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4th Circuit Court nixes pipeline permit

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RICHMOND — A key permit for the proposed Atlantic Coast Pipeline has been vacated.

The U.S. Court of Appeals for the Fourth Circuit issued a 60-page ruling today that vacated the U.S. Forest Service's "Record of Decision" and Special Use Permit for the ACP.

The panel of judges essentially agreed that while the USFS had raised serious concerns about the pipeline route crossing the national forests, it failed to get those concerns properly addressed before issuing the permit — concerns the court noted were "suddenly, and mysteriously, assuaged in time to meet a private pipeline company's deadlines," the ruling noted.

"We trust the United States Forest Service to 'speak for the trees, for the trees have no tongues,'" the judges said, quoting Dr. Seuss' "The Lorax."

"A thorough review of the record leads to the necessary conclusion that the Forest Service abdicated its responsibility to preserve national forest resources," the panel concluded.

The petition was brought by the Cowpasture River Preservation Association,

Highlanders for Responsible Development, the Shenandoah Valley Battlefields Foundation, Shenandoah Valley Network, the Sierra Club, Virginia Wilderness Committee, and Wild Virginia. The groups were represented by the Southern Environmental Law Center.

The court was asked to address whether the U.S. Forest Service complied with the National Forest Management Act, the National Environmental Policy Act, and the Mineral Leasing Act, in issuing a Special Use Permit and Record of Decision authorizing ACP, the project developer, to construct the pipeline through parts of the George Washington and Monongahela National Forests, and granting a right of way across the Appalachian National Scenic Trail.

"We conclude that the Forest Service's decisions violate the NFMA and NEPA, and that the Forest Service lacked statutory authority pursuant to the MLA to grant a pipeline right of way across the ANST. Accordingly, we grant the petition for review of the Forest Service's (permit)

and (record of decision), vacate those decisions, and remand to the Forest Service for further proceedings consistent with this opinion," the court explained.

The pipeline was proposed to cross about 16 miles of the GWNF and five miles of the MNF. It would have crossed the Appalachian Trail within the GWNF.

The court had issued a stay in the matter previously while it formulated its final ruling.

The court noted, "Construction would involve clearing trees and other vegetation from a 125-foot right of way (reduced to 75 feet in wetlands) through the national forests, digging a trench to bury the pipeline, and blasting and flattening ridgelines in mountainous terrains. Following construction, the project requires maintaining a 50-foot right of way (reduced to 30 feet in wetlands) through the GWNF and MNF for the life of the pipeline."

Under NEPA, the judges noted, when a federal agency proposes to "take" a major federal action significantly affecting the quality of the human environment, "the agency must prepare a detailed Environmental Impact Statement.

Background

On April 27, 2015, the Forest Service provided scoping comments on the Federal Energy Regulator Commission's Notice of Intent to prepare an EIS for the ACP project. "The scoping comments stated, among other concerns, that the EIS must analyze alternative routes that do not cross national forest land, and that the EIS must address the Forest Service's policy that restricts special uses on national forest lands to those that 'cannot reasonably be accommodated on non-National Forest System lands … The Forest Service's comments further identified concerns about landslides, slope failures, sedimentation, and impacts to groundwater, soils, and threatened and endangered species that it believed would result from the ACP project," the ruling noted.

On Sept. 18, 2015, ACP filed its application with FERC for the pipeline. On Nov. 12, 2015, it applied for the Special Use Permit from the Forest Service, which was amended in June 2016. Several reviews were subsequently issued, addressing ACP plans on site stabilization, steep slope construction, and other matters.

Both national forests have plan standards that limit activities in areas that are at high risk for slope and soil instability. To facilitate the Special Use Permit application for further processing, the forests had to determine the project was consistent or can be made consistent with the Forest Plan, the ruling noted.

In a meeting between ACP and the USFS on Nov. 21, 2016, ACP presented the first two site-specific stabilization designs.

According to the meeting notes, the MNF Forest Supervisor noted that while ACP's "best in class" program is "laudable," the forest supervisor was skeptical the techniques would work. The supervisor said the USFS had seen slope failures on lesser slopes, and told ACP it needed to

demonstrate its methods would work in extreme conditions. USFS wanted to know that beforehand, too. USFS wanted more detail in design as well.

Beginning in December 2016, ACP circulated a timeframe of reviews to the USFS, which set deadlines for agency decisions based on those proposed by ACP:

• FERC's Draft Environmental Impact Statement to be issued in December 2016;

• FERC's Final Environmental Impact Statement to be issued in June 2017;

• The Forest Service's draft record of decision to be issued also in June 2017;

• A "Federal Agency Decision Deadline" of September 2017 (for issuing the FERC Certificate of Convenience and Public Necessity and the Forest Service's permit and decision;

• Forest Plan amendments completed in October 2017; and

• The pipeline in service by 2019.

In line with ACP's deadlines for the agencies' decisions, FERC issued the DEIS on December 30, 2016. "Regarding its analysis of alternative routes, the DEIS explicitly stated that the ACP was routed on national forest lands in order to avoid the need for congressional approval for the pipeline to cross the Appalachian Trial," the court noted.

The ruling noted that a significant factor in siting ACP was the location at which the pipeline would cross the trail. In the general project area, the trail is on lands managed by either the National Park Service or the Forest Service.

The NPS indicated it does not have the authority to authorize a pipeline crossing of the trail on its lands. Instead, legislation proposed by Congress and signed into law by the President would be necessary to allow the NPS the authority to review, analyze, and approve a pipeline crossing. Because of this legislative process, the court noted, ACP considered locations where the trail was on USFS land, "which significantly constrained the pipeline route and severely limits opportunities for avoiding and/or minimizing the use of National Forest System lands."

Regarding the environmental impact on forest resources, the DEIS further stated: "We acknowledge that a shorter pipeline route could conceptually have significantly greater qualitative impacts to sensitive resources than a longer route, which could make the longer route preferable. In this instance, we have not identified or received any information that suggests the shorter pipeline route through the National Forests has significantly greater impacts to sensitive resources than the alternative, but acknowledge that ground resource surveys have not been conducted."

On Feb. 17, 2017, ACP and USFS met again.

"During this meeting, Atlantic informed the Forest Service that the two earlier site designs were for demonstration purposes, and the remaining eight sites were not currently being designed. The Forest Service stated that it was 'not comfortable' with not seeing the remaining designs, and that it was the Forest Service's understanding that specific designs for all ten sites were still needed. Significantly, the Forest Service stated, it 'wanted to see actual information, including specs on the actual controls and protocol on how they will be installed, not conceptual drawings,'" the ruling explained.

On April 6, 2017, USFS provided comments on FERC's draft EIS. "In multiple places, the Forest Service's comments stated that FERC's conclusions in the DEIS were premature given the incomplete information used to make them — this was particularly the case regarding the extent of impacts to national forest resources and the effectiveness of mitigation techniques," the court noted.

The court pointed to one of the comments from USFS that noted deficiencies in the information needed to analyze sensitive species, and the USFS having "serious reservations" about some conclusions because there wasn't enough information. The USFS had noted that no matter how ACP implements measures to reduce impacts, "there will still be an unavoidable irreversible dedication of the soil resource as defined by NEPA … No analysis of a National Forest Avoidance Alternative has been conducted, and environmental impacts of this alternative have not been considered or compared to the proposed action. Therefore, the Forest Service cannot support the recommendation that the National Forest Avoidance Alternative be dropped from consideration. In our scoping comments, we requested that all alternatives, including a National Forest Avoidance Alternative, be fully addressed in regard to their feasibility and environmental effects. We hereby reiterate that request."

The court noted, "The Forest Service's comments on Atlantic's draft biologic evaluation, issued on April 24, 2017, paint a similarly grim picture of the ACP project's effects on erosion and on threatened and endangered species … Additionally, in response to a statement in the draft biologic evaluation that the loss of potential roosting habitat for the little brown bat (caused by construction of the pipeline and the resulting permanent right of way) would be 'offset,' since the species could use the right of way as foraging habitat, the Forest Service stated: 'A potential increase in foraging habitat (which is not really proven here) does not offset the long-term loss of good roosting habitat — they apply to different life history needs and an increase in one does not offset loss of the other. Also, the loss of forested habitat would be a long-term impact given the time period required for recovery.' The Forest Service further noted, 'Bats utilizing the more open areas (such as the right of way and road corridors) for foraging are also more vulnerable to predators. This offset is counteracted by an increase in potential predation, which negates the right of way and roads as potentially beneficial to the bat."

'Change of course'

The circuit court pointed out that despite the USFS' concerns about adverse impacts, "as Atlantic's deadlines for the agency's decisions drew closer, its tenor began to change."

On May 14, 2017, the court noted, USFS sent a letter to FERC and Atlantic in which it stated, for the first time, that it would not require the remaining eight site-specific stabilization designs before authorizing the project.

"The letter did not acknowledge that the agency was changing its position from its original request for all ten site designs prior to granting approval for the ACP nor did it provide any further explanation regarding the reason for the Forest Service's change in position," the court pointed out.

On July 21, 2017, FERC released the final EIS. "On the very same day, and in line with Atlantic's timeline, the Forest Service released its draft Record of Decision proposing to adopt the final EIS, grant the Special Use Permit, and exempt Atlantic from several forest plan standards," the court noted.

The final EIS's National Forest Avoidance Route Alternatives section, which the Forest Service commented on previously, was identical to the one in the draft.

FERC issued ACP a Certificate of Convenience and Public Necessity on Oct. 13, 2017.

Shortly after, on Oct. 27, 2017, the USFS filed its responses to objections to the draft Record of Decision.

In response to an objection regarding the range of non-national forest route alternatives, USFS said FERC "adequately considered" the route across the National Forests and "concluded these alternatives would not provide a significant environmental advantage over a shorter route that passes through National Forests."

On Nov. 16, 2017, USFS sent a letter to Atlantic regarding its updated biologic evaluation, which had been filed on Aug. 4, 2017.

That biologic evaluation said the ACP was likely to result in a "loss of viability" for three Regional Forester Sensitive Species in the Monongahela, "a conclusion which, we note, was in line with the Forest Service's April 24, 2017 comments on the draft biologic evaluation," the judges said. "Nonetheless, in an about-face, the Forest Service's letter amended the updated biologic evaluation to conclude that, in fact, the project was not likely to result in a loss of viability to the three (species). This conclusion is significant, because the Forest Service cannot authorize uses of national forests that are likely to result in a loss of viability for a species … However … the Forest Service had already issued its draft (decision) proposing to authorize the Special Use Permit before the updated biologic evaluation was filed."

USFS issued its final decision Nov. 17, 2017; it issued the Special Use Per mit and granted the right of way across the Appalachia Trail on Jan. 23, 2018.

The environmental groups filed their challenge in court on Feb. 5, 2018.

The court noted than an agency's decision is arbitrary and capricious if:

• The agency relied on factors which Congress has not intended it to consider,

• Entirely failed to consider an important aspect of the problem,

• Offered an explanation for its decision that runs counter to the evidence before the agency, or

• Is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.

The judges considered each of the violations the petitioners alleged.

National Forest Management Act

The groups asserted the USFS violated the National Forest Service Management Act NFMA by:

• Determining that amendments to the GWNF and MNF Plans' standards to accommodate the ACP were not "directly related" to the 2012 Forest Planning Rule's substantive requirements;

• Failing to meet public participation requirements in amending forest plans; and

• Failing to analyze whether the ACP project's needs could be reasonably met off of national forest land.

In 2012, the USFS updated its Forest Planning Rule, which set forth new, substantive requirements for Forest Plans, the court explained. It included that "the responsible official's determination must be based on the purpose for the amendment and the effects (beneficial or adverse) of the amendment, and informed by the best available scientific information, scoping, effects analysis, monitoring data or other rationale."

In its decision, USFS decided to apply project-specific amendments to a total of 13 standards in the GWNF and MNF Plans for the ACP, the court noted.

Those amendments exempted the ACP from four MNF Plan standards and nine GWNF Plan standards that relate to soil, water, riparian, threatened and endangered species, and recreational and visual resources.

"We conclude that Petitioners are correct," the ruling said. "Although the (decision) states the rule correctly … it fails to analyze the purpose of the amendments and instead moves directly to analyzing the amendments' effects … This omission is particularly striking because the Forest Service specifically identified the purpose and need for the amendments in the (decision)."

The purpose of the new amendments was to meet the Act's requirements and its implementing regulations that projects authorized on USFS lands must be consistent with its land management plan. "Without the MNF and GWNF project-specific Forest Plan amendments, the ACP project would not be consistent with some Forest Plan standards related to soil, riparian, threatened and

endangered species, utility corridors, the ANST, an Eligible Recreational River Area, and scenic integrity objectives," the court said.

"Accordingly, by failing to analyze whether the substantive requirements of the 2012 Planning Rule are directly related to the purpose of the amendments, the Forest Service 'entirely failed to consider an important aspect of the problem.' … This failure is significant, because it is clear that the amendments (intended to lessen protections for soils, riparian areas, and threatened and endangered species in the GWNF and MNF Plans) are directly related to the 2012 Planning Rule's substantive requirements for these same categories."

The judges ruled the USFS attempted to recharacterize the purpose of the amendments as "to relax thirteen planning standards just enough to 'authorize (ACP) to use and occupy National Forest System lands for the Project' consistent with the forest plans."

The ACP had argued the purpose of its pipeline is to "serve the growing energy needs of multiple public utilities and local distribution companies, and Virginia and North Carolina" and the "purpose and need" of the proposed action is to "respond to Atlantic's application for a special use permit.'"

"Quite the contrary," the court said. "The Forest Service's and Atlantic's attempts to recharacterize the purpose of the amendments (despite the clear statements of the amendments' purpose in the ROD) are without merit."

The court ruling noted USFS had asserted the "true purpose" of the amendments was just to authorize the project, not lessen environmental protections. That, the judges said, contradicts the USFS' own description of the amendments.

"Further, this is not a situation where a proposed project-specific amendment may have an incidental effect on a Forest Plan standard; rather, the amendments' entire purpose is to weaken existing environmental standards in order to accommodate the ACP, which cannot meet the current standards," the judges said. "To say that a 2012 Planning Rule requirement protecting water resources (as one example) is not 'directly related' to a Forest Plan amendment specifically relaxing protection for water resources is nonsense."

Effects analysis

The court also pointed out that USFS asserts an adverse effect must be "substantial" to be directly related to a provision in the Planning Rule. USFS had argued that "rarely, if ever, will a project-specific amendment rise to the level of having a substantial adverse effect on these resources."

The judges said regulations do not define "adverse effects" as including only "substantial effects."

"Curiously, there is no corresponding guidance for beneficial effects. In other words, under the Forest Service's interpretation of the regulation, only 'substantial' adverse effects could trigger

application of a substantive requirement, but any beneficial effect at all would trigger the same substantive requirement. The Forest Service does not explain why the regulations would intend to make it easier to pass amendments that harm the environment (by not requiring application of the substantive requirements, which aim to protect the environment, unless that harm is substantial) but more difficult to pass amendments that benefit the environment."

The judges wrote, "It is nothing short of remarkable that the Forest Service — the federal agency tasked with maintaining and preserving the nation's forest land — takes the position that as a bright-line rule, a project-specific amendment, no matter how large, will rarely, if ever, cause a substantial adverse effect on a national forest. And it is even more remarkable that the agency is unable to say what would constitute a substantial adverse effect on the forest."

They continued, "The Forest Service's strained and implausible interpretations of 'substantial adverse effects' are especially striking in light of the significant evidence in the record that the GWNF and MNF Plan amendments would cause substantial adverse effects on the forests … The lengths to which the Forest Service apparently went to avoid applying the substantive protections of the 2012 Planning Rule — its own regulation intended to protect national forests — in order to accommodate the ACP project through national forest land on Atlantic's timeline are striking, and inexplicable."

The ruling also noted USFS' objection to a remand on its determination, arguing any error in applying the 2012 Planning Rule was harmless.

"We find no basis to support such a conclusion," the court said.

"Accordingly, the case must be remanded."

Petitioners also asserted the USFS violated NEPA by failing to consider alternatives to avoid USFS lands with the pipeline.

"We agree that the Forest Service violated its obligations under the NFMA and its own Forest Plans because it failed to demonstrate that the ACP project's needs could not be reasonably met on non-national forest lands," the court said. "The Forest Service's (decision) adopted and incorporated FERC's alternative routes analysis in the EIS, but the EIS applied a different standard than the one imposed on the Forest Service by the NFMA and its own Forest Plans.

"In the EIS, FERC considered only whether a route alternative 'confers a significant environmental advantage over the proposed route.' This is a significantly different standard than whether the proposed use 'cannot reasonably be accommodated off of National Forest System lands.' … Accordingly, adopting FERC's EIS was not sufficient for the Forest Service to fulfill its obligations under the Forest Service Manual and its own Forest Plans, and the Forest Service did not purport to undertake this required analysis anywhere else in the (decision)," the court said.

The court also noted proposed use of USFS land must fit its definition of "in the public use" and noted its policy about the consistency requirement. "In other words, even if the Forest Service is

not required to conclude that an individual project alone meets a forest planning goal, it is not free to disregard the goal entirely — as the Forest Service apparently wishes to do here," the ruling said.

"The Forest Service was aware of its obligation to determine that the ACP project could not be reasonably accommodated on non-national forest land from the beginning of the project. Indeed, the Forest Service specifically cited to the Forest Service Manual and Forest Plan requirements in its initial scoping comments in response to FERC's Notice of Intent to Prepare an EIS … The Forest Service's failure to undertake this analysis violated the NFMA. Accordingly, we remand to the Forest Service for proper analysis of whether the ACP project's needs can be reasonably met on non-national forest lands, in compliance with the NFMA and the GWNF and MNF Plans.

National Environmental Policy Act

NEPA requires agencies consider alternatives to their proposed actions, the court noted, and "take a hard look at environmental consequences."

"To that end, whenever a federal agency proposes to take a major federal action significantly affecting the quality of the human environment, the agency must prepare a detailed EIS describing the likely environmental effects of the proposal, any unavoidable adverse environmental effects, and potential alternatives," the court explained.

Petitioners asserted the USFS violated NEPA by failing to study alternative off-forest routes, and adopting a final EIS that failed to take a hard look at landslide risks, erosion, and degradation of water quality.

USFS countered that once FERC issued a certificate for the ACP, then USFS either had to approve the pipeline route as authorized by FERC, or deny the right of way.

"The Forest Service frames Petitioners' argument as an impermissible collateral attack on FERC's actions, but that ignores the Forest Service's obligation to 'independently review' the EIS and ensure its comments and suggestions to the lead agency were satisfied before adopting it," the court ruling said.

"Neither the Forest Service nor Atlantic points to evidence in the record to demonstrate that the Forest Service undertook the required independent review. To the contrary, the record suggests that they did not. Instead, the record reflects that at first, the Forest Service strenuously objected to the lack of non-national forest route alternatives in the DEIS, but it eventually reversed course and adopted the FEIS even though the analysis of non-national forest alternatives was unchanged from the DEIS — all in an effort to prevent Atlantic from having to obtain congressional approval for the project to cross the ANST.

"From the beginning, the Forest Service made clear through its comments to FERC and Atlantic that the EIS would need to analyze non-national forest alternative routes and justify the necessity of any proposed route crossing of national forest lands," the ruling said.

The draft EIS noted that crossing the Appalachian Trail on NPS land required congressional approval, and therefore ACP considered locations where the trail was on USFS lands. Therefore, no analysis of an alternative route was conducted.

In the case, USFS said the petitioners did present evidence that FERC didn't analyze non-USFS alternatives. "But no such analysis is apparent anywhere in the record, and most tellingly, neither the Forest Service nor Atlantic even attempt to identify evidence to demonstrate that FERC did anything to address the Forest Service's concerns about off-forest alternative routes," the judges said. "What is apparent from the record is that: the Forest Service repeatedly expressed concerns about the need to analyze alternative pipeline routes that avoided the national forests (particularly in the scoping comments, comments on the draft resource reports, and the DEIS; FERC's analysis of alternative pipeline routes remained unchanged from the DEIS to the FEIS, and there is no other evidence apparent from the record that FERC addressed the Forest Service's concerns about off-forest alternative routes; and the Forest Service never explains, in a shorter overall route through NFS lands would have significantly greater impacts on sensitive resources … Therefore, it was concluded these alternatives would not provide a significant environmental advantage over a shorter route that passes through National Forests," the ruling states.

"The chain of events surrounding the Forest Service's sudden acquiescence to the alternatives analysis in the FEIS is similar to that in Sierra Club v. Forest Service, where we determined that the Forest Service had acted arbitrarily and capriciously in adopting the sedimentation analysis in the FEIS for a different pipeline project … Here, like in Sierra Club, 'given the circumstances, we simply cannot conclude that the Forest Service undertook an independent review and determined that its comments and concerns were satisfied' when it seemingly dropped its demand that off-forest alternative routes be studied before the ACP was authorized without any further analysis. In light of this, and particularly considering the Forest Service's earlier skepticism that location decisions for the ACP were made solely to avoid congressional approval, we hold that adopting the unchanged alternatives analysis in the FEIS was arbitrary and capricious."

Landslides, erosion, water quality

The petitioners noted the USFS had abandoned its request for 10 site-specific stabilization plans before granting the Special Use Permit. Instead, it accepted two that ACP provided, without explaining its change in position, the court ruling noted.

The petitioners also said the E&S mitigation plan had not been determined at the time the final EIS and the USFS decision were issued.

"Thus, the Forest Service did not know if the mitigation measures it relied on to approve the project would actually be successful. As a result, Petitioners argue that the FEIS does not provide a thorough investigation into the environmental impacts of the agency's action," the ruling explained.

The USFS, however, said it "thoroughly" analyzed the impacts of the route on USFS land, and asserted NEPA doesn't require an agency to adopt a complete mitigation plan before it can act.

The court ruling pointed out that NEPA requires " particular care" when the environment that may be damaged is one that Congress has specially designated for federal protection, such as national forests. "We conclude that the Forest Service violated NEPA by failing to take a hard look at the environmental consequences of the ACP project," the judges said. "The Forest Service expressed serious concerns that the DEIS lacked necessary information to evaluate landslide risks, erosion impacts, and degradation of water quality, and it further lacked information about the effectiveness of mitigation techniques to reduce those risks … the FEIS could not have satisfied the Forest Service's concerns that the DEIS lacked necessary information to evaluate the environmental consequences of the pipeline. Indeed, the FEIS conceded that the Forest Service's concerns remained unresolved. Nevertheless, as Atlantic's deadlines drew near, the Forest Service disregarded these concerns and adopted the FEIS — including its conclusions that landslide risks, erosion impacts, and degradation of water quality remained unknown — the very same day FERC issued it. To support its decision to approve the project and grant the Special Use Permit, the Forest Service relied on the very mitigation measures it previously found unreliable. This was insufficient to satisfy NEPA, and did not constitute the necessary hard look at the environmental consequences of the ACP project."

Also, the USFS had expressed its concerns about landslides, erosion, and pipeline safety and stability in its Oct. 24, 2016 letter requesting the ten site-specific stabilization designs.

"Accordingly, the Forest Service's later decision to only require the designs prior to construction was not simply a question of timing. It meant the Forest Service approved the pipeline without information it previously determined was necessary to making its decision, and it did so without acknowledging, much less explaining, its change in position," the court said. "The Forest Service's reversal is particularly puzzling considering the reason it requested the site-specific stabilization designs in the first place: to demonstrate that Atlantic's (best in class) program could actually work in particular conditions, rather than simply being a 'cookbook with generalities.' … Thus, despite its own well-documented concerns with Atlantic's mitigation plans, the Forest Service abandoned its request for the eight site-specific stabilization designs and adopted the FEIS, all without science-based evidence of the BIC program's effectiveness. This falls far short of NEPA's hard look requirement, and the Forest Service's brief, conclusory letter stating that the information provided by Atlantic was adequate is insufficient to show that the Forest Service's concerns had been addressed as NEPA requires," the ruling said.

The judges reached the same conclusion about the USFS with regard to its determination about the impacts to water quality.

"Once again, the Forest Service adopted the FEIS (including its use of water bars as a mitigation technique), issued its Record of Decision, and granted the Special Use Permit based on an erosion and sedimentation analysis using water bars as a mitigation technique, despite the clear evidence in the record that the Forest Service had concerns with this technique; the Forest Service's concerns were not resolved in the FEIS; and the effectiveness of water bars for this project was never analyzed."

It continued, "The Forest Service argues — correctly — that NEPA does not require a fully formed mitigation plan to be in place … However, in this case, the Forest Service adopted the FEIS and issued its draft ROD in reliance on a mitigation plan that had not been established, and one that, as demonstrated by the Forest Service's own concerns, had not been proven effective … the record before us readily leads to the conclusion that the Forest Service's approval of the project 'was a preordained decision' and the Forest Service 'reverse engineered' the (decision) to justify this outcome, despite that the Forest Service lacked necessary information about the environmental impacts of the project," the court said.

Mineral Leasing Act

The Forest Service asserted the Mineral

Leasing Act authorizes the USFS to grant pipeline rights of way on Forest Service land traversed by the Appalachian Trail.

"Specifically, the Forest Service argues that the National Trails System Act, which provides for the administration of national trails like the ANST, distinguishes between the 'overall' administration of the ANST (with which NPS is charged) and administration of the ANST's underlying lands (most of which are under the jurisdiction of other agencies, like the Forest Service)," the court said.

"The problem with the Forest Service's argument is it misreads both the MLA and the National Trails System Act," the judges said.

The MLA specifically excludes lands in the National Park System from the authority of the Secretary of the Interior "or appropriate agency head" to grant pipeline rights of way, the court explained. "The FEIS concluded, and the parties agree, that the ANST is a unit of the National Park System. Accordingly, even if the Forest Service were the appropriate agency head in this instance, it could not grant a pipeline right of way across the ANST pursuant to the MLA. Interpreting the MLA as the Forest Service argues would give the Forest Service more authority than NPS on National Park System land. This defies logic … Other national trails are administered by the Secretary of Agriculture and are subject to laws applicable to the National Forest System — the ANST is simply not one of those trails.

"The Forest Service's arguments to the contrary are unavailing, and the Forest Service does not have statutory authority to grant pipeline rights of way across the ANST pursuant the MLA. The Forest Service's Record of Decision and Special Use Permit granting this right of way are, accordingly, vacated," the court ruled.

"We trust the United States Forest Service to 'speak for the trees, for the trees have no tongues,'" the judges said, quoting Dr. Seuss' "The Lorax."

"A thorough review of the record leads to the necessary conclusion that the Forest Service abdicated its responsibility to preserve national forest resources. This conclusion is particularly informed by the Forest Service's serious environmental concerns that were suddenly, and

mysteriously, assuaged in time to meet a private pipeline company's deadlines. "Accordingly, for the reasons set forth herein, we grant the petition to review the Forest Service's Record of Decision and Special Use Permit, vacate the Forest Service's decisions, and remand to the Forest Service for proceedings consistent with this opinion."

"Today's decision by the 4th Circuit Court of Appeals describes a regulatory process that was hijacked by political appointees willing to sacrifice the public good for corporate greed. The court saw the glaring deficiencies in the plans submitted by Dominion and rubber stamped by Trump officials at the Forest Service, by FERC, and by state officials," said David Slight of Wild Virginia.

"Forest Service scientists in Virginia and West Virginia did their duties, warning of the dire threats to our resources. Citizens played their proper roles, providing information and analyses. Then, irresponsible officials swept aside the facts and the law and, as stated by Chief Judge Gregory at oral arguments, capitulated to the wishes of the pipeline company. Wild Virginia thanks the dedicated Forest Service employees who repeatedly demanded the necessary analyses and, rightly, saw that supposed pollution controls are unlikely to protect the sensitive and valuable environments the ACP would cross. We will continue to oppose this destructive proposal every inch of the way, until the ACP is abandoned."

ACP contractor and part-owner Dominion issued a statement late Thursday. "We strongly disagree with the court's ruling," said spokesman Aaron Ruby. "The court's decision is at odds with the consensus of the U.S. Department of Interior, U.S. Department of Agriculture, National Park Service and U.S. Forest Service. All of these agencies agree that the Forest Service has the full legal authority to approve the Atlantic Coast Pipeline's crossing of the Appalachian Trail. Under Democratic and Republican administrations alike, for decades 56 other oil and gas pipelines have operated across the AT. This opinion brings into question whether or not these existing pipelines can remain in place.

"With this decision, the Fourth Circuit has now undermined the judgment of the dedicated, career professionals at nearly every federal agency that has reviewed this project.

"We are immediately appealing the court's decision to the full U.S. Court of Appeals for the Fourth Circuit. If allowed to stand, this decision will severely harm consumers and do great damage to our economy and energy security. Public utilities are depending on this infrastructure to meet the basic energy needs of millions of people and businesses in our region.

"We are confident we will prevail on appeal. Opponents' tactics in the courts are not doing anything to provide additional protection of the environment. They are only driving up consumer energy costs, delaying access to cleaner energy and making it harder for public utilities to reliably serve consumers and businesses.

"The Atlantic Coast Pipeline has been the most thoroughly reviewed infrastructure project in the history of our region. No other project in our region's history has been developed with greater attention to the environment, including the national forests and the Appalachian Trail."