



**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR**

In the Matter of:	)	
	)	
State of Alaska Department of	)	Docket No. CWA-10-2024-0154
Transportation and Public Facilities,	)	
	)	
Respondent.	)	

ORDER ON COMPLAINANT’S MOTION TO WITHDRAW COMPLAINT

This proceeding commenced on August 27, 2024, when Complainant, the Director of the Enforcement and Compliance Assurance Division for Region 10 of the U.S. Environmental Protection Agency (“EPA” or “the Agency”), filed a Complaint and Notice of Opportunity for a Hearing against the State of Alaska Department of Transportation and Public Facilities (“Respondent”) under Section 309(g)(2)(B) of the Clean Water Act (“CWA” or “the Act”), 33 U.S.C. § 1319(g)(2)(B). The Complaint alleges that Respondent violated Section 301(a) of the CWA, 33 U.S.C. § 1311(a), by discharging dredged or fill material to wetlands covered by the Act without first obtaining a permit from the U.S. Army Corps of Engineers under CWA Section 404, 33 U.S.C. § 1344.

Respondent denied the Agency’s allegations and requested a hearing. See State of Alaska’s Answer (Oct. 4, 2024). After the parties engaged in a prehearing exchange of information, they filed timely cross motions for accelerated decision. See Complainant’s Mot. for Accelerated Decision (Mar. 3, 2025); Resp’t’s Mot. for Accelerated Decision (Mar. 3, 2025). The deadlines for response and reply briefs to those motions were extended several times at the request of one or both of the parties, and they are now stayed pending my ruling on the motion currently before me: Complainant’s Motion for Leave to Withdraw Complaint Without Prejudice (Oct. 1, 2025) (“Motion to Withdraw”). See Order on Complainant’s Motion to Stay Deadlines Pending Outcome of Motion to Withdraw Complaint (Oct. 1, 2025); Order Extending Briefing Deadlines (Sep. 8, 2025). Respondent filed a response to the Motion to Withdraw (“Response”) on October 16, 2025. The time for the Agency to file a reply has not yet expired, but in this case, no reply is needed.

For the reasons outlined below, Complainant’s Motion to Withdraw is **GRANTED**.

A. Standard for Adjudicating Motion to Withdraw Complaint

The Rules of Practice governing this proceeding, 40 C.F.R. Part 22, provide that “the complainant may withdraw the complaint . . . without prejudice only upon motion granted by the Presiding Officer.” 40 C.F.R. § 22.14(d). As the Rules do not provide a standard for granting

leave to withdraw a complaint, I may look to the Federal Rules of Civil Procedure (“Federal Rules”) and court decisions interpreting the Federal Rules for guidance. *See, e.g., Env’tl. Prot. Servs., Inc.*, 13 E.A.D. 506, 560 n.65 (EAB 2008) (citing *J. Phillip Adams*, 13 E.A.D. 310, 330 n.22 (EAB 2007) and *Lazarus, Inc.*, 7 E.A.D. 318, 330 n.25 (EAB 1997)); *Dependable Towing & Recovery, Inc.*, 2012 EPA ALJ LEXIS 47, at *8 (June 6, 2012).

Federal Rule 41(a)(2) provides that a court may dismiss an action at the plaintiff’s request “on terms that the court considers proper.” This is a broad grant of discretion to dismiss a case without prejudice. *Kamal v. Eden Creamery, LLC*, 88 F.4th 1268, 1279 (9th Cir. 2023). Indeed, dismissal should be granted unless the defendant shows “it will suffer some plain legal prejudice as a result.” *Id.* at 1279-80 (quoting *WPP Lux. Gamma Three Sarl v. Spot Runner, Inc.*, 655 F.3d 1039, 1058-59 n.6 (9th Cir. 2011) *abrogated on other grounds by Lorenzo v. SEC*, 578 U.S. 71 (2019)). *See also Jones v. SEC*, 298 U.S. 1, 19 (1936) (“The general rule is settled for the federal tribunals that a plaintiff possesses the unqualified right to dismiss his complaint . . . unless some plain legal prejudice will result to the defendant”). “Legal prejudice” means prejudice to a legal interest, claim, or argument. It does not include “uncertainty because a dispute remains unresolved,” “the threat of future litigation,” “the mere inconvenience of defending another lawsuit,” or the inconvenience of “having to defend in another forum or where a plaintiff would gain a tactical advantage by [the] dismissal.” *Eden Creamery*, 88 F.4th at 1280 (quoting *Westlands Water Dist. v. United States*, 100 F.3d 94, 97 (9th Cir. 1996); *Hamilton v. Firestone Tire & Rubber Co.*, 679 F.2d 143, 145 (9th Cir. 1982); *Smith v. Lenches*, 263 F.3d 972, 976 (9th Cir. 2001)).

In the past, when adjudicating EPA motions to dismiss a complaint without prejudice, this Tribunal has also applied factors outlined by the U.S. Court of Appeals for the Seventh Circuit, considering

(1) the defendant's effort and expense of preparation for trial; (2) excessive delay and lack of diligence on the part of the [Agency] in prosecuting the action; (3) the adequacy of [the Agency’s] explanation for the need to take a dismissal; and (4) the fact that a motion for summary judgment has been filed by the defendant.

Dependable Towing, 2012 EPA ALJ LEXIS at 10 (quoting *FDIC v. Knostman*, 966 F.2d 1133, 1142 (7th Cir. 1992)). The Tribunal has also examined EPA’s “diligence in bringing the motion, any undue vexatiousness on [the Agency’s] part, the extent to which the suit has progressed, and the duplicative expense of relitigation.” *Id.* (citing *Zagano v. Fordham University*, 900 F.2d 12, 14 (2d Cir. 1990)).

B. Background

EPA filed the Complaint that initiated this action in August 2024. The Agency alleges Respondent dumped excavated material from highway maintenance work into wetlands in Juneau, Alaska, and that the wetlands are “waters of the United States” due to their adjacency and continuous surface connection to navigable waters. Compl. ¶¶ 3.2-3.8. The Clean Water

Act generally prohibits the unauthorized discharge of pollutants into “navigable waters.”¹ 33 U.S.C. § 1311(a); 33 U.S.C. § 1362(7), (12). That term is defined by statute to mean “the waters of the United States” (“WOTUS”), and the jurisdictional scope of the CWA is largely determined by whether an affected water is a WOTUS and thus a “navigable water.” 33 U.S.C. § 1362(7).

Although WOTUS is not defined in the CWA, in implementing the Act, EPA has provided a detailed regulatory definition at 40 C.F.R. Part 120. Determining the contours of this definition has, from the Act’s beginning, “been ‘a contentious and difficult task’” that “has sparked decades of agency action and litigation.” *Sackett v. EPA*, 598 U.S. 651, 663 (2023) (quoting *Nat’l Assn. of Mfrs. v. Dep’t of Defense*, 583 U.S. 109, 114 (2018)). In *Sackett*, decided a year prior to the filing of the Complaint in this matter, the Supreme Court limited the geographical reach of the CWA, particularly in relation to wetlands, and prompted the Agency to narrow its WOTUS regulatory definition a few months later to conform with the Court’s holding. See Revised Definition of “Waters of the United States”; Conforming, 88 Fed. Reg. 61,964 (Sep. 8, 2023) (Final Rule).

Not long after the Complaint was filed, the presidential election took place, and the Agency’s political leadership began to turn over in January 2025.² On March 12, 2025, shortly after the parties filed their motions for accelerated decision, the EPA and the Department of the Army issued joint guidance³ modifying how field personnel should determine whether there exists a “continuous surface connection” between jurisdiction-conferring waters of the United States and adjacent wetlands. Among other directives, the guidance limits how wetlands may be deemed to connect to WOTUS. The Agency also announced a series of public listening sessions and a comment period to solicit feedback on its implementation of the WOTUS definition, stating its intent “to provid[e] additional clarity regarding which waters are ‘waters of the United States,’” because the Agency now viewed its initial post-*Sackett* rulemaking to be insufficient. See WOTUS Notice: The Final Response to SCOTUS; Establishment of a Public Docket; Request for Recommendations, 90 Fed. Reg. 13,428, 13,429 (Mar. 24, 2025) (Notice). EPA’s rulemaking effort with respect to WOTUS is particularly

¹ As an exception to that general prohibition, the United States Army Corps of Engineers (“Corps”) may issue permits under Section 404 of the Act that authorize the discharge of dredged or fill materials into navigable waters. 33 U.S.C. § 1344(a), (d).

² By EPA’s account, the turnover continued through at least August 18, 2025, when Craig Pritzlaff was appointed Principal Deputy Assistant Administrator and acting Assistant Administrator of the Office of Enforcement and Compliance Assurance. Mot. to Withdraw at 9 n.28.

³ 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 (March 12, 2025) (available online at <https://www.epa.gov/system/files/documents/2025-03/2025cscguidance.pdf>).

relevant to this case: In its motion for accelerated decision (“MAD”), Respondent asserts as its first defense that EPA does not have jurisdiction over the wetlands at issue because they are not adjacent to waters of the United States and there is no “continuous surface connection” to such waters. MAD at 9.

After holding nine listening sessions and receiving more than 45,000 comments, the Agency in June 2025 announced its plan to propose a new WOTUS rule with the goal of implementing a final rule by the end of the year.⁴ Mot. to Withdraw at 10-11 & n.40. As of the filing of the Motion to Withdraw, the Agency and the Army

have sent a proposed rule defining the jurisdictional scope of “waters of the United States” to the Office of Management and Budget for interagency review. Following that interagency review, the Agencies intend to publish a proposed rule in the *Federal Register* for public notice and comment. Following consideration of comments received on the proposed rule, the Agencies intend to take final action on the proposed rule.

Mot. to Withdraw at 1-2.

This rulemaking effort has significantly affected the trajectory of this proceeding: Since filing its motion for accelerated decision, EPA has repeatedly sought extensions of time based on the Agency’s evolving approach to WOTUS and the need to confer with newly installed political leadership about this case.

C. Arguments of the Parties

a. The Agency

Citing judicial efficiency concerns, EPA now seeks to withdraw its complaint without prejudice so that it can assess how the WOTUS rulemaking will affect the prosecution of this matter.⁵ It offers multiple grounds for its voluntary dismissal.

First, the Agency argues that “there is no evidence that Respondent has expended significant effort and expense in preparation for hearing.” Mot. to Withdraw at 7. It points to the fact that Respondent’s Prehearing Exchange is “short” and devoid of exhibits demonstrating a major investment of resources, such as independent scientific reports or technical analyses. Mot. to Withdraw at 7. EPA also notes that at this “early” stage of litigation, dispositive motions have not been fully briefed, and no hearing has been scheduled, likely minimizing

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

⁵ Alternatively, Respondent asks for an indefinite stay of this proceeding.

Respondent's effort and expense. Mot. to Withdraw at 7-8, 14. For these reasons, there is little risk of duplicative expenses in the event of relitigation, the Agency adds, and any investment made thus far could likely be used in the future. Mot. to Withdraw at 14-15.

Second, EPA contends there has been no excessive delay, lack of diligence in prosecuting this matter, or undue vexatiousness on its part. All of the extensions of time it requested were reasonable, it asserts, because the basis for the requests—an ongoing effort by new political leadership at the Agency to change how it implements CWA jurisdiction—did not arise until after the Complaint and cross motions for accelerated decision were filed. Mot. to Withdraw at 8-9. The Agency further asserts it “should be able to use its discretion” to develop a litigation position based on how the rulemaking process alters its approach to CWA jurisdiction. Mot. to Withdraw at 9. Given the timing of EPA's public initiation of that process with respect to the filing dates of its Complaint and motion for accelerated decision, the Agency argues that it now needs to “fully assess this case in the context” of the effort to redefine WOTUS. Mot. to Withdraw at 11-12. Additionally, the Agency states that it would have sought dismissal regardless of the parties' pending motions, and it is not trying to avoid a ruling on those motions. The Agency notes that it has made similar requests in federal court litigation involving CWA matters and that the motions for accelerated decision have not been fully briefed. Mot. to Withdraw at 14.

Finally, the Agency argues that equity favors preserving its ability to enforce the CWA, and thus dismissal *without* prejudice. It advocates for the ability to review its position in the light of new rulemaking without being precluded from filing a new complaint, particularly as it is the only governmental authority that can address the alleged violations. Mot. to Withdraw at 15-16. It also rebuts arguments Respondent has made that the lack of resolution to this proceeding has stopped it from making needed roadway repairs. The Agency notes that Respondent can, like any other regulated entity, obtain from the Corps all CWA Section 404 permits that are necessary for its work. Mot. to Withdraw at 16-17.

b. Respondent

Respondent agrees the Complaint should be withdrawn, but it argues that “due to EPA's failure to prosecute, bad faith actions, and the plain lack of legal merit,” the matter should be dismissed *with* prejudice. Response at 1.

First, Respondent contends the case against it lacks a legal foundation under *Sackett* regardless of the Agency's rulemaking effort. *Sackett* so altered CWA jurisdiction that the Agency should not have initiated this proceeding in the first place, it states. “There is little reason to believe that any upcoming regulations would create a broader standard for jurisdiction than that which currently applies,” Respondent asserts. Response at 2-3.

Second, Respondent alleges that EPA has not diligently prosecuted this case, causing it undue delay and prejudice. Respondent specifically refers to the Agency's prior requests for extensions of briefing deadlines related to the parties' cross motions for accelerated decision.

Asserting again that there is no jurisdictional basis for this action, Respondent contends that a dismissal without prejudice denies Respondent a favorable decision from this Tribunal, creating future uncertainty, and allows EPA to demand mitigation measures in-lieu of enforcement. Response at 4-5.

Finally, Respondent claims EPA has acted vexatiously throughout this proceeding by “weaponizing” a 2010 Consent Decree between the parties, pointing to the document as evidence of Respondent’s history of noncompliance. Response at 6-7. The Agency has further “trapped” Respondent “in this proceeding by bringing meritless claims and then requesting continual extensions of time, so the matter is never resolved; and EPA never admits that it has plainly lacked jurisdiction all along,” Respondent declares. Response at 7. Respondent concludes that the Agency deserves no further accommodations in this matter. Response at 8.

D. Discussion

Based on the record and the parties’ arguments, I find it appropriate to grant the Agency’s Motion to Withdraw and dismiss this case without prejudice. This is in keeping with the basic policy that the Agency has a right to withdraw its Complaint so long as doing so causes no plain legal prejudice to Respondent.

Here, dismissal will not cause Respondent to experience plain legal prejudice. The primary prejudice that Respondent articulates relates to uncertainty from an unresolved dispute and having to defend against the same or similar claims in future litigation. For example, Respondent refers to roadwork that it is not undertaking during the pendency of this matter, because it does not know what the outcome will be. This lack of resolution is undoubtedly inconvenient, but it does not constitute plain legal prejudice, as withdrawal of the Complaint will not deny Respondent a legal interest, claim, or argument. Further, there is nothing stopping Respondent from proceeding with the work and securing any necessary permits in advance, as would be required regardless of this ongoing matter. I also note that Respondent’s uncertainty is not indefinite to the extent that a statute of limitations sets an end date by which any enforcement action must commence.

Respondent’s attacks on the jurisdictional basis for this case have little bearing on the question of whether the Agency may withdraw its Complaint without prejudice. A jurisdictional analysis requires a close review of the law and facts that goes beyond the scope of my consideration of the Motion to Withdraw. Whether EPA has jurisdiction over the wetlands in this matter will be determined in a future proceeding (assuming the Agency files a new Complaint). Notably, allowing EPA to first complete its rulemaking process before proceeding further will bring more certainty to any future jurisdictional determination. It will also allow whatever narrower WOTUS definition the Agency produces to be considered during the drafting of a future Complaint.

Regarding other factors that support dismissal without prejudice, there is no evidence that Respondent has wasted significant effort or expense toward the preparation for hearing.

Obviously, no hearing was ever scheduled in this matter, limiting the amount of preparation that was required. Respondent's Prehearing Exchange was, as the Agency points out, devoid of exhibits demonstrating a major investment of resources, such as independent scientific reports or technical analyses. And the documents that were produced appear to be ones that can be used in future litigation, so there should be minimal waste. Notably, Respondent has not outlined any particular expenses it has incurred. Further, briefing for responses and replies to the cross motions for accelerated decision was never undertaken, limiting the effort and resources expended on dispositive motions practice.

I also do not view the Agency to have engaged in excessive delay or undue vexatiousness. Although it requested several extensions of time, the extensions were necessary for the orderly disposition of this proceeding and judicial economy. The change in the Agency's political leadership after the initiation of this action brought about a change in how the Agency views its implementation of the Clean Water Act. To move forward with this proceeding without accounting for the forthcoming codification of this change would likely result in wasted time, effort, and resources for all involved. Moreover, it is likely that in this action Respondent will ultimately benefit from the Agency's modification of its rules as the Agency moves to curtail its CWA jurisdiction.

Accordingly, for the foregoing reasons, Complainant's Motion to Withdraw is **GRANTED**. The Complaint is hereby **withdrawn without prejudice**, and this case is closed.

SO ORDERED.

A handwritten signature in black ink, appearing to read 'Michael B. Wright', written over a horizontal line.

Michael B. Wright
Chief Administrative Law Judge

Dated: October 22, 2025
Washington, D.C.

In the Matter of *State of Alaska Department of Transportation and Public Facilities*,
Respondent.

Docket No. CWA-10-2024-0154

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Order on Complainant's Motion to Withdraw Complaint**, dated October 22, 2025, and issued by Chief Administrative Law Judge Michael B. Wright, was sent this day to the following parties in the manner indicated below.



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Attorney Advisor

Copy by OALJ E-Filing System to:

U.S. Environmental Protection Agency

Office of Administrative Law Judges

<https://yosemite.epa.gov/OA/EAB/EAB-ALJ Upload.nsf>

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Dated: October 22, 2025

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