



ABRA Update #252 – November 7, 2019

Legal Challenges Against the ACP: A Quick Rundown

Construction of the Atlantic Coast Pipeline (ACP) was suspended last December due to the vacating of the U.S. Fish and Wildlife Service biological opinion and taking statement for the project. There are other permits for the ACP that have either been invalidated by court decisions or are being challenged. Here is a brief rundown of the status of the key cases. A more complete status report on legal challenges is posted and kept up to date on the [ABRA website](#).

- Fish and Wildlife Service – The biological opinion and taking statement (Biop), as required under provisions of the Endangered Species Act, has been vacated twice by the Fourth Circuit Court of Appeals for being inadequate; the second time was in July. The agency is currently developing a new Biop. Atlantic Coast Pipeline, LLC (Atlantic) has said that after the new Biop is issued, it will seek permission from the Federal Energy Regulatory Commission (FERC) to resume construction. When that will be is unclear.
- Forest Service Permit – The U.S. Forest Service permit, which included the right for the ACP to drill underneath the Appalachian Trail (AT), was vacated by the Fourth Circuit Court of Appeals in December 2018. Atlantic has appealed the case – *Cowpasture River Association, et. al. vs. Forest Service* – to the U.S. Supreme Court. The case is expected to be heard by the Court in late January or early February, with a decision by June 2020.
- FERC Certificate – Several challenges to the certificate issued by FERC in December 2017 were consolidated in the D.C. Circuit Court of Appeals. Oral arguments, originally scheduled for October, have been deferred pending the Supreme Court’s decision on the *Cowpasture* case (see above).
- Buckingham Compressor Station – A challenge to the air permit issued for the ACP compressor station in Buckingham County, VA was argued before the Fourth Circuit Court of Appeals on October 29. A decision is expected by early 2020.
- Army Corps of Engineers Permit – In January 2019 the U.S. Army Corps of Engineers withdrew its previously issued permit for the ACP to cross rivers and streams under its jurisdiction. A new permit has not yet been reissued.
- National Park Service Permit – The Fourth Circuit Court of Appeals vacated on August 6, 2019 the permit issued by the National Park Service for the ACP to pass under the Blue Ridge Parkway (BRP) because the permit was inconsistent with the Park Service’s own guideline. A subsequent permit was issued, then challenged by several ABRA members,

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and withdrawn by the Park Service. At this writing, there is no permit for the ACP to cross the Blue Ridge Parkway. (*Note: This permit is distinct from the vacated permit issued by the Forest Service for the ACP to cross the AT. The ACP will need both permits since the AT and BRP are parallel to one another at the proposed point of crossing.*)

New Virginia Legislature Promises to Be More Conservation Friendly

Initial analysis of the November 5 state legislative election results in Virginia suggest that the General Assembly that takes office in January will be more favorable to conservation-minded issues. A good number of the newly elected members are on record as being against the Atlantic Coast Pipeline and favorable to conservation positions taken by many of ABRA's members. The new balance in the General Assembly will be 21 Democrats and 19 Republicans in the Senate, and 55 Democrats and 45 Republicans in the House of Delegates.

UK Government Suspends Support for Fracking

The Government of the United Kingdom last week announced it was ending support for the use of hydraulic fracturing technology to extract oil and gas from shale deposits. The decision was based on [a new report by the UK Oil and Gas Authority](#), released November 2, which concluded "that it is not currently possible to accurately predict the probability or magnitude of earthquakes linked to fracking operations." Continuing, the UK Government announced that "exploratory work to determine whether shale could be a new domestic energy source, delivering benefits for our economy and energy security, has now been paused - unless and until further evidence is provided that it can be carried out safely here."

The UK action is relevant to the proposed Atlantic Coast Pipeline because the gas that would travel through that pipeline, as well as the Mountain Valley Pipeline, would be extracted by fracking from West Virginia shale deposits.

In the News:

Local/Atlantic Coast Pipeline

Environmental Nonprofit Studies Potential Impact of ACP on African American Community

- NBC29 News – 11/4/19

<https://www.nbc29.com/story/41271334/blue-ridge-environmental-defense-league>

The Blue Ridge Environmental Defense League is exploring the potential impact of the Atlantic Coast Pipeline in a historic African American community in Buckingham County.

In face of litigation, Dominion reiterates Atlantic Coast Pipeline timeline, cost estimate

- S&P Global – 11/1/19

<https://www.spglobal.com/platts/en/market-insights/latest-news/natural-gas/110119-in-face-of-litigation-dominion-reiterates-atlantic-coast-pipeline-timeline-cost-estimate>

Virginia's legislative shift could tighten RGGI market, impact gas pipeline development

- S&P Global – 11/6/19

<https://www.spglobal.com/platts/en/market-insights/latest-news/electric-power/110619-virginias-legislative-shift-could-tighten-rggi-market-impact-gas-pipeline-development>

Related:

- <https://www.abralliance.org/wp-content/uploads/2019/11/What-Va.s-political-earthquake-means-for-RGGI-renewables-EE-Energywire-11-7-19.pdf>

Democratic Sweep Sets Up Confrontation With Corporate Giant That Has Loomed Over Virginia Politics For A Century

- The Intercept – 11/6/19

<https://theintercept.com/2019/11/06/virginia-democrats-dominion-energy-lobbying/>

The election results mark a turning point that will likely transform into a brutal legislative fight in 2020 over the future of energy policy, corporate consolidation, and climate change.

North Carolina approved one pipeline. Why is it now questioning another?

- The News & Observer – 11/6/19

<https://www.newsobserver.com/opinion/article237034754.html>

The state Department of Environmental Quality (DEQ) has approved the Atlantic Coast Pipeline's passage through central North Carolina, but the agency is raising strong objections to the proposed 74-mile Mountain Valley Pipeline Southgate extension.

Virginia is all-in on offshore wind but Dominion's decision raises questions about cost, competence

- Virginia Mercury – 11/4/19

<https://www.virginiamercury.com/2019/11/04/virginia-is-all-in-on-offshore-wind-but-dominions-decision-raises-questions-about-cost-competence/>

Related:

- <https://www.spglobal.com/platts/en/market-insights/latest-news/electric-power/110119-dominion-will-see-regulated-recovery-of-8b-in-offshore-wind-investment>

Regional/Mountain Valley Pipeline, other

Mountain Valley co-owner puts cap on investment in pipeline

- Pittsburgh Business Times – 11/5/19

<https://www.bizjournals.com/pittsburgh/news/2019/11/05/mountain-valley-co-owner-puts-cap-on-investment-in.html>

Con Edison, the large New York-based utility company, is scaling back its investment in the troubled Mountain Valley Pipeline.

Pipeline contractors owe about \$1.5 million in unpaid taxes, Franklin County says

- WDBJ7 News – 10/30/19

<https://www.wdbj7.com/content/news/Pipeline-contractors-owe-about-15-million-in-unpaid-taxes-Franklin-County-says-564080081.html>

Heavy equipment located in Franklin County for pipeline construction is subject to property taxes. Pipeline contractors aren't paying up.

Big Picture:

More than 11,000 scientists from around the world declare a 'climate emergency'

- The Washington Post – 11/5/19

<https://www.washingtonpost.com/science/2019/11/05/more-than-scientists-around-world-declare-climate-emergency/>

Study outlines six major steps that 'must' be taken to address the situation.

Sen. Manchin 'fighting' for White House nomination of Democratic FERC candidate

- Utility Dive – 11/6/19

<https://www.utilitydive.com/news/sen-manchin-fighting-for-white-house-nomination-of-democratic-ferc-candi/566722/>

As long as they are "coal-friendly", of course!

Keystone oil pipeline leaks 383,000 gallons in North Dakota

- PBS News Hour – 10/31/19

<https://www.pbs.org/newshour/nation/keystone-oil-pipeline-leaks-383000-gallons-in-north-dakota>

Not mentioned are the toxic, sometimes caustic, chemicals added to make the thick, tar-sands oil flow. How quickly do *they* get into the groundwater?

States Are More Worried About Pipeline Protesters Than Spills

- The New Republic – 11/5/19

<https://newrepublic.com/article/155593/states-worried-pipeline-protesters-spills>

Rather than raising the cost of contaminating vast swaths of American lands, the state and federal governments have spent their time re-codifying and weaponizing the legal system against citizens opposing further pipeline construction.

Texas judge won't toss Obama-era WOTUS

- E&E News – 11/7/19

https://www.abralliance.org/wp-content/uploads/2019/11/Texas-judge-wont-toss-Obama-era-Water-Rule-EE-News_20191107.pdf

The Long Battle to Stop the Kinder Morgan Pipeline

- Texas Observer – 11/5/19

<https://www.texasobserver.org/kinder-morgan-texas-hill-country-lawsuit/>

Residents and local governments fear that if Kinder Morgan is successful in ramming its \$2 billion pipeline project through the Hill Country, more pipelines will soon follow, creating a new industrial corridor right through the heart of the state's porous hills of limestone and a part of Texas that has largely managed to avoid extraction infrastructure.

Fiduciary duty and fossil fuel divestment

- IEEFA – 10/22/19

<https://ieefa.org/ieefa-update-fiduciary-duty-and-fossil-fuel-divestment/>

Investing is all about looking ahead towards the future. Investment managers who remain stuck in the thrall of fossil fuels are looking backwards and failing younger beneficiaries.

Wind and Solar Power Have Become Amazingly Affordable

- Bloomberg – 11/7/19

<https://www.bloomberg.com/opinion/articles/2019-11-07/wind-and-solar-power-have-become-amazingly-affordable>

Costs are falling so fast, it can make more sense to build new renewable capacity than to run old coal plants.