

UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF SOUTH CAROLINA
 CHARLESTON DIVISION

CITY OF BEAUFORT, et al.,)	
)	
Plaintiffs,)	Civ. No. 2:18-cv-3326-RMG
)	
v.)	(Consolidated with 2:18-cv-3327-RMG)
)	
NATIONAL MARINE FISHERIES)	SUPPLEMENTAL REPLY IN SUPPORT
SERVICE, et al.,)	OF FEDERAL DEFENDANTS’ MOTION
)	TO STAY THE DEADLINE FOR
Defendants.)	FEDERAL DEFENDANTS’ RESPONSE TO
)	MOTION TO INTERVENE
)	

In support of Federal Defendants’ motion for a stay (ECF No. 60) and, as directed by this Court (ECF No. 69), in response to the State of South Carolina’s supplemental argument in opposition of that motion (ECF No. 68), the Federal Defendants state as follows:

1. Congress has still not appropriated funds for the Department of Justice, Federal Defendants, and Department of the Interior. Absent an appropriation, Department of Justice attorneys and employees of the Federal Defendants and the Department of the Interior are prohibited from working, even on a voluntary basis, except in very limited circumstances. 31 U.S.C. § 1342.

2. Prior to the Federal Defendant’s filing on January 15, 2019 (ECF No. 65), Department of Justice counsel contacted Department of the Interior officials regarding the status of work on the pending Atlantic Coast seismic permit applications that are the subject of this litigation. Based on those communications, the Department of Justice reported that the Department of the Interior would not be acting on pending permit applications for the seismic survey activity at issue in this case until funding is restored. The Department of the Interior now provides clarification of the status of its work. Declaration of Walter Cruickshank, Acting Director of

BOEM, attached as Attachment 1. The Department of Justice sincerely apologizes for the inadvertent mischaracterization of the status of work on the permits in its previous filing and, and greatly regrets any confusion caused by that filing.

3. In December, 2018, the Department of the Interior issued a Contingency Plan that identifies the essential functions and number of employees needed to perform these functions in the event of a lapse of appropriations. Decl. ¶ 5. On January 8, 2019, the Department of the Interior issued a revised Contingency Plan which identified that certain available carryover funds could be used for specified purposes during the lapse of appropriations, including several pending Outer Continental Shelf Program actions. Decl. ¶ 6. The revised Contingency Plan for BOEM provided, in part, that the Bureau will have 40 personnel available on an on-call basis to perform exempt functions related to OCS oil and gas activities, including processing of Atlantic G&G permit applications and completing environmental reviews, including the applications related to the incidental harassment authorizations at issue in this litigation. Decl. ¶ 6.

4. While Federal Defendants' January 15, 2019 filing indicated that BOEM would not be acting on the permit applications prior to funding being restored, after balancing the status of this litigation including South Carolina's pending motion, the need for greater certainty for the parties and the permit applicants, and the increasing uncertainty regarding the potential length of the current lapse in appropriations, BOEM has determined that it will not make a final permit decision on any application for proposed G&G activities on the Atlantic OCS before March 1, 2019, regardless of the status of appropriations. BOEM has determined that March 1, 2019 is a reasonable date, in consideration of the time necessary to process the permits with limited BOEM exempted staff, the likelihood (but not foregone conclusion) that appropriations will be restored by that date, and the benefit of advance notice to the parties and applicants. Decl. ¶ 8.

5. The State of South Carolina's position that any extension for Federal Defendants'

response to its motion to intervene should be limited to fourteen days is insufficient because the duration of the lapse of appropriations remains uncertain and the Department of the Interior does not intend to make a final determination on the pending permit applications before March 1, 2019. Decl ¶ 8. If the Court grants this motion for a stay, Federal Defendants will notify the Court as soon as Congress has appropriated funds for the Department, the Federal Defendants, or the Department of Interior. Additionally, Federal Defendants will notify the Court in the event that the Department of the Interior makes a final determination on the pending permit applications on or after March 1, 2019.

6. For the foregoing reasons, Federal Defendants request that this Court grant their motion for a stay of the Federal Defendants' deadline to respond to the State of South Carolina's Motion to Intervene.

Respectfully submitted this 17th day of January, 2019.

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CERTIFICATE OF SERVICE

I hereby certify that on January 17, 2018, I electronically filed the foregoing Reply in Support of Defendants' Motion for a Stay of the Deadline for Defendants' Response to Motion to Intervene of the State of South Carolina in Light of Lapse of Appropriations with the Clerk of Court using the CM/ECF system, which will send electronic notification of such filing to all counsel of record.

/s/ Jonelle Dilley