CLIENT ALERTS & INSIGHTS

Supreme Court Hears Arguments on Atlantic Coast Pipeline

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On February 24, 2020, the U.S. Supreme Court heard arguments on a critical permit needed for completion of the Atlantic Coast Pipeline, a controversial natural gas pipeline crossing the Appalachian Trail. Supporters of the pipeline, including Solicitor General Noel Francisco for the Trump Administration, argued that the U.S. Forest Service has jurisdiction over land in the George Washington National Forest, where a 0.1-mile segment of the pipeline would cross hundreds of feet beneath the Appalachian Trail. The consolidated cases are U.S. Forest Service v. Cowpasture River Assn. and Atlantic Coast Pipeline LLC v. Cowpasture River Assn.[1]

Background:

Pipeline developers Dominion Energy and Duke Energy asked the Supreme Court to reverse a 2018 Fourth Circuit decision which held that the Forest Service lacked statutory authority to grant a pipeline right of way across the Appalachian Trail.

In *Cowpasture River Preservation Assoc. v. Forest Service*,[2] the Fourth Circuit reasoned that the Mineral Leasing Act - a 1920 federal law that governs rights of way through federal land for oil and gas pipelines - allows rights of way for pipelines on federal land, *except for land in the National Park System*. The Court noted that the 1968 National Trails System Act (the "Trails Act") had transferred more than 1,000 miles of lands crossed by the Appalachian Trail to the National Park System, and that such lands are not subject to rights of way under the Mineral Leasing Act, unlike other federal lands. Because the Court considered the Appalachian Trail to be a unit of the National Park System, it held that the Forest Service lacked the authority to approve the right of way and accordingly vacated the Special Use Permit and Record of Decision granting the right of way for construction of the Atlantic Coast Pipeline.

Issue and Main Arguments:

The issue before the Supreme Court is whether the U.S. Forest Service has the authority to grant rights of way under the Mineral Leasing Act through lands traversed by the Appalachian Trail within national forests.[3]

Led by Dominion Energy, appellants argued that the Trails Act did not transfer lands crossed by the Appalachian Trail to the National Park System. The Atlantic Coast Pipeline developers maintain that the Park Service is charged with overall administration of the Appalachian Trail, but the actual lands traversed by the Appalachian Trail within national forests remain under the jurisdiction of the Forest Service. As such, the U.S. Forest Service has the authority to grant the necessary rights of way. Appellants asserted, "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."[4]

Respondents, including the Sierra Club and other environmental groups opposing construction of the Atlantic Coast Pipeline, argued that no federal agency can grant rights of way for the Atlantic Coast Pipeline because the Appalachian Trail is part of the National Park System and therefore *only* Congress can approve the crossing.[5]

Significance:

The Supreme Court's decision should clarify the authority of the U.S. Forest Service to grant pipeline easements that cross the Appalachian Trail and may ultimately determine if the Atlantic Coast Pipeline will be completed. Construction of the $8 billion pipeline project has been delayed for more than a year due to legal disputes.

For more information on this topic, contact a member of Benesch's Energy Practice Group.

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[1] https://www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/public/18-1584.html

[2] The Fourth Circuit opinion is available here: https://www.scotusblog.com/wp-content/uploads/2019/07/18-1584-18-1587-opinion-below.pdf

[3] https://www.scotusblog.com/case-files/cases/united-states-forest-service-v-cowpasture-river-preservation

[4] *See Appellants' Opening Brief* at 2, available at https://www.supremecourt.gov/DocketPDF/18/18-1584/124078/20191202141517431_18-1587%20Atlantic

[5] https://www.washingtonpost.com/local/virginia-politics/us-supreme-court-to-decide-winner-in-case-of-gas