

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. (the Service), respectfully requests that the Court continue to hold this case in abeyance for an additional 60 days, to and including March 11, 2020, under the terms set forth in the Court's Order dated October 11, 2019 (Doc. 41). This is the Service's first request for an extension of the abeyance. 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.*

As noted in the parties' most recent status report (Doc. 44), the reinitiated consultation is continuing to progress. On December 10, 2019, FERC and the Service agreed to extend the consultation by 60 days pursuant to 50 C.F.R. § 402.14(e). Consultation is now set to conclude on February 10, 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 a corresponding 60-day extension of the abeyance.

CONCLUSION

For the foregoing reasons, the Service respectfully requests that the Court grant this motion and continue to hold the litigation in abeyance until March 11, 2020, under the terms specified in the Court's Order of October 11, 2019.

Of Counsel:

S. AMANDA BOSSIE

Attorney

Office of the Solicitor

U.S. Department of the Interior

January 2, 2019

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 January 2, 2019, 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 343 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