

## **Eggerding, Matthew**

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**From:** Troy Andersen <troy\_andersen@fws.gov>  
**Sent:** Wednesday, June 06, 2018 3:55 PM  
**To:** Stahl, Megan D.  
**Cc:** Cindy Schulz; John Schmidt; Jennifer Stanhope; Sumalee Hoskin; Tiernan Lennon; Paul Friedman; Lavinia DiSanto; Douglas Mooneyhan; Eggerding, Matthew; Rebeca Giacomani  
**Subject:** RE: [EXTERNAL] RE: MVP Request for Clarification

Megan:

This email responds to your request for clarification submitted April 5, 2018 and follow-up inquiry submitted June 4, 2018.

The Service's November 21, 2017 biological opinion does not restrict clearing of vegetation less than 3 inches DBH during the June 1 – July 31 timeframe. This smaller diameter vegetation is not considered suitable bat habitat.

We appreciate your commitment to conduct avian surveys prior to clearing as outlined in the Migratory Bird Conservation Plan. The Solicitor's Opinion M-37050 dated December 22, 2017, issued by the Principal Deputy Solicitor of the Department of the Interior, establishes that the Migratory Bird Treaty Act does not prohibit the incidental take of migratory birds. The take of birds, eggs, or nests occurring as the result of an activity, the purpose of which is not to take birds, eggs, or nests, is not prohibited by the Migratory Bird Treaty Act. From the Service's perspective, continued conservation efforts for migratory birds by the Federal Energy Regulatory Commission/Mountain Valley are purely voluntary.

If you have any additional questions, please let me know.

V/R  
Troy

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Endangered Species/Conservation Planning Assistance Supervisor  
USFWS - Virginia Field Office  
Phone: 804-824-2428  
Visit us at: <http://www.fws.gov/northeast/virginiafield/>

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**From:** Stahl, Megan D. [mailto:[MStahl@egt.com](mailto:MStahl@egt.com)]  
**Sent:** Monday, June 04, 2018 3:21 PM  
**To:** Troy Andersen  
**Cc:** Jennifer Stanhope; Sumalee Hoskin; '[tiernan\\_lennon@fws.gov](mailto:tiernan_lennon@fws.gov)'  
**Subject:** [EXTERNAL] RE: MVP Request for Clarification

Troy,

Can we discuss my email below during tomorrow's call as well? As you can imagine, this topic is very relevant now that we are within the June 1 – July 31 TOYR timeframe. While MVP was able to clear ~99% of the trees on the project prior to May 31, there are numerous areas where smaller vegetation was left. This is largely due to the need to prioritize efforts on clearing suitable bat habitat.

I would greatly appreciate if FWS could confirm that vegetation less than 3 inches DBH can be cleared during the June 1 – July 31 timeframe. Where this vegetation is suitable migratory bird habitat MVP will continue conducting avian surveys prior to clearing these areas, as outlined in MVP's Migratory Bird Conservation Plan.

I am trying to gather example photos where this is relevant and will share them with you.

Thank you,  
Megan

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**From:** Stahl, Megan D.  
**Sent:** Thursday, April 05, 2018 4:02 PM  
**To:** Troy Andersen <[troy\\_andersen@fws.gov](mailto:troy_andersen@fws.gov)>; 'Schmidt, John' <[john\\_schmidt@fws.gov](mailto:john_schmidt@fws.gov)>  
**Cc:** 'Paul Friedman' <[Paul.Friedman@ferc.gov](mailto:Paul.Friedman@ferc.gov)>; Lavinia DiSanto <[Lavinia.DiSanto@cardno.com](mailto:Lavinia.DiSanto@cardno.com)>; Doug Mooneyhan ([douglas.mooneyhan@cardno.com](mailto:douglas.mooneyhan@cardno.com)) <[douglas.mooneyhan@cardno.com](mailto:douglas.mooneyhan@cardno.com)>; Jennifer Stanhope <[jennifer\\_stanhope@fws.gov](mailto:jennifer_stanhope@fws.gov)>; Sumalee Hoskin <[sumalee\\_hoskin@fws.gov](mailto:sumalee_hoskin@fws.gov)>; 'tiernan lennon@fws.gov' <[tiernan\\_lennon@fws.gov](mailto:tiernan_lennon@fws.gov)>; Eggerding, Matthew <[MEggerding@eqt.com](mailto:MEggerding@eqt.com)>  
**Subject:** MVP Request for Clarification

Troy and John,

As outlined in the Biological Opinion (BO), Mountain Valley is working to clear all unknown use summer habitat and unknown use spring staging/fall swarming habitat areas prior to the June 1 to July 31 time-of-year restriction. We are seeking agreement on what qualifies as "habitat".

- Please confirm that clearing all trees greater than 3 inches DBH (as referenced in the attached guidance from FWS) would adequately accomplish clearing of these habitat types as analyzed in the BO. Our teams are prioritizing trees greater than 3 inches DBH to ensure we get these trees down by the end of May to protect federally listed bat species. We would like to avoid any misunderstandings as to why smaller vegetation might be left in place. If smaller vegetation remains, then we will clear it at a later time.
- For areas where we clear all trees greater than 3 inches DBH, please confirm that vegetation  $\leq 3$  inches DBH would not be suitable for migratory birds, and as such we would not need to conduct subsequent avian surveys of these areas prior to removing this smaller vegetation.

Thank you,  
Megan

Megan Stahl  
Permitting Supervisor  
625 Liberty Avenue, Suite 1700  
Pittsburgh, PA 15222  
T 412-553-7783  
C 412-737-2587



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