

# **Mountain Valley pipeline takes on Appalachian Trail battle**

**Pamela King, E&E News reporter Published: Tuesday, July 30, 2019**

The Atlantic Coast pipeline wouldn't be the only project stymied by Supreme Court inaction on a question of whether the Forest Service can authorize crossings of the Appalachian Trail, another developer told the justices last week.

Builders of the 300-mile Mountain Valley natural gas pipeline through West Virginia and Virginia said they've already spent \$3 billion on a project now in legal limbo, as they urged justices to take up recent petitions from Atlantic Coast backers and the federal government.

Their Supreme Court petitions challenge a decision by the 4th U.S. Circuit Court of Appeals that the National Park Service, which is bound to a stricter land conservation mandate than the Forest Service, must authorize crossings of the more than 2,000-mile trail ([\*Energywire\*](#), June 26).

"If allowed to stand, the decision below eliminates federal [Mineral Leasing Act] authority to grant or renew rights-of-way for gas pipelines serving the millions of Americans living along the eastern seaboard if the pipeline crosses the Trail, a court-erected barrier from central Maine to north Georgia," attorneys for Mountain Valley Pipeline LLC wrote in a Friday "friend of the court" [\*\*brief\*\*](#).

The Southern Environmental Law Center, which represents groups facing off with Atlantic Coast in court, has noted that existing projects would not be affected if the Supreme Court preserves the 4th Circuit's finding.

More than 50 pipelines that currently traverse the footpath are located on state and private land or along existing rights of way, an attorney for the group wrote in a recent letter to the Forest Service.

Like Atlantic Coast, the Mountain Valley pipeline would need to cross below the Appalachian Trail within a national forest.

When the 4th Circuit issued its decision on Atlantic Coast, Mountain Valley developers paused their plans to run a borehole under the trail.

"The MVP Trail crossing remains unfinished today — a key missing link for the almost-completed MVP project," lawyers for Mountain Valley wrote in the amicus brief.

Around the time of Atlantic Coast's Supreme Court petition, Mountain Valley developers began to broker a deal to give the federal government control over private lands along the trail in exchange for a pipeline easement and right of way.

The strategy is not without its own legal risks, experts say.

Mountain Valley could also fall prey to some of the other challenges the Atlantic Coast pipeline has faced.

Construction of Atlantic Coast has been on hold since the 4th Circuit last year yanked a key Endangered Species Act review for the 600-mile project from West Virginia to North Carolina. The court Friday scrapped the Fish and Wildlife Service's reissued permits ([Greenwire](#), July 26).

Mountain Valley critics have not yet fought that pipeline's ESA analyses in court, but they have asked the government to voluntarily suspend the permits.

## **More support**

Energy, labor and logging groups also urged the Supreme Court to take the Appalachian Trail case.

They argued that the 4th Circuit's decision threatens future efforts to build out infrastructure and improve forest health.

"While the cancellation of a pipeline deprives the nation of a plethora of benefits — including supporting the deployment of renewable energy — delays also cause real economic harm," the National Association of Manufacturers, the American Petroleum Institute and other energy industry groups wrote in their [brief](#).

The AFL-CIO and the American Forest Resource Council also [led briefs](#) in support of Atlantic Coast's and the federal government's Supreme Court petitions.

Lawyers for Atlantic Coast challengers have yet to file a formal reply to the challenges. Their response is due to the court by Aug. 28.

The justices will decide whether to hear the case during their next term, which begins in October.