



## MEMORANDUM

To: President Mitch Carmichael, Chair  
Speaker Roger Hanshaw, Chair  
Joint Committee on Government and Finance

cc: Mike Hall, Chief of Staff  
C. Edward Gaunch, Cabinet Secretary, West Virginia Department of Commerce  
Wesley White, Deputy Cabinet Secretary, West Virginia Department of Commerce  
Michael Graney, Executive Director, West Virginia Development Office

From: West Virginia Office of Energy

Date: January 13, 2020

Re: Quarterly Report Ending December 31, 2019  
Legal Challenges Potentially Impacting the Energy Industry

As mandated by West Virginia Code §5B-2F-2(s), the following information presents legal challenges with the potential to impact the state's energy industry. This submission was prepared by Amy Smith, Steptoe & Johnson PLLC. Reports are submitted on a quarterly basis.

**FOURTH QUARTER 2019**  
**REPORT TO THE JOINT COMMITTEE ON GOVERNMENT AND FINANCE**  
**PURSUANT TO WEST VIRGINIA CODE § 5B-2F-2(q)**

On October 7, 2019, the United States Supreme Court denied a petition for certiorari to review the Fourth Circuit’s opinion in *Mountain Valley Pipeline, LLC v. 6.56 Acres of Land*, 915 F.3d 197 (4th Cir. 2019). See *Givens v. Mountain Valley Pipeline, LLC*, 140 S. Ct. 300 (2019). As previously reported in the first quarter of 2019, the Fourth Circuit issued an opinion affirming district court orders granting preliminary injunctive relief to Mountain Valley Pipeline (“MVP”) and allowing MVP immediate possession to easements that it indisputably has the substantive right to take by eminent domain. *Mountain Valley Pipeline, LLC*, 915 F.3d at 209.

On October 11, 2019, the Fourth Circuit issued an order granting the petitioners’ motion for a stay of the respondent U.S. Fish and Wildlife Service’s biological opinion and incidental take statement for the Mountain Valley Pipeline pending a decision by the Court on the petition for review of action of the U.S. Fish and Wildlife Service. *Wild Virginia v. United States Department of Interior*, 19-1866 (4th Cir. Oct. 11, 2019) (ECF No. 41). The order places the case in abeyance until January 11, 2020, pending completion of re-consultation between the Fish and Wildlife Service and the Federal Energy Regulatory Commission, without prejudice to the petitioner’s right to seek further relief if circumstances change materially during the abeyance period. *Id.* The order further required the parties to file a status report every 30 days. *Id.*