

No. 19-1866

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UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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WILD VIRGINIA, et al.,  
*Petitioners,*

v.

UNITED STATES DEPARTMENT OF THE INTERIOR, et al.,  
*Respondents,*

and

MOUNTAIN VALLEY PIPELINE, LLC,  
*Intervenor-Respondent.*

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On Petition for Review of Action of the U.S. Fish and Wildlife Service

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**FEDERAL RESPONDENTS' UNOPPOSED  
MOTION TO EXTEND ABEYANCE**

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Federal Respondents, the U.S. Fish and Wildlife Service, et al. (collectively, the Service), respectfully request that the Court continue to hold this case in abeyance under the terms set forth in the Court's Order dated October 11, 2019 (Doc. 41), for an additional 47 days, to and including April 27, 2020, or until a new biological opinion and incidental take statement are issued, whichever occurs first. This is the Service's second request for an extension of the abeyance. By Order dated January 9, 2020, the Court granted the Service's first request for a 60-day

extension of the abeyance (from January 11, 2020, through March 11, 2020).

Counsel for Petitioners and counsel for Intervenor-Respondent Mountain Valley Pipeline, LLC (MVP), have authorized the undersigned to represent that Petitioners and MVP do not oppose the proposed extension. As demonstrated below, good cause exists for the extension.

Petitioners challenge the Service's Biological Opinion and Incidental Take Statement for the Mountain Valley Pipeline. In its October 11 Order, the Court stayed the Biological Opinion and Incidental Take Statement pending judicial review. The Court also placed this litigation in abeyance until January 11, 2020, pending completion of re-consultation between the Service and the Federal Energy Regulatory Commission (FERC) pursuant to the Endangered Species Act, without prejudice to Petitioners' right to seek further relief if circumstances change materially during the abeyance period. Doc. 41. The Court directed the parties to file a status report every 30 days and to notify the Court immediately if circumstances changed materially. *Id.*

On December 10, 2019, the Service and FERC agreed to extend consultation by 60 days pursuant to 50 C.F.R. § 402.14(e). On January 2, 2020, the Service moved for a corresponding 60-day extension of the abeyance period (Doc. 45). The Court granted that motion by Order dated January 9, 2020 (Doc. 46).

As noted in the parties' most recent status report (Doc. 48), the reinitiated consultation is continuing to progress. On February 7, 2020, the Service, FERC, and Mountain Valley Pipeline LLC agreed to extend consultation by an additional 45 days. Consultation is now set to conclude on March 26, 2020. The Service anticipates issuing a new biological opinion and incidental take statement after the reinitiated consultation has concluded. Because the new biological opinion and incidental take statement could avoid the need for further proceedings in this case, good cause exists for extending the abeyance by an additional 47 days (until April 27, 2020) or until the new biological opinion and incidental take statement are issued, whichever occurs first.

### **CONCLUSION**

For the foregoing reasons, the Service respectfully requests that the Court grant this motion and continue to hold the litigation in abeyance until April 27, 2020, or until a new biological opinion and incidental take statement are issued, whichever occurs first, under the terms specified in the Court's Order of October 11, 2019.

Of Counsel:

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Office of the Solicitor

U.S. Department of the Interior

March 9, 2020

90-13-8-15823

Respectfully submitted,

s/ Kevin W. McArdle

KEVIN W. McARDLE

*Attorney*

Environment and Natural Resources Division

U.S. Department of Justice

## CERTIFICATES

I certify that on March 9, 2020, a copy of the foregoing was served on all counsel of record in the above-captioned case by electronic service under the Court's CM/ECF system.

I certify that the foregoing complies with the type-volume limits because, excluding the parts of the document exempted by Fed. R. App. R. 32(f), it contains 474 words. I certify that the foregoing complies with the typeface and type style requirements because it has been prepared in a proportionally spaced typeface, Times New Roman 14 point, using Microsoft Word.

/s/ Kevin W. McArdle  
Kevin W. McArdle

Counsel for Federal Respondents