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**BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

In the Matter of:)	
)	
STATE OF ALASKA DEPARTMENT)	Case No.: CWA-10-2024-0154
OF TRANSPORTATION AND PUBLIC)	
FACILITIES,)	STATE OF ALASKA’S
)	OPPOSITION TO EPA’S THIRD
Juneau, Alaska)	MOTION FOR EXTENSION OF
)	DEADLINES TO FILE RESPONSES
Respondent.)	AND REPLIES TO MOTIONS FOR
)	ACCELERATED DECISION

The State of Alaska, Department of Transportation & Public Facilities (“DOT&PF”), hereby files its Opposition to the Motion for Extension of Deadlines to File Responses to Motions for Accelerated Decision filed by the U.S. Environmental Protection Agency (“EPA”) on August 27, 2025.

EPA has already asked this Tribunal and DOT&PF to wait half a year while it reassesses its caseload in the wake of the new federal administration. EPA now files a third extension request, seeking an additional 60 days. Good cause no longer exists to delay

resolution of this case, and granting yet another extension of time will be prejudicial to DOT&PF.

EPA’s main arguments that good cause exist essentially boil down to two claims: (1) that new regulations concerning the definition of federal regulatory jurisdiction may be promulgated before the end of the year, and (2) there is new leadership within EPA that has still not been briefed on the details of this case. To the first point, concerns over new regulations ring hollow considering EPA’s decision to initiate the present litigation after the landmark decision in *EPA v. Sackett* was issued by the U.S. Supreme Court, which made explicit that new regulations would need to be adopted in its wake.¹ The absence of regulatory certainty did not preclude EPA from commencing this enforcement action, yet now it somehow warrants staying resolution of this litigation for the better part of a year. Moreover, the interim guidance adopted by EPA in response to *Sackett* entirely undercuts its jurisdictional arguments. Specifically, the issuance of the 2025 Field Memorandum by EPA and the U.S. Army Corps of Engineers² on March 12, 2025—issued just nine days after the pending motions for accelerated decision were filed—entirely vindicates DOT&PF’s position with regard to federal regulatory jurisdiction post-*Sackett* because it confirms that “discrete features” such as culverts and pipes sever jurisdiction.³ To the

¹ See *Sackett v. Env’t Prot. Agency*, 598 U.S. 651, 679 (2023).

² See EPA’s Motion for 3rd EOT at 2, n.1.

³ See 2025 Field Memo at 5 (stating that the new definition of “waters of the United States” is limited to “only those adjacent wetlands that have a continuous surface connection because they directly abut the [requisite jurisdictional water] (e.g., they are not separated by *uplands, a berm, dike, or similar feature*).”) (emphasis added).

second point, both this Tribunal and DOT&PF have allowed EPA half a year to adjust to changes in leadership.

EPA's continued requests for lengthy extensions are prejudicial to DOT&PF in several ways—both at the worksites relevant to this proceeding, and statewide. Regarding the worksites along Glacier Highway, DOT&PF halted necessary culvert maintenance work in the Summer of 2021 in response to EPA's Notice of Violation.⁴ Maintenance work that remains uncompleted are the permanent repairs to Glacier Highway's stormwater management system that were damaged in a Winter 2020 storm event that was declared a national disaster.⁵ Continued delays in completing this work cause safety concerns and prejudices DOT&PF's operations.

EPA's delays in this proceeding also have widespread impacts on DOT&PF's operations throughout Alaska. Currently, the DOT&PF Southcoast Region's number one priority project is the traffic safety improvements at the Egan Drive-Yandukin intersection, which includes areas that overlap with the highway median and culvert system included in the present enforcement action.⁶ The intersection currently presents significant safety concerns not only for vehicle traffic, but also for pedestrians and bicyclists in the area. Incidents at this intersection are numerous⁷—including 86 crashes between 2005-2017, and a fatality at the intersection in 2023. Because of the regulatory uncertainty created by EPA's

⁴ Respondent's Motion for Accelerated Decision at 6-7.

⁵ *Id.*

⁶ Alaska Department of Transportation and Public Facilities, <https://dot.alaska.gov/sereg/projects/egan-yandukin/index.shtml> (last visited September 5, 2025).

⁷ *Id.*

enforcement action, DOT&PF is forced to delay work on that site pending resolution of this proceeding. As can be imagined, the regulatory uncertainty of whether highway medians and roadside ditches are to be considered jurisdictional wetlands is slowing maintenance and improvements to public infrastructure throughout Alaska.

Simply put, EPA's arguments in this proceeding are contrary to case law, the CWA, and EPA's own guidance. A lack of clarification or resolution in this case has resulted, and will continue to result, in prejudice against the DOT&PF as it cannot move forward on this project and others throughout the State. DOT&PF seeks to proceed in this action, and gain clarity on the proper application of recent case law and EPA guidance, as the uncertainty cast by this proceeding has a profound impact on DOT&PF's operations. Furthermore, the 60-day extension sought is significant in the context of DOT&PF's projects and the limited time available each year suitable for construction. Keeping the resolution of this case in a state of perpetual limbo creates significant uncertainty for DOT&PF's statewide maintenance and operations work and will hinder ongoing permitting efforts.

Accordingly, for the reasons given above, EPA's requested 60-day extension should be denied.

DATED: September 5, 2025.

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CERTIFICATE OF SERVICE

The undersigned certifies that the original **State of Alaska's Opposition to EPA's Third Motion for Extension of Deadlines to File Responded and Replies to Motions for Accelerated Decision** in the above-captioned action was filed with 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

Further the undersigned certifies that a true and correct copy of the original **State of Alaska's Opposition to EPA's Third Motion for Extension of Deadlines to File Responded and Replies to Motions for Accelerated Decision** was served on Complainant United States Environmental Protection Agency via email to:

Patrick Johnson
johnson.patrick@epa.gov

DATED: September 5, 2025.

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