

BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

STATE OF ALASKA DEPARTMENT OF  
TRANSPORTATION AND PUBLIC  
FACILITIES,

Juneau, Alaska

Respondent.

DOCKET NO. CWA-10-2024-0154

**COMPLAINANT’S MOTION FOR  
ADDITIONAL EXTENSIONS TO  
DEADLINES TO FILE RESPONSES AND  
REPLIES TO MOTIONS FOR  
ACCELERATED DECISION**

1.1. On March 3, 2025, the U.S. Environmental Protection Agency, Region 10 (“EPA” or “Complainant”) and the State of Alaska Department of Transportation and Public Facilities (“Respondent”) (collectively “the Parties”) filed cross Motions for Accelerated Decision.

1.2. On March 4, 2025, the Parties conferred and jointly moved for the deadline for the Parties to respond to the cross motions for accelerated decision to be extended to April 2, 2025, and for the deadline for the Parties to file replies to the responses to the cross motions for accelerated decision be extended to April 22, 2025. On March 5, 2025, this Tribunal granted that joint motion.

1.3. The Parties conferred and jointly moved on March 27, 2025, for the deadline for the Parties to respond to the cross motions for accelerated decision to be further extended to June 2, 2025, and for the deadline for the Parties to file replies to the responses to the cross motions for accelerated decision be extended to June 23, 2025. On March 31, 2025, this Tribunal granted that joint motion.

1.4. On May 22, 2025, the EPA filed an unopposed motion seeking an additional 90-day extension of the response and reply brief deadlines for the cross motions for accelerated decision.

**In the Matter of: State of Alaska Department of Transportation  
and Public Facilities**

**Docket Number: CWA-10-2024-0154**

**COMPLAINANT’S MOTION FOR ADDITIONAL  
EXTENSIONS TO DEADLINES TO FILE RESPONSES AND  
REPLIES TO MOTIONS FOR ACCELERATED DECISION**

**Page 1 of 6**

**U.S. Environmental Protection Agency  
1200 Sixth Avenue, Suite 155, 11-C07  
Seattle, Washington 98101**

1.5. On May 23, 2025, this Tribunal denied that Motion, stating that “[g]iven the several prior extensions provided in this case, and EPA’s simple repetition in the pending Motion of its broadly asserted need to brief new administration officials, I do not find that EPA has at this time presented good cause for extending until late September briefing deadlines that would originally have expired in March and April.” This Tribunal then stated that “[i]f EPA still desires more time to file its briefs, it may resubmit its request and state with greater specificity why more time is needed and why the previous 60-day extension was insufficient to accomplish the task of briefing new administration officials.”

1.6. On May 27, 2025, the EPA filed a second unopposed motion renewing the request for an additional 90-day extension of the response and reply brief deadlines for the cross motions for accelerated decision. In that second unopposed motion, the EPA provided greater specificity justifying the need for an additional deadline extension. On May 28, 2025, this Tribunal granted the motion, extending the deadline for the Parties to respond to the cross motions for accelerated decision to September 2, 2025, and extending the deadline for the Parties to file replies to the responses to the cross motions for accelerated decision to September 23, 2025.

1.7. On March 12, 2025, the EPA and the U.S. Department of the Army (the “Agencies”) issued a memorandum providing new guidance concerning implementation of the “continuous surface connection” requirement for adjacent wetlands under the definition of “waters of the United States.”<sup>1</sup> In the same memorandum, the Agencies announced a public notice to be published in the Federal Register establishing a docket and gathering

---

<sup>1</sup> *Memorandum to the Field Between the U.S. Department of the Army, U.S. Army Corps of Engineers and the U.S. Environmental Protection Agency Concerning the Proper Implementation of “Continuous Surface Connection” Under the Definition of “Waters of the United States” Under the Clean Water Act*, <https://www.epa.gov/system/files/documents/2025-03/2025cscguidance.pdf>.

recommendations to assist the Agencies in further clarifying the definition of “waters of the United States.”

1.8. On March 24, 2025, that public notice appeared in the Federal Register. *See* 90 Fed. Reg. 13,428 (Mar. 24, 2025). The public notice states that the Agencies will hold a series of at least six listening sessions seeking input on the scope of “relatively permanent” waters, “continuous surface connection,” and “jurisdictional ditches.” *Id.* at 13,430-31. The Agencies accepted written recommendations from the public through April 23, 2025. *Id.* at 13,430. In doing so, the Agencies “will seek to provide clear and transparent direction regarding the definition [of ‘waters of the United States’] and will prioritize practical implementation approaches, provide for durability and stability, as well as for more effective and efficient jurisdictional determinations, permitting actions, and other actions consistent with relevant decisions of the Supreme Court.” *Id.*

1.9. The Agencies held nine listening sessions for various stakeholders and the public<sup>2</sup> and received more than 45,000 recommendations.<sup>3</sup> On June 17, 2025, the EPA stated in a press release that the Agencies intend to issue a proposed rule defining “waters of the United States” “in the coming months.”<sup>4</sup> The June 17, 2025, press release continued by stating that “[f]ollowing public comment on the proposal, the Agencies will review input with the intention of issuing a final rule by the end of 2025.”<sup>5</sup>

1.10. The first issue raised in Respondent’s March 3, 2025 Motion for Accelerated Decision involves interpretation of the definition of “waters of the United States,” including the

---

<sup>2</sup> <https://www.epa.gov/wotus/public-outreach-and-stakeholder-engagement-activities#wotusnotice>

<sup>3</sup> <https://www.regulations.gov/docket/EPA-HQ-OW-2025-0093>

<sup>4</sup> <https://www.epa.gov/newsreleases/epa-and-army-wrap-initial-listening-sessions-move-toward-proposal-revise-2023>.

<sup>5</sup> *Id.*

scope of “continuous surface connection.”<sup>6</sup> As described above, the EPA actively gathered recommendations through public comments and listening sessions on, among other things, the scope of “continuous surface connection.”

1.11. The EPA’s Office of Enforcement and Compliance Assurance (“OECA”) has been significantly engaged in briefings and decisions regarding this matter. There is new political leadership within OECA, including leadership that officially started with the EPA one week prior to the filing of this motion,<sup>7</sup> that has not yet been briefed on this matter. While some administration officials have been briefed on this matter, including political leadership, the Agency will hold additional briefings between the case team and new administration officials to ensure that their perspectives are fully considered in the context of the EPA’s response to Respondent’s Motion for Accelerated Decision. Additionally, by allowing the EPA to evaluate to what extent, if at all, the positions taken in this litigation may be affected by the Agencies’ ongoing administrative processes, the requested extension would further judicial economy, conserve the parties’ resources, and promote the efficient and orderly disposition of this case.

1.12. In determining whether an additional extension is appropriate, this Tribunal should weigh competing interests, including “the orderly course of justice measured in terms of the simplifying or complicating of issues, proof, and questions of law which could be expected to result” from the additional deadline extension. *CMAx, Inc. v. Hall*, 300 F.2d 265, 268 (9th Cir. 1962); *see also Landis v. N. Am. Co.*, 299 U.S. 248, 254-255 (1936).

1.13. The EPA acknowledges that in its May 27, 2025, Second Unopposed Motion for Additional Extensions to Deadlines to File Responses and Replies to Motions for Accelerated

---

<sup>6</sup> See Respondent’s Motion for Accelerated Decision at pages 9 – 14.

<sup>7</sup> E.g. Craig Pritzlaff started as the Principal Deputy Assistant Administrator and acting OECA Assistant Administrator on August 18, 2025.

Decision, it stated that “[b]arring unforeseen circumstances, the EPA anticipates that this will be the last request for an extension to the deadline to file the EPA’s response to Respondent’s motion for accelerated decision.” At the time of that filing, the EPA did not anticipate the need to brief additional OECA political leadership prior to filing its response. An additional sixty (60) days will allow the above-referenced briefings of new administration officials to occur and will allow the EPA with necessary time to finalize and file the EPA’s response.

1.14. The EPA has conferred with Respondent and Respondent states that it opposes this Motion. The EPA is unaware of any prejudicial effect that this Tribunal’s granting of this Motion would have on Respondent. Additionally, the EPA does not oppose this Tribunal also extending the deadlines for Respondent’s response and reply for equitable and judicial efficiency reasons.

1.15. The EPA has therefore established there is “good cause” for an extension of the deadlines pursuant to 40 C.F.R. § 22.7(b).

1.16. The EPA respectfully requests that this Tribunal establish a new deadline of November 3, 2025, for each of the Parties’ respective responses to the cross motions for accelerated decision. The EPA also respectfully requests that this Tribunal establish a new deadline of November 24, 2025, for each of the Parties’ respective replies to the responses to the motions for accelerated decision.

Respectfully submitted,

U.S. ENVIRONMENTAL PROTECTION  
AGENCY, REGION 10:

\_\_\_\_\_  
DATE

\_\_\_\_\_  
Patrick B. Johnson  
Senior Water Law Attorney  
U.S. Environmental Protection Agency, Region 10  
Alaska Operations Office  
222 West 7th Avenue, No. 19  
Anchorage, Alaska 99513  
[Johnson.patrick@epa.gov](mailto:Johnson.patrick@epa.gov)

**In the Matter of: State of Alaska Department of Transportation  
and Public Facilities**

**Docket Number: CWA-10-2024-0154**

**COMPLAINANT'S MOTION FOR ADDITIONAL  
EXTENSIONS TO DEADLINES TO FILE RESPONSES AND  
REPLIES TO MOTIONS FOR ACCELERATED DECISION**

**Page 6 of 6**

**U.S. Environmental Protection Agency  
1200 Sixth Avenue, Suite 155, 11-C07  
Seattle, Washington 98101**

BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

STATE OF ALASKA DEPARTMENT OF  
TRANSPORTATION AND PUBLIC  
FACILITIES,

Juneau, Alaska,

Respondent.

DOCKET NO. CWA-10-2024-0154

**CERTIFICATE OF SERVICE**

The undersigned certifies that the original COMPLAINANT’S MOTION FOR ADDITIONAL EXTENSIONS TO DEADLINES TO FILE RESPONSES AND REPLIES TO MOTIONS FOR ACCELERATED DECISION in the above-captioned action was filed within the OALJ E-Filing System to:

Mary Angeles, Headquarters Hearing Clerk  
Office of Administrative Law Judges  
U.S. Environmental Protection Agency  
[https://yosemite.epa.gov/OA/EAB/EAB-ALJ\\_Upload.nsf](https://yosemite.epa.gov/OA/EAB/EAB-ALJ_Upload.nsf)

Further the undersigned certifies that a true and correct copy of the original COMPLAINANT’S FOR ADDITIONAL EXTENSIONS TO DEADLINES TO FILE RESPONSES AND REPLIES TO MOTIONS FOR ACCELERATED DECISION was served on Respondent State of Alaska Department of Transportation and Public Facilities via email to:

Brian E. Gregg, Assistant Attorney General  
State of Alaska Department of Law  
[brian.gregg@alaska.gov](mailto:brian.gregg@alaska.gov)  
[ayla.lisenbee@alaska.gov](mailto:ayla.lisenbee@alaska.gov)

---

DATE

---

Patrick B. Johnson  
Senior Water Law Attorney  
U.S. Environmental Protection Agency, Region 10  
Alaska Operations Office  
222 West 7th Avenue, No. 19  
Anchorage, Alaska 99513  
[Johnson.patrick@epa.gov](mailto:Johnson.patrick@epa.gov)