



U.S. Department of Justice

Environment and Natural Resources Division

90-13-9-16015

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March 31, 2021

VIA CM/ECF

Lyle W. Cayce
Clerk of Court
U.S. Court of Appeals for the Fifth Circuit
F. Edward Herbert Building
600 S. Maestri Place
New Orleans, LA 70130-3408

Re: *Shrimpers and Fishermen of the RGV v. U.S. Army Corps of Engineers*, No. 20-60281 (5th Cir.)

Dear Mr. Cayce:

On March 9, 2021, the Court issued an opinion holding this petition in abeyance until the U.S. Army Corps of Engineers (Corps) completes its reconsideration of the currently suspended permit. The Court noted that, “at argument, the government indicated that the reconsideration proceedings should be concluded by the end of March. Accordingly, at the end of March, the government should file a letter updating the court as to the status of those proceedings.” Opinion at 5 (Mar. 9, 2021). This letter provides that update.

Last week, the Corps began finalizing its decision document and planned to issue a decision by the end of March. The Corps then received correspondence from Petitioners on March 26 regarding whether it was possible to modify the pipeline from a dual pipeline, which had been planned since the project’s inception, to a single pipeline. The Corps is reviewing this correspondence and, accordingly, its issuance of its decision will be delayed. The United States will file another letter with the Court at the end of April updating the Court on the status of the Corps’ reconsideration process.

The Court’s opinion stated that the abeyance would last until “there is a live permit for us to consider” and that “[a]t such time, the parties are further directed

to file supplemental briefing regarding their arguments.” Opinion at 5 (Mar. 9, 2021). As part of its reconsideration process, the Corps is considering additional materials, including submissions from the permit applicants. These materials will become part of the administrative record for the Corps’ decision on reconsideration. Before the parties submit supplemental briefing, the Corps will need to serve an amended administrative record on the parties and lodge an amended certified index to the administrative record. The Corps respectfully submits that the appropriate course would be for it to submit a certified index within 40 days of issuing its decision. *See* Fifth Circuit Rule 17. Once the Corps issues its decision, it can also coordinate with the parties regarding a proposed briefing schedule and submit a proposed briefing schedule to the Court.

Respectfully submitted,

s/ Rebecca Jaffe

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cc (via CM/ECF): All counsel of record

CERTIFICATE OF SERVICE

I hereby certify that on the 31st day of March, 2021, I electronically filed the foregoing letter with the Clerk of the Court using the CM/ECF system, which will send notice of such filing to all registered CM/ECF users.

CERTIFICATE OF COMPLIANCE

This letter complies with the word limitations of Federal Rule of Appellate Procedure 28(j) because, excluding the parts of the document exempted by Rule 32(f), the document contains 341 words. This document complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Rule 32(a)(6) because the document has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in 14-point Times New Roman font.

s/ Rebecca Jaffe _____
Rebecca Jaffe
Counsel for Federal Respondents