

The Recorder

Inclusive, independent, indispensable.

Court of appeals asked to reject 2nd pipeline permit

May 16, 2019

RICHMOND – The U.S. Fourth Circuit Court of Appeals on May 9 heard environmentalists again ask the three-judge panel to stop a proposed shale gas pipeline’s construction through the Alleghenies due to the presence of an endangered bumblebee and another threatened species.

Defenders of Wildlife, Sierra Club, and the Virginia Wilderness Committee filed a second appeal.

The appeal followed word from the U.S. Fish and Wildlife Service about a second biological opinion and incidental take analysis approving construction of the \$7.5 billion, 600-mile Atlantic Coast Pipeline, which would bring shale gas to the Southeast for power generation and to the western shore of the Chesapeake Bay for export.

Dominion Energy manages the project.

The first biological opinion was challenged at the same court.

Late last year, the three-judge panel threw out the permit after finding it ignored regulations for endangered species. Dominion stopped construction in 2018 while awaiting a second permit.

The same environmental groups on May 9 re-challenged the permit’s impact on species including the rusty patched bumblebee.

Southern Environmental Law Center attorney Austin Donald Gerken Jr. argued for the environmental groups that the Fish and Wildlife Service expedited the permit and again failed to address issues raised the first time. He argued that a 2018 Virginia Department of Conservation and Recreation survey found a few rusty patched bumblebees seen in the area marked “one of only five reported sightings outside the Midwest in the last decade.”

Fish and Wildlife ignored the new bee data and presented other errors in the second permit, Gerken said.

Justice Department attorney Kevin McArdle argued for Fish and Wildlife and was asked about the rusty patched bumblebees. He said Fish and Wildlife said a bee expert's estimation was a best guess, and her expertise along with new data met legal requirements.

U.S. Circuit Judge Stephanie Thacker suggested that was not very scientific.

Impact on the Madison Cave isopod, a threatened native subterranean freshwater crustacean, was another topic of argument.

McArdle told the panel the project would impact subsurface rock in one area, but not others. The pipeline would be buried eight feet, and the water table for most of the area was about 20 feet deep, McArdle said.

Gerken argued the agency's documentation showed at least six sinkholes in the pipeline's path. Blasting and heavy equipment movement would impact the isopod.

Forester Sam Crockett pointed out thousands of workers lost employment before Christmas when the Forth Circuit threw out the first permit Dec. 8.

All Democratic appointees, Chief U.S. Circuit Judge Roger Gregory and U.S. Circuit Judge James Wynn joined Thacker on the panel.

There was no time frame for issuing a decision.