



ABRA Update #255 – December 5, 2019

Appeal of Forest Service Case Scheduled for Supreme Court Argument

The U.S. Supreme Court has announced that the appeal of the case vacating the Atlantic Coast Pipeline's (ACP) permit from the U.S. Forest Service to build across Forest Service land is scheduled for oral argument on Monday, February 24, 2020 at 10 am. The [Fourth Circuit Court of Appeals struck down the permit in a December 18, 2018 decision](#) on the grounds that the Forest Service 1) was negligent in its analysis of environmental impacts on Forest lands, and 2) did not have the legal authority to grant permission for the project to cross the Appalachian National Scenic Trail.

The appellants in the case – Atlantic Coast Pipeline, LLC and the U.S. Forest Service – filed their briefs with the Court on December 2. Amicus briefs in support of the appellants are due to be filed by December 9

The respondents in the case, all members of ABRA, are Cowpasture River Preservation Association, Highlands for Responsible Development, Shenandoah Valley Battlefields Foundation, Shenandoah Valley Network, Sierra Club, Virginia Wilderness Committee and Wild Virginia. Their brief must be filed by the Southern Environmental Law Center (SELC) by January 15. Amicus briefs in support of the respondents' position are due January 22.

The brief filed December 2 by ACP, LLC included the following highlights:

- The Fourth Circuit's decision "not only is at profound odds with the text, structure, and history of the Trails Act (not to mention the canon against implied repeals), but threatens upheaval for the hundreds of miles of the Appalachian Trail that traverses lands owned by states or private parties. It imperils other pipelines and approvals the Forest Service has granted for other critical infrastructure to cross Forest Service lands traversed by the Trail. None of that disruption is necessary or justified. Simply put, there is no basis in any federal statute to conclude that Congress intended to convert the Appalachian Trail into a 2,200-mile barrier separating critical natural resources from the eastern seaboard."
- "The Fourth Circuit's interpretation produces results that Congress plainly did not intend."
- "If the Appalachian Trail really were a barrier to pipeline rights-of-way, then it likely would prevent construction of the Mountain Valley Pipeline."
- "The Fourth Circuit's decision converting the entirety of the Appalachian Trail into Park System lands is wrong at every turn."
- "The irony of the Fourth Circuit's decision is that its effort to preclude the Forest Service from granting pipeline rights-of-way, in the name of admonishing the agency

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to “speak for the trees” (quoting Dr. Seuss, *The Lorax* (1971)), will not even promote environmental protection. The pipeline itself would be nearly 700 feet below the Trail with no discernable effect on the footpath or trees above. And once operational, the Atlantic Coast Pipeline, like other natural gas pipelines, will do much for the environment.”

The brief submitted by the Solicitor General on behalf of the Forest Service including the following highlights:

- “This case concerns the Forest Service’s authority under 30 U.S.C. 185 to grant a right-of-way for an underground natural-gas pipeline through lands owned by the United States within the George Washington National Forest, where that right-of-way would cross underneath the Appalachian National Scenic Trail (Appalachian Trail or Trail). The existence of that authority ultimately depends on whether the “lands” within the National Forest traversed by the Trail remain National Forest lands or whether Congress has converted those lands into “lands in the National Park System.”
- “The Forest Service has authority under the Mineral Leasing Act to grant an underground pipeline right-of way through federal lands in a National Forest, including where those lands are traversed by the Appalachian Trail.”
- “The court of appeals rested its contrary holding on a Trails Act provision providing that ‘[t]he Appalachian Trail shall be administered primarily as a footpath by the Secretary of the Interior.’ But that Act makes clear that the Appalachian Trail is ‘a trail’ — not ‘land’ — and that authority to administer the trail is different from authority to administer the lands traversed by the trail. Indeed, Congress expressly provided in the Trails Act that its assignment of ‘overall administration of a *trail*’ across the surface of lands does not ‘transfer among Federal agencies any management responsibilities established under any other law for federally administered *lands*.’”
- The broader legal and practical context confirms that National Forest lands traversed by the Trail remain under the Forest Service’s administrative jurisdiction.
- “The court of appeals erred in holding that the Forest Service lacked authority under the Mineral Leasing Act to grant a pipeline right-of-way through National Forest lands traversed by the Appalachian Trail. That error derives from two primary sources. First, the court failed to recognize the distinction between a ‘trail’ and the ‘lands’ that the trail traverses. That oversight led the court to believe that the Secretary of the Interior’s authority to ‘administer’ the Appalachian Trail’ is the same as authority to administer the federal lands crossed by the Trail. On that premise, the court determined that ‘the [Trail] is land in the National Park System’ for which the Mineral Leasing Act does not authorize a right-of-way. Second, the court extended its conflation of trails and lands into a determination that the Chief of the Forest Service is not the appropriate ‘agency head’ to grant a right-of-way.

For a copy of the brief filed by ACP, LLC, click [here](#). For the Forest Service brief, click [here](#).

New Study: Environment Agencies' Staff, Budget Cuts Endanger Public Health

A new analysis released December 5 by the [Environmental Integrity Project](#), a watchdog group, concluded that over the past decade, 40 states reduced the workforce of their environmental agencies and 30 states cut their pollution control agency's budget. These reductions in pollution control resources have occurred concurrently with a decline in funding and staffing at the U.S. Environmental Protection Agency.

The study, [The Thin Green Line: Cuts in State Pollution Control Agencies Threaten Public Health](#), notes:

This downsizing of environmental protection agencies at both the federal and state levels has happened during an unprecedented boom in the U.S. oil and gas industry. State regulators are frequently overwhelmed with permit applications for new projects while serious violations of law continue to accumulate at existing facilities with no enforcement response.



Virginia's pollution control budget during the study period (2008-2018) was cut 5.5%, but staff levels rose 2%. West Virginia's Department of Environmental Protection budget rose 44.6% during the period and its staffing levels rose 1%. In North Carolina, however, funding levels over the 10-year study period dropped by 33.7% and staffing was reduced by 35%.

In the News:

Local/Atlantic Coast Pipeline

Dominion suspends plan to add 1.5 GW of peaking capacity as Virginia faces gas glut

- Utility Dive – 12/5/19

<https://www.utilitydive.com/news/dominion-suspends-plan-to-add-15-gw-of-peaking-capacity-as-virginia-faces/568489/>

Related:

- <https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/54171542>

A pipeline runs through it

- Grist – 12/3/19

<https://grist.org/article/tracing-the-path-of-dominion-energys-atlantic-coast-natural-gas-pipeline/>

Reporter Lyndsey Gilpin travels the route of the Atlantic Coast Pipeline to examine the impacts to communities, the environment, our rights and way of life.

In Virginia, Union Hill and racial tensions have put environmental justice back on the map

- Virginia Mercury – 12/5/19

<https://www.virginiamercury.com/2019/12/05/in-virginia-union-hill-and-racial-tensions-have-put-environmental-justice-back-on-the-map/>

“The idea that all people, regardless of race, color, national origin or income, should be protected from environmental risks and have a say in decisions about those risks – has become, if not a hot topic, then at least a noticeable preoccupation in Richmond.”

Restrictions Proposed on Duke Energy Influence Spending, but Groups say Loopholes Should be Closed

- NC WARN – 12/5/19

https://www.abralliance.org/wp-content/uploads/2019/12/NC_WARN_Duke_Influence_Money_20191205.pdf

Regulators reject request to boost Dominion's profit rate

- Richmond Times-Dispatch – 11/21/19

https://www.richmond.com/news/virginia/regulators-reject-request-to-boost-dominion-s-profit-rate/article_aa957b6a-efcd-5f8c-9da9-af9ee393962f.html

Dominion’s request was widely opposed by SCC staff, the attorney general’s office, consumer advocates and a group of Democratic lawmakers. They pointed to the \$277.3 million in excess profits Dominion collected from state ratepayers last year – a sum that it plans to reinvest instead of issuing refunds.

Facing backlash, Dominion says it’s willing to have coal plant removed from green energy package

- Virginia Mercury – 11/25/19

<https://www.virginiamercury.com/2019/11/25/facing-backlash-dominion-says-its-willing-to-have-coal-plant-removed-from-green-energy-package/>

Burning biomass (typically wood pellets) is not “green energy”. Especially when that biomass makes up less than 10% of your fuel and the other 90+% is coal!

Regional/Mountain Valley Pipeline, other

FERC to delay final EIS on MVP’s Southgate extension

- Kallanish Energy – 12/2/19

<https://www.kallanishenergy.com/2019/12/02/ferc-to-delay-final-eis-on-mvps-southgate-extension/>

Pipeline opponents ask court to reject agreement between Virginia and MVP

- WDBJ7 News – 11/28/19

<https://www.wdbj7.com/content/news/Pipeline-opponents-ask-court-to-reject-agreement-between-Virginia-and-MVP-565563921.html>

Members of the POWHR coalition said the agreement ignores almost a year of violations, lacks adequate safeguards and fails to mitigate the damage effectively.

Climate change threatens a giant of West Virginia's landscape

- Charleston Gazette-Mail – 11/24/19

https://www.wvgazette.com/news/energy_and_environment/climate-change-threatens-a-giant-of-west-virginia-s-landscape/article_150a908a-4efb-50b9-bc2d-76e9dfa4fcc0.html

As the climate continues to heat up, a cascade of ecosystem effects could pose more risk to the Cheat Mountain salamander and other species tucked inside these Allegheny Mountains — starting with further declines in red spruce, whose reddish-brown trunks stand tall on the landscape and in the lives of West Virginians.

Texas construction company no longer working on Mountain Valley Pipeline

- The Register-Herald – 12/4/19

https://www.register-herald.com/news/texas-construction-company-no-longer-working-on-mountain-valley-pipeline/article_9d21539b-e861-5956-a0f3-118f7474bb4c.html

Big Picture:

'Bleak' U.N. Report on a Planet in Peril Looms Over New Climate Talks

- The New York Times – 11/26/19

<https://www.nytimes.com/2019/11/26/climate/greenhouse-gas-emissions-carbon.html>

We just aren't doing enough to avoid an out-of-control climate disaster.

Related:

- <https://www.abralliance.org/wp-content/uploads/2019/12/Global-CO2-footprint-to-break-another-record-in-2019-EE-Climatewire-12-4-19.pdf>

Shakeups at FERC and New PHMSA Rules Impacting the Pipeline Industry

- North American Oil & Gas Pipelines – 12/3/19

<https://napipelines.com/shakeups-at-ferc-and-new-phmsa-rules-impacting-the-pipeline-industry/>

Discusses the administration's policy for nominating commissioners and rule changes affecting PHMSA.

Scientists have gotten predictions of global warming right since the 1970s

- Vox – 12/4/19

<https://www.vox.com/energy-and-environment/2019/12/4/20991315/climate-change-prediction-models-accurate>

The first systematic review finds that climate models have been remarkably accurate.

Rover Pipeline seeks to lower property tax valuation

- Times-Gazette – 12/3/19

<https://www.times-gazette.com/news/20191203/rover-pipeline-seeks-to-lower-property-tax-valuation>

Natural gas pipelines, sold to communities as tax revenue “windfalls”, now seek to pay less in taxes. Can you say “Bait and Switch”?

Keystone XL: police discussed stopping anti-pipeline activists 'by any means'

- The Guardian – 11/25/19

<https://www.theguardian.com/environment/2019/nov/25/keystone-xl-protests-pipeline-activism-environment>

Records show law enforcement has called demonstrators possible ‘domestic terrorism’ threats

US wind capacity exceeds hydro, while solar tops oil

- Renewables Now – 12/4/19

<https://renewablesnow.com/news/overview-us-wind-capacity-exceeds-hydro-while-solar-tops-oil-679030/>