

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 SECOND UNOPPOSED  
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.

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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.

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.” This second unopposed motion for additional extensions to deadlines seeks to provide that “greater specificity.”

1.6. 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.”

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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>.

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1.7. 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 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.*

1.8. As of the date of this filing, the Agencies have held seven listening sessions with additional listening sessions scheduled for May 28, 2025 and May 29, 2025.<sup>2</sup> This is evidence that the Agencies continue to actively gather recommendations to assist the Agencies in further clarifying the definition of “waters of the United States.”

1.9. 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 scope of “continuous surface connection.”<sup>3</sup> As described above, the EPA is actively gathering recommendations through public comments and listening sessions on, among other things, the scope of “continuous surface connection.”

1.10. While administration officials have been briefed on this matter, the Agency will hold additional briefings between the case team and administration officials following the

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

completion of the listening sessions. These additional briefings will ensure that feedback provided through public comments and listening sessions is fully considered in the context of the EPA's response to Respondent's Motion for Accelerated Decision. Allowing the EPA additional time to complete those briefings 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).

1.11. An additional ninety (90) days will allow the above-referenced listening sessions to conclude, provide the EPA with time to consider the information provided by public comments and those listening sessions in the context of the EPA's response to Respondent's motion for accelerated decision, allow additional briefings of administration officials, and allow the EPA with necessary time to finalize and file the EPA's response. Barring 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.

1.12. 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. Additionally, the EPA does not oppose this Tribunal also extending the deadlines for Respondent's response and reply for equitable and judicial efficiency reasons.

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

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1.14. The EPA respectfully requests that this Tribunal establish a new deadline of September 2, 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 September 23, 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:

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DATE

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**CERTIFICATE OF SERVICE**

The undersigned certifies that the original COMPLAINANT'S SECOND UNOPPOSED 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 SECOND UNOPPOSED MOTION 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  
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DATE

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