UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE

STATE OF MAINE, *et al.*, Plaintiffs, v. SCOTT PRUITT, Administrator, U.S. Environmental Protection Agency, *et al.*, Defendants.	Civil Action No. 1:14-cv-264-JDL

EPA'S REQUEST FOR TELEPHONIC STATUS CONFERENCE

In its December 8, 2017, Status Report, EPA explained that it had determined not to withdraw or otherwise change any of the challenged decisions in this case on reconsideration of those decisions, and that the parties intended to coordinate on a schedule for briefing the merits. (ECF Doc. 109). As EPA requested in its status report, the Court issued an Order on December 11, 2018, providing that the parties shall propose either a joint proposed schedule, separate proposed schedules, or request a status conference. (ECF Entry 110). The parties are not entirely in agreement on a schedule for merits briefing. EPA therefore requests a telephonic status conference in order to discuss options for merits briefing, including EPA's proposal that briefing could proceed in two phases.

Under EPA's bifurcated briefing proposal, briefing in phase 1 would focus in part on Maine's challenge to EPA's approval of a tribal sustenance fishing designated use for tribal waters in Maine's water quality standards. It would also focus in part on EPA's argument that Maine's challenge to EPA's disapproval of Maine's human health criteria necessary to protect the sustenance fishing designated use is not a challenge to a final agency action that is ripe for

judicial review outside of a challenge to EPA's federally promulgated human health criteria for tribal waters in Maine. Briefing on Phase 2, the merits of Maine's challenge to EPA's disapproval of Maine's human health criteria, would be necessary only if the Court rules in EPA's favor on the merits of the approval issue and rules against EPA on the final agency action issue. If Maine were to prevail on its merits challenge to EPA's approval of the sustenance fishing designated use, then EPA would need to reconsider its disapproval of the human health criteria necessary to protect that use and the issue would not need to be briefed by the parties or decided by the Court. If EPA were to prevail on its final agency action argument, then Maine's challenge to EPA's disapproval of Maine's human health criteria could be heard only in the context of a challenge to EPA's federally promulgated human health criteria which Maine has chosen not to challenge at this time.

Counsel for EPA has coordinated with counsel for the other parties. No party opposes this request for a telephonic status conference. However, EPA understands that all of the other parties do not wish to bifurcate the briefing as EPA has proposed and instead prefer to continue with the pre-existing briefing format for this case, with the deadlines adjusted as necessary depending on other scheduling needs. Counsel for Maine has suggested that any telephonic status conference should be held during the week of January 22, 2018. Counsel for all parties are currently available on Wednesday, January 24, 2018, and Thursday, January 25, 2018, from 9 a.m. to 11 a.m. Eastern time. However, counsel for EPA will not be available in the event there is a lapse in appropriations and consequent suspension of government operations.

Respectfully submitted,

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Date: January 19, 2018

CERTIFICATE OF SERVICE

It is hereby certified that all counsel of record who have consented to electronic service through the Court's ECF system are being served with a copy of the foregoing EPA's Request for Telephonic Status Conference on this 19th day of January 2018. Any other counsel of record will be served by first class U.S. mail.

s/David A. Carson