

No. 19-1866

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

WILD VIRGINIA, et al.,
Petitioners,

v.

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

and

MOUNTAIN VALLEY PIPELINE, LLC,
Intervenor-Respondent.

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

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

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), until the Service issues a new biological opinion and incidental take statement. This is the Service's third request for an extension of the abeyance. By Order dated January 9, 2020 (Doc. 46), the Court granted the Service's first request for a 60-day extension (until March 11, 2020). By Order dated March 11, 2020

(Doc. 50), the Court granted the Service's second request for an additional 47-day extension (until April 27, 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 this third 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 (ESA), and 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.* The Service, FERC, and MVP subsequently agreed to several extensions of the ESA consultation, and the Court granted the Service's unopposed motions for corresponding extensions of the abeyance. *See* Docs. 45, 46, 49, 50.

As noted in the parties' most recent status report (Doc. 51), the reinitiated consultation is continuing to progress. Consultation is currently set to conclude on April 27, 2020, although the Service, FERC, and MVP are discussing an extension. After the consultation process has concluded, the Service intends to issue a new biological opinion and incidental take statement. 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 until the new biological opinion and incidental take statement are issued.

CONCLUSION

For the foregoing reasons, the Service respectfully requests that the Court grant this motion and continue to hold the litigation in abeyance under the terms of the Court's Order dated October 11, 2019, until the Service issues a new biological opinion and incidental take statement.

Of Counsel:

S. AMANDA BOSSIE
Attorney
 Office of the Solicitor
 U.S. Department of the Interior

April 24, 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 April 24, 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 433 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