



ABRA Update #260 – January 23, 2020

State AGs File Briefs Backing 4th Circuit on Forest Service Permit Case

The Atlantic Coast Pipeline “threatens Virginia’s resources without clear corresponding benefits,” so stated a brief filed January 22 with the U.S. Supreme Court by Virginia Attorney General Mark Herring. The amicus brief was filed as part of the appeal brought by Atlantic Coast Pipeline, LLC and the U.S. Forest Service of the Fourth Circuit Court of Appeal’s decision in the *Cowpasture River Preservation Association, et. al. v. U.S. Forest Service* case. The Fourth Circuit’s decision vacated the Forest Service’s permit issued for the Atlantic Coast Pipeline (ACP). The permit was rejected by the Court on several grounds, including holding that the agency did not have the proper legal authority to authorize the ACP to cross the Appalachian National Scenic Trail. In addition to the Virginia AG brief, the Attorneys General of 13 states and the District of Columbia filed an amicus brief in support of upholding the Fourth Circuit’s decision.

Attorney General Herring was unequivocal in his criticism of the ACP project:

The pipeline company (Atlantic) claims the project is necessary to address an unmet and growing demand for natural gas in Virginia and North Carolina. But that claim does not withstand scrutiny. Indeed, recent analyses indicate that the demand for natural gas will remain flat or decrease for the foreseeable future and can be met with existing infrastructure.

Beyond offering dubious benefits, the pipeline unquestionably threatens some of Virginia’s most valued natural sites. The George Washington National Forest, the Blue Ridge Parkway, and the Appalachian Trail are woven into the fabric of Virginia’s history, offering solitude and recreation to Virginians and visitors for generations, bringing tourism and its corresponding benefits to the neighboring communities.

...the United States Forest Service failed to conduct the meticulous review of Atlantic’s permit application called for by the Service’s governing statutes and regulations. Instead, the permitting process was rushed and slipshod and driven by Atlantic’s arbitrary deadlines. Given the chaotic nature of the agency proceedings, it is unsurprising that the Fourth Circuit invalidated the permit on three separate grounds that are entirely independent of the question whether the Forest Service has authority to grant Atlantic permission to cross the Appalachian Trail.

The amicus brief filed by Vermont Attorney General Thomas Donovan, on behalf of his state and 12 other states and the District of Columbia, stressed that the Appalachian Trail is a vital part of the National Park System and that “existing Appalachian Trail pipeline crossings and utility easements will be unaffected” by the Fourth Circuit’s decision. The AGs’ brief also notes that the “availability of adequate energy sources or even this particular pipeline project”

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are not imperiled by the Fourth Circuit decision, noting that the project could be built on non-federal land to cross the Trail.

Seven of the 13 states filing amici briefs in support of the Fourth Circuit decision encompass 58% of the total length of the Appalachian Trail. Of the 18 states whose Attorneys General filed briefs in support of the Forest Service/ACP appeal, only 2 are states traversed by the Trail – Georgia and West Virginia – and their total of 80 Trail miles represents less than 4% of the Trail’s 2200-mile length. Other amici briefs filed this week in support of the Fourth Circuit decision include those by: John Jarvis, former Superintendent of the National Park Service; Natural Resources Defense Council; Wintergreen Property Owners Association; and a joint brief by Nelson County, VA and the City of Staunton. A link to all of the briefs filed is available [here](#).

The Supreme Court is scheduled to hear arguments on the case on February 24.

FERC Is Asked to Halt ACP Construction

A new request to halt construction of the Atlantic Coast Pipeline (ACP) was made to the Federal Energy Regulatory Commission (FERC) in a [January 14 filing](#) by the Southern Environmental Law Center, Appalachian Mountain Advocates and Chesapeake Bay Foundation on behalf of their respective client groups. While construction on the ACP ceased more than a year ago in the wake of the project losing its Biological Opinion and Take Statement, as required by the Endangered Species Act, the project’s managing partner, Dominion Energy, has indicated its intention to resume construction as soon as a new Biological Opinion and Take Statement is issued by the U.S. Fish and Wildlife Service (FWS). The FWS has not announced plans for reissuing a revised permit.

The request to FERC points out that with the recent loss of the Buckingham compressor station air permit – struck down January 7 by the Fourth Circuit Court of Appeals (see [ABRA Update #259, January 9 for details](#)) – there are been 8 missing permits for the project:

Nationwide Permit 12 Verification, Pittsburgh District, U.S. Army Corps of Engineers: suspended by Pittsburgh District, Nov. 20, 2018.

Nationwide Permit 12 Verification, Norfolk District, U.S. Army Corps of Engineers: suspended by Norfolk District, Nov. 20, 2018.

Nationwide Permit 12 Verification, Wilmington District, U.S. Army Corps of Engineers: suspended by Wilmington District, Nov. 20, 2018.

Special Use Permit and Record of Decision, U.S. Forest Service: vacated by Fourth Circuit, Dec. 13, 2018 *Cowpasture River Pres. Ass’n v. Forest Serv.*, 911 F.3d 150 (4th Cir. 2018).

Right-of-Way and Construction Permits, National Park Service: remanded by Fourth Circuit, Jan. 23, 2019, to be vacated by Park Service. Order (Dkt. 51), *Sierra Club v. U.S. Dep’t of the Interior*, No. 18-2095 (4th Cir. Jan. 23, 2019).

Nationwide Permit 12 Verification, Huntington District, U.S. Army Corps of Engineers: vacated by Fourth Circuit, Jan. 25, 2019. Order (Dkt. 67), *Sierra Club v. U.S. Army Corps of Eng’rs*, No. 18-1743 (4th Cir. Jan. 25, 2019).

Biological Opinion and Incidental Take Statement, U.S. Fish and Wildlife Service: vacated by Fourth Circuit, July 26, 2019. *Defenders of Wildlife v. U.S. Dep’t of the Interior*, 931 F.3d 339 (4th Cir. 2019).

Article 6 Permit, Virginia State Air Pollution Control Board (implementing federal Clean Air Act requirements): vacated by Fourth Circuit, January 7, 2020. *Friends of Buckingham*, 2019 WL 63295 (4th Cir. Jan. 7, 2020).

ABRA Members File Brief with DC Circuit on FERC Tolling Order Policy

Several ABRA members were among organizations jointly filing an amicus brief last week in a case before the DC Circuit Court of Appeals challenging the practice of the Federal Energy Regulatory Commission (FERC) to forestall judicial review of its orders, a practice known as “tolling orders.” The brief, filed in a case involving the Atlantic Sunrise pipeline, notes:

FERC consistently grants itself an indefinite extension of time in which to act on the merits of such requests, while locking requesters out of court. As its public dockets reveal, FERC does not reserve this practice for only the most complex of cases; it tolls virtually all requests for rehearing of all types of orders—certificate orders, orders authorizing construction, and even tolling orders themselves. Over the past two years, FERC tolled *every* timely filed rehearing request it received in proceedings in which it issued a decision, spanning all four of FERC’s regulatory programs—natural gas, hydropower, electricity, and oil.

A copy of the brief is available [here](#).

In the News:

Local/Atlantic Coast Pipeline

‘Environmental Justice Is Not Merely a Box to Be Checked’

- The New York Times – 1/23/20

https://www.abralliance.org/wp-content/uploads/2020/01/SELC-op-ed-in-NYT_20200123.pdf

When concerns about a pipeline were dismissed by regulators, a rural black enclave went to court – and won.

Threats to safety, health, environment from pipeline still not addressed

- The Recorder – 1/23/20

https://www.abralliance.org/wp-content/uploads/2020/01/Threats-to-safety-health-environment-from-pipeline-still-not-addressed-Recorder_20200123.pdf

A Walk in the Woods: Pipelines and the Appalachian Trail

- Natural Resources Defense Council – 1/22/20

<https://www.nrdc.org/experts/gillian-giannetti/walk-woods-pipelines-and-appalachian-trail>

A refresher on the ACP vs. Cowpasture River Preservation Association case headed to the Supreme Court.

Duke lobbyist says Cooper aide was untruthful

- The Laurenburg Exchange – 1/21/19

<https://www.laurinburgexchange.com/news/32841/duke-lobbyist-says-cooper-aide-was-untruthful>

Accusations still swirling around NC Governor Cooper regarding the permitting process for the ACP.

NC And SC Lawmakers Call For Studies Of Electricity Market Reforms

- NPR – 1/17/19

<https://www.wfae.org/post/nc-and-sc-lawmakers-call-studies-electricity-market-reforms#stream/o>

NC and SC getting wise to the ways of monopolies?

Bill that would ban Dominion donations dies in Democratic-led Senate committee

- Virginia Mercury – 1/21/20

<https://www.virginiamercury.com/blog-va/bill-that-would-ban-dominion-donations-dies-in-democratic-led-senate-committee/>

The flood of corporate monopoly money won’t be stopped this session. If only it *were* a game!

Regional/Mountain Valley Pipeline, other

Hundreds Trek To Virginia's Capitol To Support Environmental Bills

- Henrico Citizen – 1/17/20

<https://www.henricocitizen.com/articles/hundreds-trek-to-capitol-to-support-environmental-bills/>
Sierra Club Virginia Chapter, Chesapeake Climate Action Network Action Fund and other environmental organizations, participants pushed for Virginia to join the Regional Greenhouse Gas Initiative, an effort to cap and reduce carbon emissions from the power sector.

After 50 years, National Environmental Policy Act long overdue for revision

- The Exponent-Telegram – 1/17/20

https://www.wnnews.com/theet/opinion/editorials/after-years-national-environmental-policy-act-long-overdue-for-revision/article_ed84bfef-e9bf-51ab-ac93-2389edf8a84e.html

Basically a message to 'keep the coal rolling and the gas flowing'...under the guise of responsible government.

Big Picture:

America's Radioactive Secret

- Rolling Stone – 1/21/20

<https://www.rollingstone.com/politics/features/oil-gas-fracking-radioactive-investigation-937389/>
Oil-and-gas wells produce nearly a trillion gallons of toxic waste a year. An investigation shows how it could be making workers sick and contaminating communities across America.

Former FERC chairs praise US grid regionalization, but lament headwinds

- S&P Global – 1/22/20

<https://www.spglobal.com/platts/en/market-insights/latest-news/coal/012220-former-ferc-chairs-praise-us-grid-regionalization-but-lament-headwinds>

Four former chairs of the Federal Energy Regulatory Commission praised the agency's 20-year-old Order 2000 encouraging utilities to form regional transmission organizations but said a lack of consensus on climate change policy poses challenges to the markets run by those organizations.

America Is Awash With Natural Gas and It's About to Get Worse

- Bloomberg – 1/19/20

<https://www.bloomberg.com/news/articles/2020-01-19/america-is-awash-with-natural-gas-and-it-s-about-to-get-worse>

The dark side of the gas boom is increasingly difficult to ignore. Shale drillers are extracting so much g

It's Steven Mnuchin who should listen to economists on climate change

- Vox – 1/23/20

<https://www.vox.com/2020/1/23/21078895/greta-thunberg-climate-change-steven-mnuchin>

Remember, this is the guy who took his wife to Ft. Knox (on your dime) "to look at the gold". There isn't any. The Treasury Secretary ought to know that. He's not the sharpest tool in the shed. There's overwhelming consensus among scientists for more aggressive action.

Renewable Energy Prices Hit Record Lows: How Can Utilities Benefit From Unstoppable Solar And Wind?

- Forbes – 1/21/20

<https://www.forbes.com/sites/energyinnovation/2020/01/21/renewable-energy-prices-hit-record-lows-how-can-utilities-benefit-from-unstoppable-solar-and-wind/#5f5e4d32c84e>

Is this even the right question? Why is it utilities, not citizens and rate payers, that should benefit from the energy transition?