

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

In re:)

J. Phillip Adams)

Docket No. CWA-10-2004-0156)

CWA Appeal No. 06-06

ORDER SCHEDULING ORAL ARGUMENT

Upon review of the file and the briefs in the above-captioned matter, the Board has decided that oral argument will assist it in its deliberations. In their oral presentations, the parties should, in particular, focus on the following issues raised by the Region and the responses filed by Adams to these issues:¹

1. The Region's argument that Adams waived his right to assert a defense under CWA § 404(f) (as stated on pages² 4 to 9 of the Complainant's Notice of Appeal and Supporting Brief).
2. The Region's argument that it was materially prejudiced in its preparation for the evidentiary hearing by the late assertion of the 404(f) defense (as stated on pages 7 to 9 of the Complainant's Notice of Appeal and Supporting Brief).

¹ These arguments and issues are identified solely to aid the parties in preparing their presentations and should neither be construed as limiting the issues that the parties can address nor interpreted to suggest that the Board has made any determinations on the merits regarding any of the facts, issues, or legal matters relating to this petition.

² The indicated pages of the Region's brief are provided only to assist in identification of the particular issue of interest to the Board.

3. The Region's argument that the ALJ improperly shifted the burden of proving the application of CWA § 404(f) to the Region (as stated on pages 11 to 12 of the Complainant's Notice of Appeal and Supporting Brief).

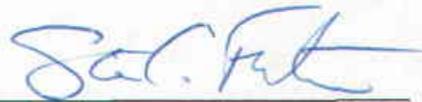
The parties are hereby advised that oral argument is scheduled to begin at 1:30 p.m. on Thursday, May 3, 2007, in the Administrative Courtroom, U.S. Environmental Protection Agency, EPA East Building, Room 1152, 1201 Constitution Avenue, N.W., Washington, D.C. Each party will have thirty (30) minutes to present argument. The Region shall present its argument first and may, if it chooses, reserve 5 minutes of the allotted time for rebuttal.

The parties shall notify the Clerk of the Board in writing by April 26, 2007, of the names of counsel who will present oral argument. Counsel for either of the parties who wish to participate in this oral argument via the EPA video-conferencing equipment in the Administrative Courtroom shall contact the Clerk of the Board, at (202) 233-0122, no later than April 19, 2007, to make arrangements for use of such equipment.

So ordered.

ENVIRONMENTAL APPEALS BOARD

By: _____



Scott C. Fulton

Environmental Appeals Judge

Dated: _____

March 28, 2007

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Order Scheduling Oral Argument in the matter of J. Phillip Adams, CWA Appeal No. 06-06, were sent to the following persons in the manner indicated:

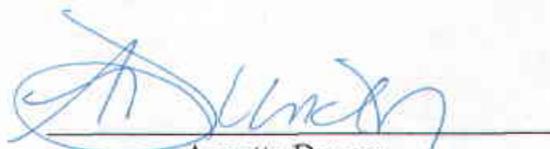
By Pouch Mail and facsimile:

Mark A. Ryan, Esq.
Assistant Regional Counsel
U.S. EPA Region 10
1435 N. Orchard Street
Boise, ID 83706
Fax: 208-378-5744

By First Class Mail and facsimile::

Randy Budge, Esq.
201 East Center
P.O. Box 1391
Pocatello, ID 82304
Fax: 208-232-6109

Dated: MAR 28 2007


Annette Duncan
Secretary