
No. 17-1714

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

SIERRA CLUB, WEST VIRGINIA RIVERS COALITION, INDIAN CREEK
WATERSHED ASSOCIATION, APPALACHIAN VOICES, and CHESAPEAKE
CLIMATE ACTION NETWORK

Petitioners

v.

WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION, and
AUSTIN CAPERTON, Secretary of the West Virginia Department of
Environmental Protection

Respondents

and

MOUNTAIN VALLEY PIPELINE, LLC

Intervenor-Respondent

**CONSENT MOTION FOR VOLUNTARY REMAND WITH VACATUR BY
RESPONDENTS WEST VIRGINIA DEPARTMENT OF
ENVIRONMENTAL PROTECTION AND AUSTIN CAPERTON**

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Pursuant to Rule 27 of the Federal Rules of Appellate Procedure, Respondents West Virginia Department of Environmental Protection and Austin Caperton (hereinafter, collectively, “WVDEP”) respectfully request that the Court vacate the water quality certification on judicial review in this case and grant Respondents a voluntary remand pursuant to Section 19(d)(3) of the Natural Gas Act, 15 U.S.C. § 717r(d)(3). Counsel for WVDEP has conferred with counsel for Petitioners and Intervenor Respondent, and all Parties consent to the relief requested in this motion.

On March 23, 2017, WVDEP issued a water quality certification under Section 401 of the Clean Water Act (“CWA”), 33 U.S.C. § 1341 (hereinafter, the “Section 401 Certification”), to Intervenor-Respondent Mountain Valley Pipeline, LLC (“MVP”) for the proposed Mountain Valley Pipeline project (hereinafter, “the Pipeline”). AR15195-203. On June 9, 2017, after their request for a hearing on the Section 401 Certification was denied, Petitioners Sierra Club, West Virginia Rivers Coalition, Indian Creek Watershed Association, Appalachian Voices, and Chesapeake Climate Action Network (hereinafter, collectively, “Sierra Club”) filed a timely petition for review in this Court under Section 19(d)(1) of the Natural Gas Act, 15 U.S.C. § 717r(d)(1). On August 14, 2017, WVDEP submitted the Administrative Record to this Court. Doc. Nos. 26-32. On August 15, 2017,

pursuant to this Court's July 6, 2017 Briefing Order, Sierra Club filed its page-proof opening brief. Doc. No. 34.

During its review of the filings in this judicial review proceeding, WVDEP determined that the information used to issue the Section 401 Certification needs to be further evaluated and possibly enhanced. Among the issues raised by Sierra Club is the requirement that certifications under Section 401 of the CWA examine compliance with all water quality standards, including a state's antidegradation policy. In light of that requirement, WVDEP recognizes that it needs to reconsider its antidegradation analysis in the Section 401 Certification and commits to doing so as expeditiously as possible.

CONCLUSION

For the foregoing reasons, WVDEP requests that this Court remand the Section 401 Certification to the agency under Section 19(d)(3) of the Natural Gas Act, 15 U.S.C. § 717r(d)(3), with vacatur. As noted above, Sierra Club and MVP report that they consent to the relief requested in this motion.

Respectfully submitted,

/s/ Jason E. Wandling

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CERTIFICATE OF SERVICE

I hereby certify that on September 13, 2017, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Fourth Circuit by using the appellate CM/ECF system. The participants in the case are registered CM/ECF users and service will be accomplished by the appellate CM/ECF system. I further certify that on September 13, 2017, I will serve on the Clerk of the Court an original and three copies of the foregoing by United States Mail, postage prepaid.

/s/ Jason E. Wandling

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