

No. \_\_\_\_\_

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In The  
**Supreme Court of the United States**

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MARQUETTE COUNTY ROAD COMMISSION,

*Petitioner,*

v.

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY, et al.

*Respondents.*

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On Petition for Writ of Certiorari to the  
United States Court of Appeal for the Sixth Circuit

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**APPLICATION FOR EXTENSION OF TIME TO  
FILE PETITION FOR WRIT OF CERTIORARI**

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To the Honorable Elena Kagan, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Sixth Circuit:

Pursuant to Supreme Court Rule 13.5, Petitioner Marquette County Road Commission (Road Commission) respectfully requests an extension of 59 days to file its Petition for Writ of Certiorari in this Court. Granting this application would extend the deadline for the filing of a Petition to October 25, 2018.

The United States Court of Appeals for the Sixth Circuit issued a decision on May 29, 2018, denying Petitioner's Motion for Rehearing and Rehearing En Banc of the panel's March 20, 2018, decision affirming the district court's dismissal of Petitioner's Clean Water Act case. *See* Exhibit 1, Order Denying Rehearing, and Exhibit 2, Opinion.

The Petition for Writ of Certiorari is due in this Court no later than August 27, 2018. This application precedes that date by more than 10 days, as required. This Court has jurisdiction under 28 U.S.C. § 1254(1).

This is a challenge to a United States Environmental Protection Agency (EPA) veto of a state-approved permit under 33 U.S.C. § 404(j) of the Clean Water Act. The Road Commission contests this veto as contrary to the Act and Supreme Court precedent and seeks to have the veto overturned under the Administrative Procedure Act (APA).

This is the first case addressing judicial review of an EPA veto of a state-approved Clean Water Act dredge and fill permit to reach this Court since the Court's decisions in *Sackett v. EPA*, 566 U.S. 120 (2012), and *U.S. Army Corps of Engineers v. Hawkes Co.*, 136 S. Ct. 1807 (2016). Those two seminal cases

overturned decades of uniform case law prohibiting judicial review of compliance orders and jurisdictional determinations issued pursuant to the Clean Water Act and the regulations implementing the Act. This Court held *unanimously in both cases* that certain agency actions previously considered non-final and non-appealable were in fact final and subject to judicial review under the APA. The decision in this case conflicts with both *Sackett* and *Hawkes*. The decision here is just as final and consequential as the decisions in those cases, and to preclude review of the EPA veto allows the EPA to frustrate the clear congressional intent of the Clean Water Act. Congress gave the states the authority to assume permitting authority under the Clean Water Act. Why would states take on that authority and the costs it entails if the EPA could simply arbitrarily, capriciously, and without fear of judicial review veto the state decisionmaking? The agency's position ignores Congress's clear intent as expressed in the text of the Clean Water Act and the lower court's decision ignores this Court's instruction to take a "pragmatic approach" to questions of finality under the APA. See *U.S. Army Corps of Engineers v. Hawkes*, 136 S. Ct. at 1815.

Due to the importance of this case, the Road Commission's counsel will require additional time to fully research the issues presented and draft a Petition for Writ of Certiorari. Petitioner's Counsel of Record has extensive litigation duties during the period in which the Petition must be drafted and filed, including drafting, finalizing, and filing a Reply Brief on the Merits in *Weyerhaeuser Co. v. United States Fish and Wildlife Service*, 827 F.3d 452 (5th Cir. 2016), *petition for cert. granted* (U.S. Jan. 22, 2018)

(17-71), which is due to this Court on August 13, 2018. The 59-day extension sought herein will work no hardship on any party, and no action is pending that could be adversely affected by the requested extension of time. Petitioners have requested no previous extension from this Court. Due to these time constraints, and in order to prepare these filings, Petitioner requests an additional 59 days to file a Petition for Writ of Certiorari in this matter.

For these reasons, Petitioner respectfully requests that an order be entered extending its time to file a Petition for Writ of Certiorari by 59 days, up to and including October 25, 2018.

DATED: August 1, 2018.

Respectfully submitted,



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