

No. _____

**UNITED STATES OF AMERICA
BEFORE THE DEPARTMENT OF COMMERCE**

**Weaver's Cove Energy, LLC
Mill River Pipeline, LLC
Appellants,**

vs.

**Massachusetts Office of
Coastal Zone Management
Respondent.**

**JOINT SUPPLEMENTAL REPLY BRIEF FOR APPEAL
OF WEAVER'S COVE ENERGY, LLC AND MILL RIVER PIPELINE, LLC**

Bruce F. Kiely
G. Mark Cook
Jessica A. Fore
Emil J. Barth
BAKER BOTTS L.L.P.
The Warner
1299 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2400
(202) 639-7700

Counsel for Appellants
Weaver's Cove Energy, LLC
Mill River Pipeline, LLC

March 21, 2008

TABLE OF CONTENTS

TABLE OF CONTENTS..... i

TABLE OF AUTHORITIES ii

INTRODUCTION 1

I. Respondent’s Attempts To Deny Appellants’ Right Of Appeal Under The CZMA Because No Agreement On A Stay Of MCZM’s Consistency Review Was Reached Should Be Rejected..... 1

II. Element 1: Appellants Have Demonstrated That The Projects Significantly And Substantially Further The National Interest..... 4

 A. The LOR and Reconsideration Response Do Not Render The Projects “Dead” Because They Are Not Final Decisions 4

 B. The LOR and Reconsideration Response Do Not Affect The Calculation Of The National Interest For The Projects 6

III. Element 2: Appellants Have Demonstrated That The National Interests Furthered By The Projects Outweigh Any Adverse Coastal Effects 8

IV. Element 3: MCZM Cannot Prevail on Element 3 Because It Has Not Met Its Burden of Identifying An Alternative That Is Consistent With The Massachusetts Coastal Zone Management Program..... 11

CONCLUSION..... 12

CERTIFICATE OF SERVICE 13

TABLE OF AUTHORITIES

STATUTES

16 U.S.C. § 1456(c)	1
---------------------------	---

REGULATORY MATERIALS

15 C.F.R. § 930.120	4
15 C.F.R. § 930.130(d)	9
33 C.F.R. § 127.007	6
33 C.F.R. § 127.015(c)	5
33 C.F.R. § 127.015(d)	5
CZMA Federal Consistency Regulations, 65 Fed. Reg. 77,124 (Dec. 8, 2000).....	2
CZMA Federal Consistency Regulations, 71 Fed. Reg. 788 (Jan. 5, 2006).....	8, 12

SECRETARY OF COMMERCE DECISIONS

<i>Decision and Findings in the Consistency Appeal of Roger W. Fuller</i> (Oct. 2, 1992).....	7, 9
<i>Decision and Findings in the Consistency Appeal of Islander East Pipeline Company, L.L.C.</i> (May 5, 2004)	7, 9
<i>Decision and Findings in the Consistency Appeal of Long Island Lighting Co.</i> (Feb. 26, 1988)	3, 8
<i>Decision and Findings in the Consistency Appeal of Mobil Oil Exploration & Producing Southeast, Inc.</i> (Sept. 2, 1994)	6
<i>Decision and Findings in the Consistency Appeal of Va. Elec. & Power Co.</i> (May 19, 1994)	12

INTRODUCTION

Weaver's Cove Energy, LLC ("Weaver's Cove") and Mill River Pipeline, LLC ("Mill River," and together with Weaver's Cove, "Appellants") established in their respective Principal and Reply Briefs that the objection of the Massachusetts Office of Coastal Zone Management ("MCZM" or "Respondent") to Appellants' consistency certifications ("MCZM Objection") should be overridden. In its latest brief, Respondent yet again tries to distract attention from the specific and substantial record evidence supporting the conclusion that the Projects¹ are consistent with the objectives of the Coastal Zone Management Act ("CZMA"), by improperly trying to drag other federal and state proceedings into this appeal. As shown below, these other proceedings, which are conducted by other agencies under different statutory mandates, are irrelevant to this proceeding and do not provide any evidence that rebuts Appellants' case for the Secretary's override.

I. Respondent's Attempts To Deny Appellants' Right Of Appeal Under The CZMA Because No Agreement On A Stay Of MCZM's Consistency Review Was Reached Should Be Rejected

Respondent persists with its argument that the Secretary should not override the MCZM Objection because Appellants did not agree to a stay of MCZM's consistency review. MCZM Supp. Br. at 12. In pursuing this argument, Respondent continues to ignore, and indeed attempts to deny, Appellants' *statutory right to appeal* to the Secretary, regardless of the basis for the state's objection, after six months of state review. *See* 16 U.S.C. § 1456(c)(3)(A).

As Appellants explained in the Joint Initial Supplemental Brief, Appellants justifiably declined to agree to the proposed stay of the MCZM consistency review, which stay

¹ "Projects," "Weaver's Cove Project" and "Mill River Project" have all been defined in the Joint Initial Supplemental Brief for Appeal filed by Appellants with the Secretary on March 14, 2008.

was intended for additional time to secure state permits, only when the Massachusetts Department of Environmental Protection (“MADEP”) stayed *indefinitely* its processing of the requisite state permits necessary for the state’s concurrence. *See* Joint Initial Supp. Brief at 34-35. In light of the indefinite MADEP stay, and at the end of the state’s six-month review period, Appellants determined that they had no choice but to exercise their statutory right to appeal to the Secretary. *Id.* Regardless of the reasons for their decision, the important point for the purposes of this appeal is that Appellants’ decision is fully consistent with the CZMA, which imposes a six-month review period on the state in order to bring finality and predictability to the state consistency review process. *See* CZMA Federal Consistency Regulations, 65 Fed. Reg. 77,124, 77,127 (Dec. 8, 2000). Respondent’s *post hoc* rationalization that “it was prudent, reasonable, and wise — and not mere recalcitrance or stonewalling — for MassDEP to stay its technical review until the Coast Guard issued the LOR,” MCZM Supp. Br. at 13, does not alter the statutory six month period for state consistency review, and does not in any way undermine Appellants’ right to appeal to the Secretary after the six months and obtain a decision on the merits.²

² In the course of setting out this *post hoc* rationalization, MCZM also miscites *City of Fall River, et al. v. FERC*, 507 F.3d 1 (1st Cir. 2007), for the proposition that MADEP’s stay was appropriate. That case, however, did not even address the question of whether a permitting agency should move forward on processing Appellants’ applications after action by the Coast Guard. Instead, the court in *Fall River* rejected as not ripe a substantive challenge to the Federal Energy Regulatory Commission’s (“FERC’s”) decision by parties such as Fall River, and found that FERC did not abuse its discretion in declining to reopen its record.

Moreover, in a pending federal district court case brought by Weaver’s Cove against the Rhode Island Coastal Resources Management Council (“RICRMC”), where inaction by that permitting agency is under review, the court *rejected* RICRMC’s request that the case be stayed because of the LOR. In his bench ruling, Judge Smith stated:

And, in the bigger picture, what concerns me is that if - - every time that there is a setback on one element of the larger application process, that, in turn, could lead to every other piece of the process sort of stopping work, and then nothing would

Because the law does not support MCZM counsel's claim that Appellants' decision to not to agree to a stay should influence the Secretary's review, MCZM resorts to unfounded generalizations about the intent and spirit of the CZMA. MCZM claims, in an effort to preclude the Secretary's review, that (1) "the CZMA scheme generally contemplates Secretarial review in circumstances where substantive state review of enforceable polices has already taken place" and (2) because Appellants did not agree to a stay, "the course of action by the Secretary that would most capture the spirit and intent of the CZMA would be to refrain from overriding [the MCZM Objection]." MCZM Supp. Br. at 12. Respondent is wrong on both counts.

First, Secretarial precedent has soundly rejected the claim that the Secretary's review is only available when there has been an objection based on enforceable policies of the state management program, finding it to be "without merit." *Decision and Findings in the Consistency Appeal of Long Island Lighting Co.* (Feb. 26, 1988) ("LILCO"), at 5. Second, contrary to Respondent's claim, the "spirit" of the CZMA does not preclude the Secretary from reviewing this case on the merits simply because Appellants did not agree to stay the state's review. Instead, Appellants respectfully submit that "the spirit" and letter of the CZMA require the Secretary to conduct his review of this appeal in compliance with the standards set forth in the CZMA and its corresponding regulations: The Secretary is required to consider whether the

ever get through. And I think Plaintiffs here have a right to have their application considered by all the various agencies on the merits of the application. . . . And so, for that reason, I don't feel that it would be appropriate to just sort of declare that we're going to stop work on this until that Coast Guard process works its way to its end point.

Transcript of Record at 53-54, *Weaver's Cove Energy, LLC vs. Rhode Island Coastal Resources Management Council, et al.*, No. 07-246S (D.R.I. Nov. 26, 2007).

proposed activity is (a) consistent with the objectives or purposes of the CZMA, or (b) necessary in the interest of national security. 15 C.F.R. § 930.120.

II. Element 1: Appellants Have Demonstrated That The Projects Significantly And Substantially Further The National Interest

Weaver's Cove and Mill River demonstrated in their respective briefs, by a preponderance of the evidence, that the Projects significantly and substantially further the national interest. *See* WCE Br. at 7-14; WCE Reply Br. at 3-6; MR Br. at 7-13; MR Reply Br. at 4-6. In its most recent brief, MCZM continues to claim that the issuance by the Captain of the Port, Southeastern New England, to Weaver's Cove of a Letter of Recommendation ("LOR") and the Response to Request for Reconsideration of the Captain of the Port, Southeastern New England ("Reconsideration Response") somehow diminishes Appellants' demonstration that the Projects will significantly and substantially further the national interest. MCZM Supp. Br. at 4-8. Specifically, MCZM asserts that, as a result of these documents, the Projects are "ineffectual, unviable and simply cannot yield any of the goals or benefits touted by Applicants or commenters DOE and FERC."³ MCZM Supp. Br. at 4. This claim is wrong because, as shown below, it is premised on a flawed understanding of the significance of that particular LOR and the Reconsideration Response, and is contrary to consistency appeal precedent.

A. The LOR and Reconsideration Response Do Not Render The Projects "Dead" Because They Are Not Final Decisions

The LOR and Reconsideration Response do not render the Projects "dead" as MCZM wishfully suggests, MCZM Supp. Br. at 4, because they are not final determinations by

³ In the course of making this argument, MCZM cites background information about the Project provided in Weaver's Cove's consistency certification as support for the idea that LNG vessel transits are under review in these appeals. MCZM Supp. Br. at 6-8. However, the law is clear that they are not under review in these appeals because an LOR is an unlisted activity in Massachusetts, and MCZM did not request permission from the National Oceanic and Atmospheric Administration to review it as an unlisted activity. *See* WCE Reply Br. at 1-3; Joint Initial Supp. Br. at 3-4.

the Coast Guard. Instead, they are interim steps in the process of obtaining an LOR for a vessel transit plan for Weaver's Cove. This is demonstrated by the Coast Guard's ongoing review pursuant to its regulations of the vessel transit plan underlying the LOR, as well as the fact that Weaver's Cove has filed a revised vessel transit plan, in the form of a Further Change of Information in the Letter of Intent, subject to new Coast Guard review.

As to the first point, the LOR and the Reconsideration Response do not represent the final view of the U.S. Coast Guard on the vessel transit plan underlying the LOR, contrary to what MCZM maintains, *see* MCZM Supp. Br. at 4, 6. The U.S. Coast Guard's regulations provide that the decision of the Assistant Commandant for Marine Safety, Security and Environmental Protection ("Assistant Commandant") on an LOR is final agency action, and the Assistant Commandant does not review an LOR until the last stage of the Coast Guard LOR appeals process. *See* 33 C.F.R. § 127.015(d). Currently, Weaver's Cove's appeal of the LOR is pending before the District Commander, First Coast Guard District.⁴ Review of the LOR by the District Commander, which is the first time any Coast Guard officer other than the Captain of the Port will review the LOR, precedes review by the Assistant Commandant. *See* 33 C.F.R. § 127.015(c)(1). This means that two more Coast Guard officers must review Weaver's Cove's LOR and issue their decisions before the conclusions in the LOR can be considered final agency action.⁵

⁴ *See* Appeal Of Weaver's Cove Under 33 C.F.R. § 127.015(b) Of The Letter Of Recommendation And Response To Request For Consideration (dated January 11, 2007), filed in this proceeding on March 14, 2008 as Document No. 7 in the Joint Request of Appellants for Supplementation of the Consolidated Record.

⁵ It is worth noting that the LOR and Reconsideration Response each set forth in detail the process for obtaining further Coast Guard review pursuant to the Coast Guard regulations.

As to the second point, the LOR and Reconsideration Response are not final determinations as to whether LNG can be delivered to the terminal by ship. The LOR and Reconsideration Response only set out conclusions with respect to a very specific vessel transit plan involving specific facts and metrics. At the same time Weaver's Cove is seeking Coast Guard approval of that vessel transit plan through higher level review within the Coast Guard, Weaver's Cove is seeking approval from the Coast Guard for a revised transit plan that addresses the navigational issues raised in the LOR. This new plan, or Further Change of Information in the Letter of Intent, makes material changes to several of the variables relating to the number of transits and the length, beam and draft of the ships, and is being filed on this date with the Captain of the Port, Southeastern New England, pursuant to 33 C.F.R. § 127.007. Accordingly, because the process for obtaining approval for a vessel transit plan for Weaver's Cove is moving forward on two separate tracks, the LOR and Reconsideration Response cannot have the dire impact on the Projects that MCZM attributes to them.

B. The LOR and Reconsideration Response Do Not Affect The Calculation Of The National Interest For The Projects

Regardless of the status of their finality, the LOR and Reconsideration Response do not preclude the Secretary from finding for Appellants with respect to Element 1 because they do not constitute evidence that shows one way or another whether the Projects will further the national interest once the Projects are constructed and operating.⁶ *See, e.g.*, WCE Reply Br. at 4-

⁶ MCZM's continued reliance on *Decision and Findings in the Consistency Appeal of Mobil Oil Exploration & Producing Southeast, Inc.* (Sept. 2, 1994) ("*Mobil Southeast*") to suggest that potential benefits of the Projects are speculative, MCZM Supp. Br. at 6, is misplaced. As explained in Weaver's Cove's Reply Brief, that decision only addresses uncertainty about whether the project would have any benefits after it was constructed and went into service because of physical geological factors. *See* WCE Reply Br. at 5. Here, there is no dispute that the Projects will have significant and substantial benefits once constructed and operating. And, MCZM's reliance on *Mobil Southeast* is plainly contrary to the Secretarial precedents discussed *infra*.

6. It is uncontroverted on this record that once the Projects are constructed and are operating, they will provide very substantial energy and economic benefits on a national scale and of national importance. As Secretarial precedent shows, this conclusion is not nullified by negative determinations, final or otherwise, by other agencies under other statutes.

In *Decision and Findings in the Consistency Appeal of Islander East Pipeline Company, L.L.C.* (May 5, 2004) (“*Islander East*”), the Secretary ruled in favor of the appellant on Element 1 (and issued an override) even though a state agency had *denied* the appellant a water quality certification for the project before the Secretary issued his decision. See *Islander East*, at 13 n.60. In responding to the state’s assertion in that case that the denial of the water quality permit “constitute[s] a legal bar to the permitting of this project,” *id.*, the Secretary held that the state’s “denial is *not a bar* to the Secretary’s decision under the CZMA,” *id.* (emphasis added).

Moreover, in *Decisions and Findings in the Consistency Appeal of Roger W. Fuller* (Oct. 2, 1992) (“*Fuller*”), the Secretary found that the appellant’s proposed project satisfied Element 1 despite the fact that a state agency denied a water quality certification for the project and that there was uncertainty regarding zoning approval. See *Fuller*, at 13, 14 n.16.

In sum, these decisions stand for the proposition that even a denial issued by another agency for a necessary permit to carry out a project does not bar the Secretary from finding for an appellant with respect to Element 1. In other words, the absence of necessary regulatory approvals has no bearing on the determination of whether a project will significantly and substantially further the national interest once it is carried out. Therefore, these decisions only serve to reinforce Appellants’ argument that the ongoing LOR proceedings before the Coast

Guard do not undermine Appellants' demonstration that the Projects significantly and substantially further the national interest.

III. Element 2: Appellants Have Demonstrated That The National Interests Furthered By The Projects Outweigh Any Adverse Coastal Effects

Weaver's Cove and Mill River demonstrated in their respective briefs, by a preponderance of the evidence, that any limited adverse impacts of the Projects, whether considered separately or cumulatively, will not outweigh the national interests furthered by the Projects. *See* WCE Br. at 14-26; WCE Reply Br. at 6-14; MR Br. at 14-23; MR Reply Br. at 6-10. In its most recent brief, Respondent again fails to identify *any* evidence of adverse effects. Instead, Respondent argues that without the issuance of state permits — specifically, a state M.G.L. c. 91 license for water-dependent structures associated with the LNG terminal, a M.G.L. c. 91 permit for dredging of the channel and turning basin, and a state water quality certification for proposed dredging activities — the Secretary cannot evaluate whether adverse effects of the Weaver's Cove Project are outweighed by its furtherance of the national interest.⁷ MCZM Supp. Br. at 9, 11. MCZM's argument fails for the following reasons:

First, MCZM continues to conflate the issuance of permits by MADEP with the Secretary's consistency review.⁸ The Secretary does not review MADEP's conclusions.

⁷ Respondent's arguments with respect to Element 2 do not address the Mill River Project, and therefore Appellants' reply focuses on the Weaver's Cove Project.

⁸ If MCZM's contention that state permits are integral to the Secretary's review were accepted, it would nullify the CZMA appellate scheme. A state with a networked program such as Massachusetts is able to object to a consistency certification if the applicant has not secured certain state permits. *See* Coastal Zone Management Act Federal Consistency Regulations, 71 Fed. Reg. 788, 795 (Jan. 5, 2006) ("Final Rule 2006"). However, the CZMA regulations also contemplate that the applicant may appeal this objection to the Secretary. *See LILCO*, at 7. The essence of MCZM's argument is that the Secretary cannot override the objection because state permits have not been issued. Adoption of MCZM's notion would serve to *nullify* the statutory right of the applicant to appeal the objection in the first instance, placing every project objected to on the grounds that it does not have certain state permits in limbo. Appellants respectfully

Secretarial precedent is clear that the Secretary considers the *record evidence* when evaluating adverse effects of the project rather than whether a state agency has issued a permit. *See, e.g., Fuller*, at 13 (Secretary reviews record evidence to determine whether adverse effects on water quality despite denial of water quality certification by state agency). *See also* 15 C.F.R. § 930.130(d) (“In reviewing an appeal, the Secretary shall find that a proposed federal license or permit activity . . . is consistent with the objectives or purposes of the Act . . . when the information in the decision record supports this conclusion.”). In this case, the issuance of deficiency letters by MADEP does not change the fact that the evidence in the record demonstrates that the adverse impacts of the Weaver’s Cove Project from dredging, including impacts on water quality, will be minimal, temporary and sufficiently mitigated.⁹ *See* WCE Br. at 14-26; WCE Reply Br. at 6-14.

Second, MCZM argues that the Secretary cannot conduct his consistency review because MADEP did not believe it had sufficient information for “properly evaluating *applicable regulatory factors*.” MCZM Supp. Br. at 12 (emphasis added). MCZM is wrong on the law. MADEP’s decision that *it* did not have sufficient information to make a determination regarding the satisfaction of state regulatory criteria is not relevant for purposes of a *CZMA* appeal.¹⁰ In

urge the Secretary to be mindful of the sinister implications of this drastic change to the *CZMA*’s statutory structure proffered by MCZM.

⁹ Nor is the outcome changed by the MADEP’s March 10, 2008 denials of the M.G.L. c. 91 license and the water quality certification which Respondent proposed to have added to the record on March 14, 2008. *See Islander East*, at 13 n.60 (“denial [of a water quality certification] is not a bar to the Secretary’s decision under the *CZMA*”).

¹⁰ In the December 14, 2007 letter regarding Weaver’s Cove’s application for a state water quality certification for proposed dredging activities, MADEP indicates it may request more information from Weaver’s Cove on certain dredging issues, including time-of-year restrictions, water quality, and mitigation measures. *See* Letter from Lealdon Langley to Ted Gehrig, Weaver’s Cove Energy LLC regarding 401 Water Quality Certification (Dec. 14, 2007), at 4

other words, such a conclusion does nothing to change the fact that there is ample *record evidence* for the Secretary to evaluate dredging and water quality impacts of the Weaver's Cove Project pursuant to the criteria set forth by the CZMA and the regulations implemented thereunder.

Third, MCZM attempts to suggest that the amount of dredging being conducted by Weaver's Cove is in flux such that dredging impacts cannot be evaluated. MCZM Supp. Br. at 10. This argument is baseless. At no point in MCZM's consistency review process or elsewhere has Weaver's Cove altered the amount or location of the proposed dredging in Massachusetts waters from those that are currently before the Secretary.¹¹ And, as the *record evidence* demonstrates, any impacts from the quantity and location of dredging proposed by Weaver's Cove will be temporary or limited, in part because of the nature of the impacts and in part because of measures Weaver's Cove has adopted to minimize and mitigate impacts. *See* WCE Br. at 16-22, & sources cited therein; WCE Reply Br. at 10-14, & sources cited therein. If

(MCZM SSA 147). Impacts from dredging and mitigation of those impacts have been fully addressed by the record evidence identified in Weaver's Cove's briefs, such that the Secretary has before him substantial evidence upon which to find that the adverse impacts from dredging will be insignificant, temporary and mitigatable. *See* WCE Br. at 16-23; WCE Reply Br. at 7-14; Joint Initial Supp. Br. at 22-33. Moreover, Weaver's Cove has already provided to MADEP sufficient information addressing the issues identified in the letter. *See* Weaver's Cove Response To MADEP Inquiry Regarding Water Quality Issues (and attachments thereto) & Weaver's Cove Response To MADEP Inquiry Regarding SSFATE Modeling (and attachments thereto), filed in this proceeding on March 14, 2008 as Document Nos. 5 and 6 in the Joint Request Of Appellants For Supplementation Of The Consolidated Record.

¹¹ While certain dimensions of the ships being proposed to deliver LNG to the terminal have changed, *see, e.g.*, Change of Information Letter (WCE SA-2), the amount of dredging required by Weaver's Cove has not. *See* Letter from Lealdon Langley to Ted Gehrig, Weaver's Cove Energy LLC regarding 401 Water Quality Certification (Dec. 14, 2007), at 2 (MCZM SSA 147) (summarizing Weaver's Cove's explanation that the extent of dredging would not significantly change with smaller ships because, while having a shorter draft, the smaller ships could take advantage of a larger tidal cycle with the same depth of dredging). Notably, the dredging requirements also have not changed for the ship dimensions contemplated by the Further Change of Information in the Letter of Intent submitted on this date to the Coast Guard, *see* Section II.A *supra*.

MADEP ultimately conditions a permit or license on Appellants conducting less dredging, *see, e.g.,* MCZM Supp. Br. at 10 (arguing that Massachusetts regulations only permit “the minimum amount of dredging to allow the proposed activities”), it could only reduce the already minimal impacts from dredging, but importantly it would not alter the conclusion that the demonstrably minor adverse effects of the Weaver’s Cove Project are outweighed by its furtherance of the national interest.

Finally, while MCZM argues that the extent of adverse effects cannot be determined because state permits may ultimately impose additional restrictions or conditions on the Weaver’s Cove Project, MCZM Supp. Br. at 9, 11, Appellants have already demonstrated that the mitigation measures that already have been imposed on the Project — by the Federal Energy Regulatory Commission and, to the extent it has acted, by the state — and those that have been separately committed to by Weaver’s Cove on a voluntary basis, already will mitigate adverse effects such that these effects will be minimal or non-existent, and thus will not outweigh the national interest. *See* WCE Br. 16-26; WCE Reply Br. 6-14. Any additional mitigation measures or conditions that the state might ultimately impose in a state M.G.L. c. 91 license or permit or a state water quality certification may further reduce any remaining adverse coastal effects, but they could not alter the conclusion already demonstrated by the evidence in this record that the national interest outweighs any such effects.

IV. Element 3: MCZM Cannot Prevail on Element 3 Because It Has Not Met Its Burden of Identifying An Alternative That Is Consistent With The Massachusetts Coastal Zone Management Program

Regardless of the explanations counsel for MCZM now seeks to provide, MCZM cannot escape the fact that it has failed to set forth an alternative to the Projects that it is consistent with its coastal management program, and therefore MCZM cannot prevail on

Element 3. Final Rule 2006 at 820 (“If a State cannot make a finding of consistency for an alternative on appeal, then the State would not prevail on . . . element [3].”). *See also Decision and Findings in the Consistency Appeal of Va. Elec. & Power Co.* (May 19, 1994), at 38.

CONCLUSION

For the foregoing reasons and those stated in their respective Principal Briefs and Reply Briefs and their Joint Initial Supplemental Brief, Appellants respectfully request that the Secretary override the MCZM Objection.

Respectfully submitted:



Bruce F. Kiely
G. Mark Cook
Jessica A. Fore
Emil J. Barth
BAKER BOTTS L.L.P.
The Warner
1299 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2400
(202) 639-7711

Counsel for Appellants
Weaver’s Cove Energy, LLC
Mill River Pipeline, LLC

Dated: March 21, 2008

CERTIFICATE OF SERVICE

Consistent with 15 C.F.R. § 930.127, copies of this Joint Supplemental Reply Brief have been sent to the following:

Mr. Joel La Bissonniere (by email and messenger)
Assistant General Counsel for Ocean Services
National Oceanic and Atmospheric Administration
1305 East-West Highway
SSMC-4, Room 6111
Silver Spring, MD 20910

Ms. Carol Iancu (by email and first-class mail)
Assistant Attorney General, Environmental Protection Division
Massachusetts Office of the Attorney General
One Ashburton Place, 18th Floor
Boston, MA 02108

Mr. Bruce Carlisle (by first-class mail)
Acting Director, Massachusetts Office of Coastal Zone Management
251 Causeway Street, Suite 800
Boston, MA 02114-2136

Ms. Kimberly Bose (by first-class mail)
Federal Energy Regulatory Commission
888 1st Street N.E.
Washington, D.C. 20426

Ms. Karen Kirk Adams (by first-class mail)
Chief, Regulatory Branch, U.S. Army Corps of Engineers
696 Virginia Rd.
Concord, MA 01742-2751

Respectfully submitted:



Jessica A. Fore
BAKER BOTTS L.L.P.
The Warner
1299 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2400
(202) 639-1103
Counsel for Appellants
Weaver's Cove Energy, LLC and
Mill River Pipeline, LLC

Dated: March 21, 2008