



ABRA Update #265 – February 27, 2020

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Supreme Court Hears the Forest Service Case

A very engaged U.S. Supreme Court (SCOTUS) heard on February 24 arguments for and against overturning the [Fourth Circuit Court Appeals' December 13, 2018 decision](#) to vacate the U.S. Forest Service (NFS) permit for the Atlantic Coast Pipeline (ACP). After the Fourth Circuit turned down an appeal by NFS and Atlantic Coast Pipeline, LLC (ACP, LLC) for reconsideration by all 15 judges in the Circuit, the losing parties appealed to SCOTUS. Their appeal was accepted in September 2019.

At issue in the case was only one of the findings of the Fourth Circuit opinion: that the NFS did not have authority to grant authority for the ACP to cross the Appalachian National Scenic Trail (AT) because the AT was administered by the National Park Service not the Forest Service. During the course hour-long argument, the Justices' questions revolved around two major questions:

1. How can the AT be a separate entity from the land on which it exists, an argument made by the appellants (ACP, LLC and NFS)? Justice Kagan made the observation that such a distinction is not made by anyone in "real life." The extensive exchange among the justices and the appellant attorneys on this issue can best be described as being, well, "nerdy."
2. What would be the consequences – intended and unintended – if the Fourth Circuit opinion were upheld and the ACP was not permitted to cross the AT? The appellants contended that the Fourth Circuit decision essentially creates a 2,000-mile barrier to any future pipeline or perhaps other projects crossing it. The attorney for the respondents (Cowpasture River Preservation Association and six other ABRA members), Michael Kellogg, countered that the prohibition against pipelines crossing the AT was limited to certain federal lands, not to private and other public lands, and pointed out that several dozen other pipelines already cross the AT. Beyond the 2000-mile barrier issue, the Justices delved into numerous "what if" questions concerning possible unintended consequences of their upholding the Fourth Circuit.

In a February 27 communication to its mailing list, ACP, LLC said: "A positive decision will help us resume construction this summer, to be completed by the end of 2021 and in-service shortly thereafter. We remain confident the law and the facts are on our side."

Following the SCOTUS hearing, D.J. Gerken of the Southern Environmental Law Center, appearing at a press conference in front of the Supreme Court, reiterated that AT crossing issue is not the only reason that the Fourth Circuit struck down the FS permit for the ACP, and pointed out that there are 7 other needed permits that the ACP lacks.

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A copy of the briefs filed in the case, including amicus briefs, are available [here](#). A recording of the proceedings before SCOTUS, will be available on Friday, February 28; click [here](#). The Court is expected to rule in May or June of this year.

For additional reporting and insights on the argument, consult the several news items below in In the News.

Environment, Renewables Top List of Concerns in New Utility Survey

The seventh annual survey on the State of the Electric Utility was published this week by Utility Dive, an on-line utility industry publication. It concludes that renewables and sustainability are the top issues for utilities, but notes that there is room for improvement on the issues of cybersecurity and climate resilience.

The survey drew responses from 566 executives and professionals from utilities and energy retailers around the world. Nearly half of the respondents (46%) listed renewables and sustainability as pressing issues. Less than half of the survey participants (44%) said they were coordinating with public safety officials around climate-related risks, and only 24% said they were adopting emerging technologies such as microgrids or energy storage with climate resilience in mind.

A copy of the complete survey results are available [here](#).

Hearing on Proposed NEPA Changes Receives Strong Opposition

A February 25 public hearing on changes to the National Environmental Policy Act (NEPA) elicited strong opposition from many witnesses, as well as protests outside of the hearing room by environmental activists and at least one Member of Congress, Sen. Tom Carper (D-DE), ranking member of the Senate Environment and Public Works Committee. The hearing was held in Washington, DC before a panel of staff of the President's Council on Environmental Quality (CEQ). An earlier public hearing was held in Denver, CO on February 11.

The proposed NEPA changes, [announced on January 9](#), would substantially weaken many protections in the environmental review process that such projects as the Atlantic Coast Pipeline (ACP) are required to undergo. Shortcomings in various NEPA required reviews for the ACP are a prime reason for many of the permits the project has lost in court.

For more on the February 25 CEQ hearing, click [here](#).

In the News:

Local/Atlantic Coast Pipeline

Supreme Court considers pipeline appeal

- The Recorder – 2/27/20

https://www.abralliance.org/wp-content/uploads/2020/02/Supreme-Court-considers-pipeline-appeal-Recorder_20200227.pdf

Synopsis of arguments at SCOTUS on Monday.

Supreme Court Seems Ready to Back Pipeline Across Appalachian Trail

- The New York Times – 2/24/20

<https://www.nytimes.com/2020/02/24/us/supreme-court-appalachian-trail.html>

Related:

- https://www.abralliance.org/wp-content/uploads/2020/02/Supreme-Court-Signals-Resistance-to-Blocking-Atlantic-Coast-Pipeline-WSJ_20200224.pdf

- https://www.abralliance.org/wp-content/uploads/2020/02/Supreme-Court-hears-battle-over-Atlantic-Coast-Pipeline_Washington-Post_2020224.pdf

- https://www.newsvirginian.com/news/government/supreme-court-hears-arguments-on-atlantic-coast-pipeline-questions-arise/article_243f7ef9-59a9-5e66-8610-a9cb5f3de268.html

- <https://www.utilitydive.com/news/supreme-court-justice-gorsuch-warns-of-unintended-consequences-in-atlantic/572870/>

- <https://www.forbes.com/sites/kensilverstein/2020/02/26/atlantic-coast-pipeline-mirrors-keystone-xls-path>

From 4th Circuit to Supreme Court - A case history

- The Recorder – 2/27/20

https://www.abralliance.org/wp-content/uploads/2020/02/From-4th-Circuit-to-Supreme-Court-A-case-history-Recorder_20200227.pdf

A pipeline runs through Southern news deserts

- Columbia Journalism Review – 2/21/20

https://www.cjr.org/covering_climate_now/atlantic-coast-pipeline-news-deserts.php

In modern America, information inequality is a real and growing problem.

Bill intends to question Dominion Energy pipeline need

- The Recorder – 2/27/20

https://www.abralliance.org/wp-content/uploads/2020/02/Bill-intends-to-question-Dominion-Energy-pipeline-need-Recorder_20200227.pdf

If successful, Dominion would have to answer some significant questions about objective ‘need’ for a project such as the Atlantic Coast Pipeline.

Dominion's first storage projects to test increased solar integration, fewer distribution upgrades

- Utility Dive – 2/26/20

<https://www.utilitydive.com/news/dominions-first-storage-projects-to-test-increased-solar-integration-fewe/572970/>

Regional/Mountain Valley Pipeline, other

Mountain Valley weighs options should its crossing of the Appalachian Trail be blocked

- The Roanoke Times – 2/24/20

https://www.roanoke.com/news/local/mountain-valley-weighs-options-should-its-crossing-of-the-appalachian/article_b353d625-31b6-5908-b6d8-a7c29d426foe.html

Mountain Valley says it has other potential options for crossing the Appalachian Trail should the 4th Circuit’s ruling be upheld.

Democratic-led Senate committee kills bills to beef up regulation of pipeline construction

- Virginia Mercury – 2/20/20

<https://www.virginiamercury.com/2020/02/20/democratic-led-senate-committee-kill-bills-to-beef-up-regulation-of-pipeline-construction>

Opposition from chamber, industry and oil and gas groups amounted to opposition to “wanting to be held accountable and wanting to be responsible,” Hurst said.

Burning the Bridge: The Story of the Mountain Valley Pipeline - video

- Launchpad – 2/2020

<https://studentcam.us.launchpad6.com/fanfavorite/entry/11>

Big Picture:

Can you really negate your carbon emissions? Carbon offsets, explained.

- Vox – 2/27/20

<https://www.vox.com/2020/2/27/20994118/carbon-offset-climate-change-net-zero-neutral-emissions>

Vox, once again, gives a SOLID explanation of a complex and confusing issue. BTW, Dominion’s “Net-Zero” pledge is completely dependent on a pig-poop offset scheme that is a total shell game.

FERC Asserts Authority: Declaratory Order Says Eminent Domain Exempted From State Sovereign Immunity

- JD Supra – 2/25/20

<https://www.jdsupra.com/legalnews/ferc-asserts-authority-declaratory-66168/>

Basically, says the grant of eminent domain to private companies via the Natural Gas Act supersedes “state sovereignty”, and pipelines can take protected state land through eminent domain.

Pipelines Continue to Catch Fire and Explode

- FrackTracker – 2/21/20

<https://www.fracktracker.org/2020/02/pipelines-continue-to-catch-fire-and-explode/>

For the past decade, petroleum operators in the United States have been busy pumping record amounts of oil and gas from the ground. But has the pace been too frenzied?

Energy giant drops proposed Constitution Pipeline

- The Daily Star – 2/25/20

https://www.thedailystar.com/news/local_news/energy-giant-backs-out-of-constitution-pipeline/article_9c923154-239f-5201-85ac-84268610351f.html

Despite being approved by the Federal Energy Regulatory Commission, the project skidded into trouble when New York regulators refused to issue water-crossing permits, citing environmental concerns. Market changes made the project a financial loser, so the backers pulled the plug.

Climate change: how do I cope with our planet’s inevitable decline?

- The Conversation – 2/27/20

<http://theconversation.com/climate-change-how-do-i-cope-with-our-planets-inevitable-decline-128593>

Not as depressing as it sounds! But yes, a little depressing.

Wind has become the ‘most-used’ source of renewable electricity generation in the US

- CNBC – 2/27/20

<https://www.cnbc.com/2020/02/27/wind-is-now-most-used-source-of-renewable-electricity-generation-in-us.htm>

Last year saw wind generation in the U.S. overtake hydroelectric generation for the first time, according to data from the U.S. Energy Information Administration (EIA).