, after consideration of the prejudice to other parties. EPA submits that the nationally significant issues raised in this case and the need for coordination between various offices within EPA and the Corps all constitute good cause for the requested extension. As noted above, Respondent is stipulating to this motion. EPA therefore respectfully requests an extension of 30 days to file its brief in support of its appeal, making EPA's Notice of Appeal and Appellate Brief due no later

than Wednesday, January 17, 2007.

RESPECTFULLY SUBMITTED this 7th day of December, 2006.

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Assistant Regional Counsels  
Region 10

Of Counsel:  
Karyn Wendelsowski  
EPA Office of General Counsel

Gary Jonesi  
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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Complainant's Second Motion for Extension of Time to File Notice of Appeal in the matter of J. Phillip Adams, Docket No. CWA-10-2004-0156, were sent to the following persons in the manner indicated:

Facsimile      Environmental Appeals Board  
e-file and      Colorado Building  
Fed Ex          1341 G. Street, NW  
                    Suite 600  
                    Washington, D.C. 20005

Pouch:          Carol Kennedy  
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                    1200 Sixth Avenue  
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                    Pocatello, Idaho 83204

Dated:          December 7th, 2006

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Eileen Zahara