



## ABRA Update #281 – June 18, 2020

### Issue Highlights . . .

- Supreme Court Oks ACP to Cross Appalachian Trail in Cowpasture Decision
- ACP Requests FERC to Extend its Certificate for Two More Years
- Ag Secretary Perdue Orders Regulatory Streamlining of National Forests
- Updated Status of Legal Challenges to ACP Now Available
- New Report Documents Impact of Pipelines Crossing Streams and Rivers
- Natural Gas Demand to be Down by Record Levels in 2020
- *In the News* – page 4

### Supreme Court Oks ACP to Cross Appalachian Trail in Cowpasture Decision

The U.S. Supreme Court, by a 7-2 decision on June 15, overturned a decision by the Fourth Circuit Court of Appeals that the U.S. Forest Service (USFS) did not have authority to grant a permit for the Atlantic Coast Pipeline to cross the Appalachian National Scenic Trail (Trail).

In writing the opinion for the majority, Justice Thomas noted that the Fourth Circuit’s opinion had in effected made the AT a part of the National Park System (NPS) because the Trail was an area of land . . . administered by the Secretary of the Interior acting through the Director of the NPS, in accordance with provisions of the Mineral Leasing Act. With that logic, he said, the USFS lacked authority to grant a permit for the ACP to cross the Trail. Continuing, Thomas stated:

“ . . . it is undisputed that the Forest Service has jurisdiction over the ‘Federal lands’ within the George Washington National Forest. The question before us, then, becomes whether these *lands* within the forest have been removed from the Forest Service’s jurisdiction and placed under the Park Service’s control because the Trail crosses them.

“We conclude that the lands that the Trail crosses remain under the Forest Service’s jurisdiction and, thus, continue to be ‘Federal lands’ under the Leasing Act.”

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“In sum, read in light of basic property law principles, the plain language of the Trails Act and the agreement between the two agencies did not divest the Forest Service of jurisdiction over the lands that the Trail crosses. It gave the Department of the Interior (and by delegation the National Park Service) an easement for the specified and limited purpose of establishing and administering a Trail, but the land itself remained under the jurisdiction of the Forest Service. . . . at bottom, these cases boil down to a simple proposition: A trail is a trail, and land is a land.”

Thomas’s opinion also expressed concern that the Fourth Circuit’s theory “has striking implications for federalism and property rights.”

Justice Sotomayor, in a dissent joined by Justice Kagan, stated that “the only question here is whether parts of the Appalachian Trail are ‘lands’ within the meaning of these statutes.” Continuing, she stated:

“Federal law does not distinguish “land” from the Trail any more than it distinguishes ‘land’ from the many monuments, historic buildings, parkways, and recreational areas that are also units of the Park System. Because the Trail is land in the Park System, ‘no federal agency’ has ‘authority under the Mineral Leasing Act to grant a pipeline right-of-way across such lands.’

<p>Volunteer for ABRA’s Pipeline CSI Program</p> <p><b><u>Volunteer</u></b></p>	<p>Submit a report to the Pipeline CSI</p> <p><b><u>Report</u></b></p>	<p>Stay informed, like us on Facebook.</p> 	<p>Support ABRA financially</p> <p><b><u>GiveNow</u></b></p>
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“By contrast, today’s Court suggests that the Trail is not ‘land’ in the Park System at all. . . Because today’s Court condones the placement of a pipeline that subverts the plain text of the statutes governing the Appalachian Trail, I respectfully dissent.”

In commenting upon the Supreme Court’s decision, D. J. Gerkin of Southern Environmental Law Center, who had successfully argued the case for the Respondents (most of whom were ABRA members) before the Fourth Circuit, said:

“While today’s decision was not what we hoped for, it addresses only one of the many problems faced by the Atlantic Coast Pipeline. This is not a viable project. It is still missing many required authorizations, including the Forest Service permit at issue in today’s case, and the D.C. Circuit Court of Appeals will soon consider the mounting evidence that we never needed this pipeline to supply power. It’s time for these developers to move on and reinvest the billions of dollars planned for this boondoggle into the renewable energy that Virginia and North Carolina customers want and deserve.”

A copy of the majority opinion and dissent are available [here](#).

## **ACP Requests FERC to Extend its Certificate for Two More Years**

Dominion Energy submitted a request to the Federal Energy Regulatory (FERC) for a two-year extension of time for the Atlantic Coast Pipeline to be completed. The certificate that FERC issued for the project on October 13, 2017 expires on October 13 of this year. Dominion June 16 request, which was anticipated, asks for the certificate to build the pipeline to be extended to October 13, 2022. In its request, Dominion cites “unforeseen delays in permitting” and contends that “markets to be served by the Projects have been chronically constrained in terms of natural gas supply, as interstate natural gas pipeline capacity is either already fully subscribed or nonexistent. The need for the Projects is undiminished.”

FERC posted on June 17 a notice of Dominion’s extension of time request and established a public comment deadline on the request of July 2. For a copy of Dominion’s request, click [here](#); for a copy of the FERC Notice, click [here](#).

[ABRA urges its members and supporters to submit comments to FERC in opposition to the extension of the ACP certificate. We will provide additional information on submitting comments to FERC within the coming week.](#)

## **Ag Secretary Perdue Orders Regulatory Streamlining of National Forests**

Agriculture Secretary Sonny Perdue has announced a major streamlining of regulatory processes under the management of the U.S. Forest Service (USFS). In a June 12 memorandum to the Chief of the Forest Service Perdue directed that the USFS increase the productivity of National Forests and Grasslands, increase access to National Forests, and expedite environmental reviews. The memo comes 8 days after [President Trump’s June 4 Executive Order](#) directing department and agency heads to accelerate regulatory actions – particularly those benefiting energy projects – as part of the economic recovery from the Covid19 pandemic. Among specific directives included in Secretary Perdue’s memorandum to the Forest Service are:

- streamline processes and identify new opportunities to increase America’s energy dominance and reduce reliance on foreign countries for critical minerals;
- modernize management practices and reduce regulatory burdens to promote active management on Forest Service lands to support and protect rural communities, critical watersheds, and species habitat; and

- expedite broadband development on Forest Service lands to increase internet connectivity in rural America.

For a link to the Secretary's press release announcing the Forest Service directive, which includes within it a link to his memorandum, click [here](#).

### **Updated Status of Legal Challenges to ACP Now Available**

An updated "Status of Legal Challenges to the Atlantic Coast Pipeline" is now available on the ABRA website home page (click [here](#)). The paper provides the current status (as of June 16) of the legal challenges to permits and certifications for the ACP. At this writing, the project continues to be without 8 critical permits.

### **New Report Documents Impact of Pipelines Crossing Streams and Rivers**

West Virginia Rivers Coalition and Trout Unlimited have released a new report discussing the impact pipeline construction has on rivers and streams. *Reducing Impacts of Pipelines Crossing Rivers and Streams* notes that the Atlantic Coast Pipeline and Mountain Valley Pipeline routes include over 2,600 waterbody crossings in West Virginia, Virginia and North Carolina, including approximately 250 rivers and streams containing species of concern such as native and naturally reproducing trout, anadromous fish and sensitive mussels. The 7-page study discusses the various methods used for pipelines to cross streams and rivers and includes several case studies that document the environmental challenges posed by pipelines crossing water bodies. A copy of the study is available [here](#).

### **Natural Gas Demand to be Down by Record Levels in 2020**

A new report from the International Energy Agency (IEA) forecasts that "global natural gas consumption is heading for an estimated 4% drop in 2020." Among highlights in the report, [Gas 2020](#), are:

- In the United States output of gas-fired power generation reached new highs in 2019, rising to a record share of about 38% of total generation. However, growth was lower than in 2018.
- Global natural gas production grew at a rapid pace, up by 3% in 2019, largely driven by the United States, which accounted for over 70% of incremental gas supply. Gas production in the United States grew by slightly more than 10%, with the Appalachian and Permian basins contributing almost two-thirds of this growth.
- In spite of an expected gradual recovery in 2021, the Covid-19 crisis will have long-lasting impacts on natural gas markets. This is because the main medium-term drivers of demand growth are subject to several key uncertainties.
- China will become the No. 1 LNG buyer of LNG in 2023, and the United States will be the No. 1 LNG seller in 2025.

## ***In the News:***

### **Local/Atlantic Coast Pipeline**

#### **Pipeline wins Appalachian Trail battle but may lose war**

- E&E News – 6/16/20

<https://www.eenews.net/stories/1063396029>

Related:

- <https://www.viriniamercury.com/2020/06/15/as-supreme-court-hands-win-to-atlantic-coast-pipeline-other-hurdles-remain-for-project>

#### **Report: landslides imperil pipelines**

- The Recorder – 6/18/20

[https://www.abralliance.org/wp-content/uploads/2020/06/Report-landslides-imperil-pipelines-Recorder\\_20200618.pdf](https://www.abralliance.org/wp-content/uploads/2020/06/Report-landslides-imperil-pipelines-Recorder_20200618.pdf)

The routes of the proposed Atlantic Coast Pipeline and the Mountain Valley Pipeline pass through the most landslide-prone landscape in the United States, according to a new study released June 11 by the Allegheny-Blue Ridge Alliance.

From the other side of the fence...

#### **State Officials Applaud U.S. Supreme Court Atlantic Coast Pipeline Decision**

- The Intelligencer. Wheeling news-Register – 6/17/20

<https://www.theintelligencer.net/news/top-headlines/2020/06/state-officials-applaud-u-s-supreme-court-atlantic-coast-pipeline-decision/>

#### **Temporary RV park for Atlantic Coast Pipeline workers planned in Amherst industrial site**

- The News & Advance – 6/11/20

[https://www.newsadvance.com/news/local/temporary-rv-park-for-atlantic-coast-pipeline-workers-planned-in-amherst-industrial-site/article\\_785a75e3-de3b-5a60-8e01-77bc7d6ab21c.html](https://www.newsadvance.com/news/local/temporary-rv-park-for-atlantic-coast-pipeline-workers-planned-in-amherst-industrial-site/article_785a75e3-de3b-5a60-8e01-77bc7d6ab21c.html)

Town of Amherst officials plan to hold a public hearing on July 8th, on a request for a temporary RV park, in an Amherst industrial park, to house workers associated with the Atlantic Coast Pipeline.

### **Regional/Mountain Valley Pipeline, other**

#### **MVP Again Delays Service, but Appalachian Pipeline Nearly Complete**

- Natural Gas Intelligence – 6/12/20

<https://www.naturalgasintel.com/articles/122290-mvp-again-delays-service-but-appalachian-pipeline-nearly-complete>

Related:

- <https://www.businesswire.com/news/home/20200611005848/en/MVP-Prepares-Construction-Completion>

#### **Advocates warn environmental rollbacks threaten Va. minority communities**

- Virginia Mercury – 6/17/20

<https://www.viriniamercury.com/2020/06/17/advocates-warn-environmental-rollbacks-threaten-va-minority-communities>

Lawmakers and activists say the administration's actions — meant to boost the lagging economy — could have disproportionate effects on minority communities that live near pipeline and power projects. Local communities are at risk of missing the chance to weigh in on decisions and they could face more pollution entering their communities.

#### **Jones and Hartman: Why Roanoke Gas should opt out of MVP deal**

- The Roanoke Times – 6/12/20

[https://www.roanoke.com/opinion/commentary/jones-and-hartman-why-roanoke-gas-should-opt-out-of-mvp-deal/article\\_ffof90e2-c7cb-5e8d-997e-1fffa34400f4.html](https://www.roanoke.com/opinion/commentary/jones-and-hartman-why-roanoke-gas-should-opt-out-of-mvp-deal/article_ffof90e2-c7cb-5e8d-997e-1fffa34400f4.html)

In June 2020, Roanoke Gas can cancel their agreement to purchase \$100 million worth of gas from the ill-fated MVP project with no penalties. We urge them to do so.

## Big Picture:

### IEA unveils major new green Covid-19 recovery roadmap

- EDIE – 6/18/20

<https://www.edie.net/news/6/IEA-unveils-major-new-green-Covid-19-recovery-roadmap/>

The International Energy Agency (IEA) has set out a string of policy recommendations green Covid-19 recovery packages, which, if followed in full, could slash annual energy-related emissions by billions of tonnes, while creating jobs, improving air pollution and boosting GDP.

### Wide range of groups urge FERC to reject anti-net metering petition

- Politico – 6/16/20

<https://www.politico.com/news/2020/06/16/wide-range-of-groups-urge-ferc-to-reject-anti-net-metering-petition-324198>

The proposal risks upending the entire rooftop solar industry and could throw state utility regulation chaos, dozens of groups told FERC. Some utilities filed to intervene but did not submit comments.

Related:

- <https://www.utilitydive.com/news/utilities-remain-mute-on-ferc-net-metering-petition-leave-filing-to-face-0/579866/>

### Watchdog questions pandemic enforcement policy

- E&E Greenwire – 6/18/20

<https://www.abralliance.org/wp-content/uploads/2020/06/Watchdog-questions-EPAs-pandemic-enforcement-policy-EE-Greenwire-6-18-20.pdf>

EPA's internal watchdog said the agency's discretionary enforcement policy during the COVID-19 pandemic threatens its mission of protecting the environment.

### "Two different realities": Why America needs environmental justice

- CBS News – 6/12/20

<https://www.cbsnews.com/news/environmental-justice-movement-climate-change-racism-peggy-shepard/>

Interview with Peggy Shepard, the co-founder of WE ACT for Environmental Justice, a New York City nonprofit organization that's been working to improve the environment of local communities since 1988.

### Special Report: Millions of abandoned oil wells are leaking methane, a climate menace

- Reuters – 6/16/20

<https://www.reuters.com/article/us-usa-drilling-abandoned-specialreport/special-report-millions-of-abandoned-oil-wells-are-leaking-methane-a-climate-menace-idUSKBN23N1NL>

In the U.S., abandoned oil and gas wells together emitted 281 thousand tons of methane in 2018, according to the data, which was included in the U.S. Environmental Protection Agency's most recent report.

### EU to make big push for hydrogen, despite green concerns and infrastructure gaps

- Climate Home News – 6/17/20

<https://www.climatechangenews.com/2020/06/17/eu-make-big-push-hydrogen-despite-green-concerns-infrastructure-gaps/>

Hydrogen is a clean fuel when burned, making it attractive for heavy industry, but most is derived from fossil fuels not renewable energy. For now.

### Despite pandemic setbacks, the clean energy future is underway

- TechCrunch – 6/18/20

<https://techcrunch.com/2020/06/18/despite-pandemic-setbacks-the-clean-energy-future-is-underway/>

The economic lockdown resulting from the coronavirus pandemic has had an immediate negative impact on renewable energy projects and electric vehicles sales, but the sustainable trends are still in place and may even be strengthened over the longer term.