

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 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 an 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.

**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 its Notice of Appeal, making EPA's brief due no later than November 17, 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. The Region has identified numerous potential issues for appeal to the Environmental Appeals Board ("EAB"). Because of the broad implications of the Presiding Officer's ruling in this matter, EPA regional counsel will need to consult with EPA Headquarters and counsel in several different offices of the EPA. The Region will also need to coordinate a possible appeal with the U.S. Army Corps of Engineers, which shares regulatory authority under § 404 of the CWA. Consequently, Region 10 respectfully submits that it can not effectively brief these important issues by November 17, 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. EPA also submits that it is unlikely that a 30-day extension of time for the filing of its brief could prejudice or harm Respondent in any way.<sup>1</sup> 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 Friday, December 18, 2006.

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<sup>1</sup> Complainant attempted to obtain from Respondent a stipulation regarding this Motion for Extension of Time, but Respondent had not yet returned counsel's phone call of the filing of this Motion.

RESPECTFULLY SUBMITTED this 7th day of November, 2006.

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Region 10

Of Counsel:  
Karyn Wendelsowski  
EPA Office of General Counsel

Gary Jones  
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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Complainant's 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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Dated:          November 7th, 2006

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Eileen Zahara