

BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

JACKSON & SON DISTRIBUTORS, INC.,  
dba JACKSON AND SON OIL,

Seaside, Oregon,

Respondent.

DOCKET NO. CWA-10-2025-0023

**COMPLAINANT’S UNOPPOSED MOTION  
FOR ADDITIONAL EXTENSION OF TIME**

COMES NOW, the United States Environmental Protection Agency Region 10 (“Complainant”), by and through its undersigned counsel and pursuant to 40 C.F.R. § 22.7(b), to respectfully request that this Tribunal grant an extension of time and extend the deadlines set forth in its April 8, 2025, Order by an additional 90 days.

40 C.F.R. Part 22 allows this Tribunal to “grant an extension of time for filing any document: upon timely motion of a party to the proceeding, for good cause shown, and after consideration of prejudice to other parties.” 40 C.F.R. § 22.7(b).

On February 26, 2025, the Parties jointly requested a 30-day extension of the prehearing exchange deadlines to allow ongoing settlement negotiations to continue, which this Tribunal granted. Since that time, Complainant has been preparing its prehearing exchange.

The parties conferred and jointly moved on April 7, 2025, for an additional 60-day extension of the prehearing exchange deadlines to allow the EPA “to coordinate and brief new administration officials about the issues raised in this case prior to filing its Prehearing Exchange.” On April 8, 2025, this Tribunal granted that motion.

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

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. As of the date of this filing, the Agencies completed nine listening sessions, with the last two listening sessions completed just last week.<sup>2</sup> The Agencies also accepted written recommendations from the public through the public docket 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.*

In its Complaint, the EPA alleges that “there is a reasonable expectation that a discharge from [Respondent’s] Facility would flow . . . north via multiple pathways to field-verified and National Wetlands Inventory-mapped wetlands (“wetlands”).<sup>3</sup> The EPA further alleges that these wetlands “abut and have a continuous surface connection to a relatively permanent tributary (“unnamed tributary”) of Circle Creek.”<sup>4</sup> Respondent denies these allegations.<sup>5</sup> In its prehearing exchange, the EPA must include “a brief narrative statement, and a copy of any documents in

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<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>.

<sup>2</sup> *See* <https://www.epa.gov/wotus/public-outreach-and-stakeholder-engagement-activities> (see the list of listening sessions under “WOTUS Notice: The Final Response to SCOTUS” heading).

<sup>3</sup> Complaint, ¶ 3.10.

<sup>4</sup> *Id.*

<sup>5</sup> Answer, ¶ 3.10.

support, explaining in detail the factual and/or legal bases for the allegations denied or otherwise not admitted in Respondent's Answer."<sup>6</sup> As a result, the EPA's current draft prehearing exchange explains the factual and legal basis for the jurisdictional status of the wetlands and unnamed tributary. Yet, as described above, the EPA has been actively gathering recommendations through public comments and listening sessions on, among other things, the scope of "relatively permanent" waters, and "continuous surface connection."

Administration officials are aware of this case and the issues raised. The Agency will hold case-specific briefings between the case team and administration officials now that the listening sessions have concluded. These additional briefings will ensure that feedback provided through public comments and listening sessions is fully considered in the context of the EPA's prehearing exchange. Allowing the EPA additional time to complete these briefings and then finalize its prehearing exchange is in the interest of judicial efficiency and justice. 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). This Tribunal has also recently granted a similar motion.<sup>7</sup>

An additional ninety (90) days will provide the EPA with time to consider the information provided by public comments and those listening sessions in the context of the EPA's prehearing exchange, allow for case-specific briefings of administration officials, and provide the EPA with necessary time to finalize and file its prehearing exchange. Barring

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<sup>6</sup> Prehearing Order at 3.

<sup>7</sup> Order on Complainant's Second Unopposed Motion for Additional Extension of Time, *In re State DOT & Pub. Facilities*, Docket No. CWA-10-2024-0154 (May 28, 2025).

unforeseen circumstances, the EPA anticipates that this will be the last request for an extension to the deadline to file the EPA's prehearing exchange.

The EPA has conferred with Respondent, and Respondent does not oppose this Motion. The EPA is unaware of any prejudicial effect that this Tribunal's granting of this Motion would have on Respondent. Respondent's lack of opposition to the Motion is further evidence of that conclusion.

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

The EPA therefore respectfully request that the new deadlines for prehearing exchanges shall be:

September 8, 2025

**Complainant's Initial Prehearing Exchange**

September 29, 2025

**Respondent's Prehearing Exchange**

October 13, 2025

**Complainant's Rebuttal Prehearing Exchange**

Respectfully submitted,

U.S. ENVIRONMENTAL PROTECTION  
AGENCY, REGION 10:

\_\_\_\_\_  
DATE

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In the Matter of *Jackson & Son Distributors, Inc., d/b/a Jackson and Son Oil*, Respondent.  
Docket No. CWA-10-2025-0023

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing **Complainant's Unopposed Motion for Additional Extension of Time**, dated June 2, 2025, was sent this day to the following parties in the manner indicated below.

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Assistant Regional Counsel  
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Dated: June 2, 2025