



U.S. Supreme Court Allows Atlantic Coast Pipeline, LLC to Pursue Pipeline Construction Across the Appalachian Trail

In recent weeks, the U.S. Supreme Court handed down two important rulings relating to the Atlantic Coast Pipeline and the Keystone XL Pipeline. In this article, we will address the ruling of the Supreme Court in the Atlantic Coast Pipeline case (*U.S. Forest Service et al. v. Cowpasture River Preservation Assoc. et al.* No. 18-1584). In a following article, we will discuss the Supreme Court decision in the Keystone XL Pipeline case (*U.S. Army Corps of Engineers, et al. v. Northern Plains Resource Council, et al.*, No. 19A1053).

U.S. Forest Service et al. v. Cowpasture River Preservation Association et al., before U.S. Supreme Court, No. 18-1584

On June 15, 2020, the U.S. Supreme Court [overturned](#) an Appellate Court's decision, ruling that the U.S. Forest Service had authority to grant a right-of-way to the pipeline company because it has jurisdiction over any Federal lands within the National Forest System, even if Federal lands are crossed by a Trail administered by the National Park Service.

In December 2018, the U.S. Court of Appeals for the Fourth Circuit [concluded](#) that the U.S. Forest Service did not have the authority to grant Atlantic Coast Pipeline, LLC, a right-of-way across the Appalachian National Scenic Trail for the construction of a portion of the Atlantic Coast Pipeline.

Procedural Background

In February 2018, the Cowpasture River Preservation Association along with six other environmental conservation groups filed a joint petition before the 4th Circuit Court of Appeals requesting judicial review of a Special Use Permit issued from the U.S. Forest Service to Atlantic Coast Pipeline, LLC, on January 23, 2018 (*Cowpasture River Preservation v. Forest Service*, No. 18-1144). This Special Use Permit would authorize the use and occupancy of National Forest System (NFS) lands for the construction and operation of the pipeline and grant a right-of-way across the Appalachian National Scenic Trail, which crosses the Georges Washington National Forest.

One key argument against the permit issuance is that the U.S. Forest Service did not have statutory authority to grant a right-of-way across the Appalachian Trail, and doing so violated the Mineral Leasing Act and National Trails System Act. In this regard, petitioners argued that the Appalachian Trail belongs to the National Park System in accordance with 16 U.S.C. § 1244(a)(1), stating that the Appalachian Trail is administered by the Secretary of the Interior, who delegated that duty to the



National Park Service agency. Consequently, the Trail is not a Federal land and cannot be subjected to a pipeline right-of-way pursuant to the Mineral Leasing Act, 30 U.S.C. § 185.

In reply, the U.S. Forest Service contended that the Mineral Leasing Act and National Trails System Act provides the Forest Service with the jurisdiction to grant pipeline rights-of-way through Federal lands within the National Forest System crossed by the Appalachian Trail.

The 4th Circuit Court of Appeals sided with petitioners by vacating the Special Use Permit and concluded that the U.S. Forest Service did not have the authority to grant Atlantic Coast Pipeline, LLC, a right-of-way across the Appalachian Trail.

The U.S. Forest Service filed a petition with the U.S. Supreme Court for a writ of certiorari on June 25, 2019, seeking to appeal the Appellate Court's decision to vacate the Special Use Permit issued by the Forest Service. The U.S. Supreme Court agreed to hear the case on October 4, 2019, in order to rule on whether the U.S. Forest Service has statutory authority to grant pipeline rights-of-way in this case.

The U.S. Supreme Court's Ruling

The Supreme Court disagreed with the argument that the National Park Service should have jurisdiction over Federal lands within the National Forest System crossed by the Appalachian Trail, for the sheer fact that the National Park Service administers the Appalachian Trail. The Supreme Court pointed out that "the Department of the Interior's decision to assign responsibility over the Appalachian Trail to the National Park Service did not transform the land over which the Trail passes into land within the National Park Service."

In support of this statement, the Supreme Court first chose to focus on the significance of the interests and authority attached to a right-of-way under the National Trails System Act. The Court explained that although the Forest Service granted right-of-way agreements to the National Park Service under the National Trails System Act for nearly 780 miles of Appalachian Trail route within national forests, this does not mean that the Federal lands subject to the rights-of-way became lands within the National Park System. To further articulate its point, the Supreme Court drew an analogy with the rights of private landowners in a same situation and stresses the non-possessory characteristic of an easement or right-of-way that is limited to a specific use of the land.

The private land subjected to a right-of-way should remain the property of the owner, just like the Federal lands in the case at hand should remain under the jurisdiction of the Forest Service, because "easements are not land, they merely burden land that continues to be owned by another."

The Supreme Court noted that the Congress did not intend for the right to use another's land granted to a federal agency to be extended under the National Trails System Act and subsequently stated that "the lands that the Trail crosses are still "Federal lands" ... and the Forest Service may grant a pipeline right-of-way through them – just as it granted a right-of-way for the Trail."

Second, the Court also declared that the National Park Service is in charge of administering the Appalachian Trail through delegation of authority by the Secretary of the Interior. This does not include responsibility over the lands crossed by it contrary to what Respondents claim. The Court continues that it cannot seriously be considered that "without a word from Congress, the Department of the Interior has the power to vastly expand the scope of the National Park Service's jurisdiction through its delegation choices."



As a result, the U.S. Supreme Court reversed and remanded the Appellate Court’s decision to vacate the Special Use Permit and pipeline right-of-way, and ruled that “the Department of the Interior’s decision to assign responsibility over the Appalachian Trail to the National Park Service did not transform the land over which the Trail passes into land within the National Park System;” therefore, the Forest Service has statutory authority to grant pipeline rights-of-way across the Appalachian Trail.

Although this decision was favorable to the continuity of the project, Dominion Energy and Duke Energy unsurprisingly announced on July 5, 2020, through a [news release](#) that they chose to abandon construction of the Atlantic Coast Pipeline following a decision rendered in another case by the U.S. District Court for the District of Montana (*Northern Plains Resource Council, et al. v. U.S. Army Corps of Engineers, et al.*, No. 4:19-cv-00044), which cancels NWP 12 approvals for the construction of new pipeline projects. The two companies declare that this lower court decision brings too many uncertainties regarding the economic viability of the Atlantic Coast Pipeline project.

Author:

Chloe Marie, Research Specialist

This material is provided as part of a partnership with the National Agricultural Law Center and is based upon work supported by the National Agricultural Library, Agricultural Research Service, U.S. Department of Agriculture.

Follow us on Facebook and Twitter! @AgShaleLaw



**PENN STATE CENTER FOR
AGRICULTURAL AND SHALE LAW**

329 Innovation Blvd., Suite 118
University Park, PA 16802
Phone: 814-865-4290
Website: AgLaw.psu.edu

PROFESSIONAL STAFF

Center Director

Ross H. Pifer
rpifer@psu.edu

Staff Attorney
Brook Duer
dhd5103@psu.edu

Staff Attorney
Audry Thompson
aet17@psu.edu

Staff Attorney
Jackie Schweichler
jks251@psu.edu

Research Specialist
Chloe Marie, LL.M.
cjm445@psu.edu

CENTER MISSION AND BACKGROUND

The Center for Agricultural and Shale Law conducts research and educational programs to serve a wide variety of stakeholders including agricultural producers, landowners, mineral interest and royalty owners, business professionals, judges, attorneys, legislators, government officials, community groups, and the general public. Center programs are funded in part by the Commonwealth of Pennsylvania through the Pennsylvania Department of Agriculture. The Center for Agricultural and Shale Law is a partner of the National Agricultural Law Center (NALC) at the University of Arkansas System Division of Agriculture, which serves as the nation’s leading source of agricultural and food law research and information.

This publication is available in alternative media on request. Penn State is an equal opportunity, affirmative action employer, and is committed to providing employment opportunities to all qualified applicants without regard to race, color, religion, age, sex, sexual orientation, gender identity, national origin, disability, or protected veteran status. U. Ed. PSL 23-41

