Nos. 18-1584 and 18-1587

In the Supreme Court of the United States

UNITED STATES FOREST SERVICE, ET AL., PETITIONERS

v.

COWPASTURE RIVER PRESERVATION ASSOCIATION, ET AL.

ATLANTIC COAST PIPELINE, LLC, PETITIONER

v.

COWPASTURE RIVER PRESERVATION ASSOCIATION, ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE FEDERAL PETITIONERS

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QUESTION PRESENTED

The Appalachian National Scenic Trail (Appalachian Trail) is more than 2000 miles long, extending from Maine to Georgia, with approximately 1000 miles of the trail crossing through lands within National Forests. The National Trails System Act, 16 U.S.C. 1241 *et seq.*, provides that the Appalachian Trail is "a trail" that "shall be administered primarily as a footpath by the Secretary of the Interior." 16 U.S.C. 1244(a)(1). That Act further provides that "[n]othing contained in [the Act] shall be deemed to transfer among Federal agencies any management responsibilities established under any other law for federally administered lands." 16 U.S.C. 1246(a)(1)(A). Under the Mineral Leasing Act, 30 U.S.C. 181 *et seq.*, the United States Forest Service (Forest Service) has authority to grant certain rights-of-way through lands in the National Forest System, but no federal agency has authority under that statute to grant equivalent rights-of-way through lands in the National Park System. See 30 U.S.C. 185(a) and (b)(1). The question presented is:

Whether the Forest Service has authority to grant rights-of-way under the Mineral Leasing Act through lands traversed by the Appalachian Trail within National Forests.

PARTIES TO THE PROCEEDING

Petitioners in No. 18-1584 are the United States Forest Service; Bob Lueckel, Acting Regional Forester of the Eastern Region of the Forest Service; and Ken Arney, Regional Forester of the Southern Region of the Forest Service. Petitioner in No. 18-1587 is Atlantic Coast Pipeline, LLC.

Respondents are Cowpasture River Preservation Association, Highlanders for Responsible Development, Shenandoah Valley Battlefields Foundation, Shenandoah Valley Network, Sierra Club, Virginia Wilderness Committee, and Wild Virginia, Inc.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-64a) is reported at 911 F.3d 150. The permit and decision of the United States Forest Service (Pet. App. 65a-101a, 102a-240a) are unreported.

JURISDICTION

The judgment of the court of appeals was entered on December 13, 2018. A petition for rehearing was denied on February 25, 2019 (Pet. App. 241a-242a). On May 16,

2019, the Chief Justice extended the time within which to file a petition for a writ of certiorari to and including June 25, 2019, and the petition was filed on that date. The petition for a writ of certiorari was granted on October 4, 2019. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

STATUTORY PROVISIONS INVOLVED

Pertinent provisions are set out in an appendix to this brief. App., *infra*, 1a-19a.

STATEMENT

The United States Forest Service (Forest Service or USFS) is the agency within the United States Department of Agriculture responsible for administering federal lands in the National Forest System. 16 U.S.C. 472; 36 C.F.R. 200.3(b)(2)(i). This case concerns the Forest Service's authority under 30 U.S.C. 185 to grant a right-of-way for an underground natural-gas pipeline through lands owned by the United States within the George Washington National Forest, where that right-of-way would cross underneath the Appalachian National Scenic Trail (Appalachian Trail or Trail). See J.A. 76, 98. The existence of that authority ultimately depends on whether the "lands" within the National Forest traversed by the Trail remain National Forest lands or whether Congress has converted those lands into "lands in the National Park System," 30 U.S.C. 185(b)(1).

1. a. The Mineral Leasing Act, 30 U.S.C. 181 *et seq.*, governs rights-of-way through federal lands "for pipeline purposes for the transportation of oil, natural gas, synthetic liquid or gaseous fuels, or any refined product produced therefrom." 30 U.S.C. 185(a). In 1973, Congress generally revised Section 185's pipeline right-of-way provisions. See Act of Nov. 16, 1973, Pub. L. No.

93-153, § 101, 87 Stat. 577. As amended, Section 185 authorizes the Secretary of the Interior or the head of another federal agency "which has jurisdiction over Federal lands" to grant "[r]ights-of-way through any Federal lands" for such pipeline purposes. 30 U.S.C. 185(a) and (b)(3). If the surface of "all the Federal lands involved" is "under the jurisdiction of one Federal agency," the head of that agency (rather than the Secretary of the Interior) possesses authority to grant the right-of-way. 30 U.S.C. 185(c)(1).

The 1973 amendment defined "Federal lands" in Section 185 to mean "all lands owned by the United States except," as relevant here, "lands in the National Park System." 30 U.S.C. 185(b)(1). As a result, if federal "lands" in a National Forest that are crossed by the Appalachian Trail have become "lands in the National Park System," *ibid.*, then no federal agency would have authority under the Mineral Leasing Act to grant a pipeline right-of-way across such lands.

b. Congress has defined the "National Park System" to mean "the areas of land and water," 54 U.S.C. 100102(2) (Supp. V 2017), that include "any area of land and water administered by the Secretary [of the Interior], acting through the Director [of the National Park Service (Park Service or NPS)], for park, monument, historic, parkway, recreational, or other purposes." 54 U.S.C. 100501 (Supp. V 2017) (enacted 2014); see 16 U.S.C. 1c(a) (1970) (materially similar; repealed 2014). Congress established that system of federal lands and waters to "conserve the scenery and the natural and historic objects and the wild life therein," and to "provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations." Act of Aug.

25, 1916, ch. 408, § 1, 39 Stat. 535; see 16 U.S.C. 1 (1970) (repealed 2014); 54 U.S.C. 100101(a) (Supp. V 2017).

c. The National Forest System, by contrast, includes federal lands that have long served a variety of different functions. That system originated in multiple statutes and Presidential proclamations in the 1890s. See B. E. Fernow, *Report Upon the Forestry Investigations of the U.S. Department of Agriculture, 1877-1898*, H.R. Doc. No. 181, 55th Cong., 3d Sess. 190-204 (1899); Paul W. Gates, *History of Public Land Law Development* 563-579 (1968). In 1897, Congress provided that National Forests (then called "forest reserves") are established "to improve and protect the forest" therein, "to furnish a continuous supply of timber," and to manage "water flows." Act of June 4, 1897, ch. 2, 30 Stat. 11, 34-35. That directive has since expanded to include not only "timber" and "watershed" purposes, but also "outdoor recreation" and "wildlife and fish purposes," reflecting the lands' administration for "multiple use and sustained yield." 16 U.S.C. 528-529 (enacted 1960); see *United States* v. *New Mexico*, 438 U.S. 696, 713-714 (1978). The National Forest System today "consists of units of federally owned forest, range, and related lands throughout the United States and its territories." 16 U.S.C. 1609(a). The system of lands is "vast," *Ohio Forestry Ass'n* v. *Sierra Club*, 523 U.S. 726, 728 (1998), encompassing 154 National Forests, 20 National Grasslands, and other lands that together occupy approximately 193 million acres in 43 States, Puerto Rico, and the Virgin Islands. USFS, *Land Areas of the National Forest System* 1 & page after title page (Nov. 2018), https://go.usa.gov/xpKny.

The Forest Service exercises authority delegated by the Secretary of Agriculture to "administer[] and man-

age[] the National Forest System lands," including, as relevant here, "land in the National Forests." 36 C.F.R. 200.3(b)(2)(i) and (ii); see Act of Feb. 1, 1905, ch. 288, § 1, 33 Stat. 628 (16 U.S.C. 472) (Secretary of Agriculture has authority to administer public lands reserved as National Forests); *History of Public Land Law Development* 579-580; see also 16 U.S.C. 471 (1970). By 1973, the Forest Service, in administering the National Forest System, had authorized 700 rights-of-way for oil and gas pipelines by invoking statutory authority distinct from the Mineral Leasing Act. S. Rep. No. 207, 93d Cong., 1st Sess. 75 (1973); see *id.* at 99 (statement of Under Secretary of Agriculture).[1]

The federal lands relevant to the pipeline proposal in this case are within the George Washington National Forest. J.A. 76, 98. In 1918, President Woodrow Wilson established that forest—originally named the Shenandoah National Forest—in Virginia and West Virginia pursuant to the Weeks Act, which provides that the relevant lands "shall be permanently reserved, held, and administered as national forest lands," Act of Mar. 1, 1911, ch. 186, § 11, 36 Stat. 963 (16 U.S.C. 521). See Proclamation of May 16, 1918, 40 Stat. 1779; USFS, S. Region, *George Washington National Forest: A History* 4, 11 (1993), https://go.usa.gov/xpKnE. The President's 1918 Proclamation states that "all lands" in the relevant area "which have been or may hereafter be acquired by the United States * * * shall be permanently reserved and administered as part of [that] National Forest." 40 Stat. 1779. The National Forest was later

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[1] Until 1973, the Mineral Leasing Act conferred its right-of-way authority only on the Secretary of the Interior. 30 U.S.C. 185 (1970). That authority covered pipeline rights-of-way "through the public lands, including the forest reserves." *Ibid.*

renamed the George Washington National Forest, Exec. Order No. 5867 (June 28, 1932), and now extends roughly 140 miles along the Appalachian and Blue Ridge Mountains in Virginia and West Virginia, encompassing approximately 1.07 million acres of federal land. USFS, Region 8, *Revised Land and Resource Management Plan: George Washington National Forest* 1-6 (Nov. 2014), https://go.usa.gov/xpKnm; C.A. App. 1774.

d. In 1968, Congress enacted the National Trails System Act (Trails Act), Pub. L. No. 90-543, 82 Stat. 919 (16 U.S.C. 1241 *et seq.*), which established the statutory framework for a "national system of trails" that now includes 30 congressionally designated national scenic and historic trails. 16 U.S.C. 1242(a), 1244(a)(1)-(30). Congress in that Act "designat[ed]" the Appalachian Trail—one of the system's two "initial components"—as a national scenic trail. 16 U.S.C. 1241(b), 1244(a)(1).

i. "The Appalachian Trail itself, however, predates th[at] Federal legislation by several decades." S. Rep. No. 636, 95th Cong., 2d Sess. 3 (1978). In 1922, private citizens working with the Forest Service and other agencies began clearing and marking the Appalachian Trail. Bureau of Outdoor Recreation, U.S. Dep't of the Interior, *Trails for America: Report on the Nationwide Trail Study* 32 (1966) (*Trails for America*), https://go.usa.gov/xpKnp. In 1937, they completed the roughly 2000-mile footpath. *Ibid.*; see J.A. 76. By 1939, the Park Service, the Forest Service, and 13 of the 14 States with lands traversed by the Trail had become parties to agreements in which they committed to facilitate the Trail's public use on those lands, forgo logging within 200 feet of the Trail, and avoid incompatible development within a protected zone—"named the Appalachian Trailway"—that generally extended outward from the

Trail on each side for one mile (on federal lands) or one-quarter mile (on state lands).[2] Where the Trail crossed private property, access depended on "informal arrangements" by private trail clubs, which generally involved nonbinding "verbal permission of landowners" for the public to cross their lands.[3] By 1966, 43% (866 miles) of the Trail crossed such private lands, 23% (452 miles) crossed state lands, and 34% crossed federal lands. *Trails for America* 42. Of the 682 miles of the Trail on federal lands, 507 miles were within National Forests, 172 miles were within areas of the National Park System, and three miles were on land administered by the Tennessee Valley Authority. *Ibid.*; see *id.* at 36-37 (map).

In 1966, the Department of the Interior issued the report entitled *Trails for America*, which "formed the basis" for the 1968 Trails Act. H.R. Rep. No. 1631, 90th Cong., 2d Sess. 7 (1968) (1968 House Report); see S. Rep. No. 1233, 90th Cong., 2d Sess. 2 (1968) (1968 Senate Report). The report recommended establishing "a Nationwide System of Trails" and designating "the

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[2] See *Nationwide Trails System: Hearing on H.R. 4865, and Related Bills Before the Subcomm. on National Parks and Recreation of the House Comm. on Interior and Insular Affairs*, 90th Cong., 1st Sess. 103 (1967) (*1967 House Hearing*) (statement of Chairman of Appalachian Trail Conference (ATC)); *The Appalachian Trail: Hearing on S. 622 Before the Subcomm. on Parks and Recreation of the Senate Comm. on Interior and Insular Affairs*, 89th Cong., 1st Sess. 3 (1965) (*1965 Senate Hearing*) (letter from Secretary of the Interior); *id.* at 9 (statement of Sen. Nelson).

[3] *1965 Senate Hearing* 27 (statement of ATC Chairman); see *id.* at 3 (letter from Secretary of the Interior); see *1967 House Hearing* 103 (ATC Chairman) ("Nothing was binding in these original permissions," which caused "occasional difficulties" in maintaining "continued permission to cross the owner[s'] private land.").

existing Appalachian Trail" as the system's "initial unit." *Trails for America* 14. The report noted "complex[ities]" related to the fact that "[t]he Appalachian Trail passe[d] * * * over lands in Federal, State, and private ownership" through 14 States. *Id.* at 25, 42. The report recommended that "[p]rimary administrative authority" over the Trail should be assigned to the Secretary of the Interior "to insure continuity of [the] national scenic trail and to coordinate the efforts of the participating agencies." *Id.* at 25. Where the Trail crossed federal lands, the report continued, "[t]he land management agency having jurisdiction of the land on which any particular segment of the trail lies[] should be responsible for management." *Ibid.* But for other "sections of the trail[] that are outside the exterior boundaries of Federal areas," the Secretary of the Interior should "encourage State and local public agencies to acquire, develop, and manage" those sections "or to enter into cooperative agreements with the private owners." *Id.* at 26.

The report proposed that "[p]ublic control of the trail" and "protect[ion]" for the surrounding areas be secured by obtaining two types of "easements." *Trails for America* 27. "[R]ight-of-way easements" would be obtained from "the owners of lands through which the trail passes" to "provide for public right of passage or use of the lands," *i.e.*, a "perpetual right for individuals to walk or ride along the specified trail." *Ibid.* "Scenic easements" along the trail would also be obtained to restrict an "owner's right to develop or use his land in ways that could damage recreation values." *Ibid.* Under that proposal, "title to the lands" could "remain in the owners['] hands" (except where "major public-use facilities" were built), and appropriate easements would

be secured after the Secretary "locate[d] and designate[d] the route and width of [the] right-of-way of [the] trail." *Ibid.* The report indicated that obtaining easement interests in land could eliminate the need to acquire the land itself, such that "fee simple title [would be obtained] only where, in [the relevant agency's] judgment, lesser interests in land (including scenic and public use easements) would not be adequate." *Id.* at 26; see 1968 Senate Report 3 (stating that agencies should "obtain scenic or other easements for rights-of-way necessary for the * * * public use of the trail, and the protection of the scenic and other qualities of the trail").

ii. Congress enacted the Trails Act in 1968 against the background just described. The Trails Act "established" the "Appalachian National Scenic Trail"—"a trail of approximately two thousand miles extending generally along the Appalachian Mountains" from Maine to Georgia—as a national scenic trail that "shall be administered primarily as a footpath by the Secretary of the Interior, in consultation with the Secretary of Agriculture." 16 U.S.C. 1244(a)(1). The Secretary of the Interior is thereby "charged with the overall administration of [the] trail," 16 U.S.C. 1246(a)(1)(A), and has assigned that "management responsibility" to the Park Service. Office of the Assistant Sec'y for Fish & Wildlife & Parks, U.S. Dep't of the Interior, *Departmental Manual* Pt. 710, at 1.4(C)(1) (Aug. 16, 1977), https://go.usa.gov/xpKnw; see *id.* at 1.4(C)(3); Pet. App. 55a.

As the Secretary charged with "overall administration" of the Appalachian Trail, 16 U.S.C. 1246(a)(1)(A), the Secretary of the Interior is responsible for determining a trail route by "select[ing] the rights-of way" for the Trail and publishing notice of appropriate maps and descriptions in the Federal Register. 16 U.S.C.

1246(a)(2); see 16 U.S.C. 1244(a)(1). The Trails Act provides that, "[i]nsofar as practicable, the right-of-way for [the Appalachian Trail] shall comprise the trail depicted on" specified maps and "shall include lands protected for it under agreements in effect as of October 2, 1968, to which Federal agencies and States were parties." 16 U.S.C. 1244(a)(1). But where the rights-of-way for a trail would run "across Federal lands under the jurisdiction of another Federal agency," the Act requires the Secretary of the Interior to reach "agreement" with the head of that agency regarding the "location and width of such rights-of-way." 16 U.S.C. 1246(a)(2). After the Trails Act was enacted, the Park Service and Forest Service agreed on the "locations" and "the width of the right-of-way for approximately 780 miles of [the] route within national forests." 36 Fed. Reg. 2676 (Feb. 9, 1971); see 36 Fed. Reg. 19,802 (Oct. 9, 1971) (selecting the Trail's "official route").

The Trails Act distinguishes between the segments of a national scenic trail that lie on lands inside and segments that lie outside the exterior boundaries of areas administered by federal agencies. First, "[w]ithin the exterior boundaries of areas under their administration that are included in the right-of-way selected for a * * * trail," the Act authorizes "Federal agencies" both to "use lands for trail purposes" and to "acquire lands or interests in lands." 16 U.S.C. 1246(d).[4] After the Act's passage, the Forest Service acquired additional land "within National Forest boundaries needed for protection of the [Appalachian] Trail." Appalachian Trail Project Office, NPS, *Comprehensive Plan for the Protec-*

[4] Privately owned lands known as inholdings can exist within the exterior boundaries of National Forests and National Parks.

tion, Management, Development and Use of the Appalachian National Scenic Trail 22 (1981) (*1981 Comprehensive Plan*), https://go.usa.gov/xpNYg and https://go.usa.gov/xpNY4. About 1000 miles of the Appalachian Trail, nearly half of its total length, now pass through eight National Forests. NPS, *Appalachian National Scenic Trail: 2015 Business Plan* 18 (2015), https://go.usa.gov/xpKQN.

Second, where the designated right-of-way lies "outside of the exterior boundaries of federally administered areas," the Secretary of the Interior, as "the Secretary charged with the administration of [the] trail[,] shall encourage" States or local governments (1) to enter cooperative agreements with landowners, private organizations, and individuals to "provide the necessary trail right-of-way," or (2) to acquire "lands or interests therein" to be utilized for the trail. 16 U.S.C. 1246(e). If "within two years after notice of the selection of the right-of-way is published," the "State or local governments [have] fail[ed]" to take such actions for the trail outside of federally administrated areas, the Secretary of the Interior "may" do so. 16 U.S.C. 1246(e) (1970); see 16 U.S.C. 1246(e) (amended in 1978 to remove "within two years"). "The lands involved in such rights-of-way should be acquired in fee, if other methods of public control are not sufficient to assure their use for the purpose for which they are acquired." 16 U.S.C. 1246(e). The Secretary may also use condemnation proceedings to acquire "lands or interests therein," but only after all reasonable efforts at negotiation have failed and "only" to acquire "such title" as is "reasonably necessary" to provide "passage across such lands." 16 U.S.C. 1246(g). The Park Service, acting for the Secretary of the Interior, has accordingly acquired "interests in

lands" that "lie outside existing park and forest units" in order to protect "natural resources along the [Appalachian] Trail." *1981 Comprehensive Plan* 22. The Park Service labels as the Trail's "[*c*]*orridor*" the "zone of land, outside existing boundaries of forests, parks, and gamelands, in which [such] recently acquired federal and state interests provide permanent protection for the Trail." *Id.* at 1.

The Secretary of the Interior's "overall administration" of a trail, 16 U.S.C. 1246(a)(1)(A), also includes establishing a "uniform marker" for the trail. 16 U.S.C. 1246(c). Where a trail "cross[es] lands administered by Federal agencies," the "Federal agency administering the trail" is responsible for erecting and maintaining such markers along the trail "in accordance with standards established by the * * * Secretary." *Ibid.* But where the trail crosses "non-Federal lands, in accordance with written cooperative agreements," the Secretary provides trail markers to the relevant "cooperating agencies" and provides for those agencies to erect and maintain them. *Ibid.* The Secretary may also provide for "trail interpretation sites" that "present information to the public about the trail" and may permit "uses along the trail" that "will not substantially interfere with the nature and purposes of the trail." *Ibid.*

In 1983, Congress amended the Trails Act to clarify that "[n]othing contained in [the Act] shall be deemed to transfer among Federal agencies any management responsibilities established under any other law for federally administered lands which are components of the National Trails System." 16 U.S.C. 1246(a)(1)(A); see National Trails System Act Amendments of 1983, Pub. L. No. 98-11, Tit. II, § 207(a)(2), 97 Stat. 45-46.

2. a. In 2017, the Federal Energy Regulatory Commission (FERC) granted Atlantic Coast Pipeline (Atlantic), the petitioner in No. 18-1587, authorization to construct, operate, and maintain a 3.5-foot-diameter underground natural-gas pipeline on a 604.5-mile route from around Clarksburg, West Virginia, to the eastern regions of Virginia and North Carolina. Pet. App. 2a, 12a; J.A. 137 (map); see *id.* at J.A. 30-46 (FERC order). The completed pipeline would transport up to 1.5 million dekatherms (about 1.5 billion cubic feet) of natural gas daily and could result in $377 million of net annual savings to consumers. Pet. App. 165a, 207a; J.A. 30. FERC found "market demand" for the project, which would develop infrastructure "connecting sources of natural gas to markets in Virginia and North Carolina" and "ensure future domestic energy supplies" for which existing infrastructure, renewable energy, and conservation were not "practical alternatives." J.A. 35-37.

A total of 21 miles of pipeline on the 604.5-mile route would cross beneath the surface of federal lands in the George Washington and Monongahela National Forests. Pet. App. 2a-3a, 113a. At the location in the George Washington National Forest at issue in this case, the pipeline would lie "more than 600 feet below" the surface, C.A. App. 115, where it would cross under the Appalachian Trail through federal lands "acquired and administered by the [Forest Service]." J.A. 79-80; see J.A. 145, 147 (crossing map and diagram). The pipeline's construction would not require temporarily closing or rerouting the Appalachian Trail, or removing any nearby vegetation, because the pipeline would be constructed using a horizontal directional drilling technique at a lower elevation, with entry and exit points on private lands that "would not be visible"—and are

located about 1400 and 3400 feet, respectively—from the Trail. Pet. App. 197a-198a; see J.A. 147 (cross-section diagram).

b. Later in 2017, the Forest Service issued a record of decision (Pet. App. 102a-240a) to authorize Atlantic "to use and occupy [National Forest System] land" for its proposed pipeline along the FERC-approved route. *Id.* at 125a; see *id.* at 13a, 102a-240a. The Forest Service "adopted," and based its decision on, FERC's final environmental impact statement (EIS) for the pipeline. *Id.* at 112a, 118a. The Forest Service found that boring operations during construction near the Appalachian Trail would temporarily cause limited noise, *de minimis* dust, and "night-sky impacts" that may affect trail users, but "would have no long lasting impacts" on the Trail. *Id.* at 225a; see *id.* at 229a-231a. The Forest Service also determined that it had authority under the Mineral Leasing Act to grant a right-of-way for the pipeline through the relevant National Forest lands, *id.* at 117a, including the land in which the "pipeline route will cross the Appalachian [Trail]," *id.* at 113a.

In January 2018, the Forest Service issued a special use permit (Pet. App. 65a-101a) granting Atlantic a right-of-way for the pipeline through National Forest System lands. *Id.* at 65a, 67a. The permit incorporates the record of decision's conditions, *id.* at 137a, 210a, including that "[n]o surface-disturbing activity would occur on [such] lands as part of the [pipeline] crossing under the Appalachian [Trail]," *id.* at 141a.

3. The court of appeals vacated the Forest Service's action and remanded for further agency proceedings. Pet. App. 1a-64a. As relevant here, the court held that the Forest Service lacked authority to grant a pipeline right-of-way through land in the George Washington

National Forest traversed by the Appalachian Trail. *Id.* at 55a-59a.[5]

The court of appeals noted that the Mineral Leasing Act authorizes grants of "pipeline rights of way across 'Federal lands,'" *i.e.*, "'all lands owned by the United States *except lands in the National Park System*.'" Pet. App. 55a (quoting 30 U.S.C. 185(a) and (b)(1)). The court also noted that the "National Park System includes 'any area of land and water administered by the Secretary [of the Interior]' through [the Park Service]." *Ibid.* (quoting 54 U.S.C. 100501 (Supp. V 2017)) (first set of brackets in original). The court then determined that the Mineral Leasing Act's exception for "land in the National Park System" applies here because the Appalachian Trail is "administered [under the Trails Act] by the Secretary of the Interior, who delegated that duty to [the Park Service]." *Ibid.* (citing 16 U.S.C. 1244(a)(1)); see *id.* at 57a.

The court of appeals viewed the government as "generally" agreeing that the Appalachian Trail is "land in the National Park System" based on the court's observation that the Park Service had described the entire Appalachian Trail "'corridor'" as "a 'unit' of the National Park System," and that FERC had indicated that the Trail itself is a National Park System "unit." Pet. App. 55a (citations omitted). The court then rejected the government's contention that, under the Trails Act, the Park Service is merely charged with "'overall' administration of the [Trail]," while the actual "lands" traversed by the Trail within National Forests remain

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[5] The court of appeals held that the Forest Service erred on other matters not before this Court. Pet. App. 14a-55a. The Forest Service is considering these other matters on remand.

lands "under the jurisdiction" of the Forest Service. *Id.* at 56a-57a.

The court of appeals further held that the Chief of the Forest Service would not be the "appropriate agency head" under the Mineral Leasing Act to grant a right-of-way across the Appalachian Trail. Pet. App. 58a; cf. 30 U.S.C. 185(b)(3) (defining "[a]gency head" to mean the head of the agency "which has jurisdiction over Federal lands"). In the court's view, the Trails Act "clearly distinguishes between trail administration and management," such that "the Secretary of the Interior *administers* the entire [Trail]," while the Forest Service "*manage*[*s*] trail components under [its] jurisdiction." Pet. App. 58a.

SUMMARY OF ARGUMENT

The Forest Service has authority under the Mineral Leasing Act to grant an underground pipeline right-of-way through federal lands in a National Forest, including where those lands are traversed by the Appalachian Trail.

A. The Mineral Leasing Act authorizes the appropriate agency head to grant a pipeline right-of-way through "any Federal lands," 30 U.S.C. 185(a), defined to include "all lands owned by the United States except," *inter alia*, "lands in the National Park System." 30 U.S.C. 185(b)(1). The National Park System, in turn, encompasses "any area of land and water administered by the Secretary [of the Interior], acting through [the Park Service], for park, monument, historic, parkway, recreational, or other purposes." 54 U.S.C. 100102(2), 100501 (Supp. V 2017). The federal "lands" through which the right-of-way in this case would run are "administered" by the Forest Service, which therefore has authority to grant the right-of-way.

The Forest Service has administrative jurisdiction over all federal lands within National Forests. And under the Weeks Act, the lands at issue in this case "shall be permanently reserved, held, and administered as national forest lands." 16 U.S.C. 521. It follows that the Chief of the Forest Service is the appropriate agency head under the Mineral Leasing Act and that the lands in question are National Forest lands, not lands in the National Park System. Where Congress has transferred administrative jurisdiction over federal land from one agency to another, it has spoken clearly in statutory text. Nothing in the Trails Act contains analogous text.

B. 1. The court of appeals rested its contrary holding on a Trails Act provision providing that "[t]he Appalachian Trail shall be administered primarily as a footpath by the Secretary of the Interior." 16 U.S.C. 1244(a)(1). But that Act makes clear that the Appalachian Trail is "a trail" (*ibid.*)—not "land"—and that authority to administer the trail is different from authority to administer the lands traversed by the trail. Indeed, Congress expressly provided in the Trails Act that its assignment of "overall administration of a *trail*" across the surface of lands does not "transfer among Federal agencies any management responsibilities established under any other law for federally administered *lands*." 16 U.S.C. 1246(a)(1)(A) (emphases added). The Trails Act's provisions governing the administration and management of a trail, and the government's implementation of those provisions, likewise demonstrate that the Forest Service retains administrative jurisdiction over the lands traversed by the Appalachian Trial. Those lands are not "lands in the National Park System" to which the Mineral Leasing Act is inapplicable.

2. The broader context confirms that conclusion. Under the court of appeals' reasoning that the Trails Act transfers administrative authority over the lands traversed by a trail, pipeline rights-of-way could be granted through lands in the eight National Parks and National Monuments traversed by the Pacific Crest Trail, because that trail is administered by the Secretary of Agriculture; legislation specifically authorizing rights-of-way across the Blue Ridge Parkway, which largely parallels the Appalachian Trail, would be stripped of much of its practical effect; and the Trails Act would appear to grant the Secretary of the Interior authority to administer not only the federal lands traversed by 23 national trails but also state-owned and privately owned lands as well. Nothing in the Trails Act's modest grant of authority to "administer" a "trail" supports those results.

C. The court of appeals failed to apprehend the Trails Act's distinction drawn between a trail and the lands it traverses. The court sought to anchor its view that the Appalachian Trail is "land" "administered" by the Park Service in statements by the Park Service and FERC. But those statements about the Trail do not show that, under the Trails Act, the lands traversed by a trail are administered by the Park Service. The court's trail-land confusion likewise infected its determination that the Chief of the Forest Service was not the appropriate "agency head" to grant a right-of-way under the Mineral Leasing Act. In short, under that Act, the Forest Service has authority to grant a pipeline right-of-way across National Forest lands, including where the Appalachian Trail traverses those lands.

ARGUMENT

THE FOREST SERVICE HAS AUTHORITY UNDER 30 U.S.C. 185 TO GRANT A PIPELINE RIGHT-OF-WAY THROUGH FEDERAL LANDS IN NATIONAL FORESTS THAT ARE TRAVERSED BY THE APPALACHIAN TRAIL

The court of appeals erred in holding that the National Forest lands underlying the Appalachian Trail are lands in the National Park System and are thus ineligible for the grant of a pipeline right-of-way under the Mineral Leasing Act. The court reached that holding based on its erroneous conclusion that the Secretary of the Interior, acting through the Park Service, "administers" those lands. Congress spoke clearly in the Trails Act: The Appalachian Trail is "a trail"—not land—and the Act directs the Secretary of the Interior only to "administer[]" the "trail" primarily as a "footpath." 16 U.S.C. 1244(a)(1). That assignment of responsibility for "overall administration of a trail" across the surface of lands does not extend to control over the underlying lands or "transfer among Federal agencies any management responsibilities established under any other law for federally administered lands." 16 U.S.C. 1246(a)(1)(A). And because the Secretary of the Interior "administers" only the trail, not the lands it crosses, those lands are not "lands in the National Park System," 30 U.S.C. 185(b)(1). The Forest Service has administrative jurisdiction over federal lands in National Forests. It therefore has authority to grant a pipeline right-of-way across those lands.

A. The Forest Service Has Authority To Grant A Pipeline Right-Of-Way Through Federal Lands In National Forests

The Mineral Leasing Act authorizes the Forest Service to grant rights-of-way through National Forest

lands. That conclusion flows directly from the text of the Mineral Leasing Act, which authorizes "the Secretary of the Interior or appropriate agency head" to grant a pipeline right-of-way though "any Federal lands." 30 U.S.C. 185(a). "Where the surface of all of the Federal lands involved in a proposed right-of-way or permit is under the jurisdiction of one Federal agency, the agency head, rather than the Secretary, is authorized to grant or renew the right-of way." 30 U.S.C. 185(c)(1). Those provisions authorize the Forest Service to grant pipeline rights-of-way through National Forest lands like those here because (1) the Chief of the Forest Service is the appropriate "agency head," and (2) National Forest lands are "Federal lands" under Section 185.

First, the Chief of the Forest Service is the appropriate "agency head," which means the head of the federal "agency, other than the Secretary of the Interior, which has jurisdiction over Federal lands." 30 U.S.C. 185(b)(3). All lands relevant to the pipeline right-of-way that crosses the Appalachian Trail in this case are lands owned by the United States within the George Washington National Forest. J.A. 76, 98. Those lands were acquired for that Forest and, under the Weeks Act, "shall be permanently reserved, held, and administered as national forest lands." 16 U.S.C. 521; see pp. 5-6, *supra*. The Secretary of Agriculture is vested with administrative "jurisdiction of the national forests," *United States* v. *New Mexico*, 438 U.S. 696, 709 n.18 (1978); see 16 U.S.C. 472, and the Secretary has delegated to the Forest Service that authority to "administer[] and manage[]" the federal "land in the National Forests," 36 C.F.R. 200.3(b)(2).

Second, the lands at issue are "Federal lands," which Section 185 defines to mean "all lands owned by the United States except," as the Fourth Circuit found relevant here, "lands in the National Park System." 30 U.S.C. 185(b)(1). There is no dispute that the lands are owned by the United States. And contrary to the Fourth Circuit's conclusion, Section 185(b)(1)'s exclusion for "lands in the National Park System" is inapplicable here.

The "National Park System" includes "any area of land and water administered by the Secretary [of the Interior], acting through the Director [of the Park Service], for park, monument, historic, parkway, recreational, or other purposes." 54 U.S.C. 100102(2), 100501 (Supp. V 2017) (enacted 2014); see 16 U.S.C. 1c(a) (1970) (materially similar; repealed 2014). That definition encompasses only (1) areas of "land" (or "water") that are (2) "administered" by the Secretary of the Interior, acting through the Park Service. The Weeks Act, however, provides that the lands at issue here "shall be permanently * * * administered as national forest lands," 16 U.S.C. 521, see pp. 5-6, *supra*, and it is the Forest Service that administers National Forest lands. No statute has altered that longstanding law governing federal lands in the George Washington National Forest.[6]

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[6] Respondents refer (Br. in Opp. 24-25, 27, 30) to Federal lands as being "owned by the Forest Service, the Park Service, or [some] other agency," *id.* at 30, and suggest that an agency might separately "h[o]ld title" to such lands, *id.* at 25. Respondents appear to conflate two different concepts: the ownership of lands and a federal agency's authority to manage such lands. The Constitution vests Congress with authority to regulate the disposition of, and make needful rules for, "the territory or other property *belonging to the United States*." U.S. Const. Art. IV, § 3, Cl. 2 (emphasis added). That provision embodies a "grant of power to the United States of

Where Congress has intended to depart from the statutory requirement that "lands" governed by the Weeks Act be "permanently reserved, held, and administered as national forest lands," 16 U.S.C. 521, it has expressed that intent clearly. Other provisions of the Weeks Act, for instance, "authorize[]" the Secretary of Agriculture to "convey by deed" certain existing "national forest land" in "exchange" for other "lands within the exterior boundaries of national forests," 16 U.S.C. 516, or to sell "small areas" of National Forest lands as homesteads to actual setters for agricultural use where the lands are not needed for "public purposes" and would not injure the forests or water flows, 16 U.S.C. 519. Cf., *e.g.*, 16 U.S.C. 555a (general exchange authority for acquiring certain lands suitable for use in Forest Service activities).

Congress has likewise spoken clearly when it has authorized the transfer of administrative jurisdiction over federal land. For instance, Congress provided that the Secretary of Agriculture may "transfer to the jurisdiction of the Secretary of the Interior" certain "national forest land" for inclusion in "the Great Smoky Mountains National Park." 16 U.S.C. 403h-14 (enacted 1964). In 1968, on the same day that it enacted the Trails Act, Congress enacted its aquatic cousin, the Wild and Scenic Rivers Act, 16 U.S.C. 1271 *et seq*., with a similar pro-

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control over its property," *Kansas* v. *Colorado*, 206 U.S. 46, 89 (1907), and its text reflects that "[t]he nation is [the] owner" of "public lands." *Butte City Water Co.* v. *Baker*, 196 U.S. 119, 126 (1905). The Mineral Leasing Act thus focuses properly on "lands owned by the United States," 30 U.S.C. 185(b)(1), and refers to the agency exercising administrative authority as the agency having "jurisdiction over Federal lands," 30 U.S.C. 185(b)(3).

vision expressly authorizing the transfer of administrative jurisdiction over federal lands. That Act designates certain "rivers and the land adjacent thereto" as components of the National Wild and Scenic Rivers System; directs the Secretary of the Interior or the Secretary of Agriculture to administer such components, 16 U.S.C. 1274(a) (2012 & Supp. V 2017); and authorizes any "Federal department or agency having administrative jurisdiction over any lands" within the authorized boundaries of such components to "transfer to the appropriate secretary jurisdiction over such lands," 16 U.S.C. 1277(e). Just seven days later, Congress again spoke clearly in legislation for the Blue Ridge Parkway, which generally runs parallel to the Appalachian Trail. In authorizing an extension to the Parkway that would "cross[] national forest land," Congress directed that, where the extension "traverses Federal lands, the head of the department or agency having jurisdiction over such lands is authorized to transfer to the Secretary of the Interior" the "Federal lands" needed for the extension. 16 U.S.C. 460a-6.[7]

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[7] Congress has repeatedly spoken clearly when authorizing such transfers of administrative jurisdiction over federal lands. See, *e.g.*, Act of Oct. 9, 1965, Pub. L. No. 89-250, 79 Stat. 971 (providing that certain "lands within [a] National Forest * * * shall hereafter be administered" in accordance with the Park Service's organic statute, while "[l]ands excluded" from that transfer "shall remain and be administered as part of [that] Forest"); 16 U.S.C. 110c(c)(1) (providing that certain "[f]ederal lands" that had been in National Forests are "transferred to the administrative jurisdiction of the Secretary of the Interior for administration" as part of a National Park); 16 U.S.C. 460yy-1(d)(2) (directing that certain "[l]ands * * * which were administered by the Forest Service" are "transferred to the administrative jurisdiction of the Secretary [of the Interior] to

Nothing in the Trails Act provides—much less clearly provides—that any National Forest "lands" over which the Forest Service exercises administrative jurisdiction and which must otherwise be "permanently * * * administered as national forest lands," 16 U.S.C. 521, are transferred to the administrative jurisdiction of the Secretary of the Interior or the Park Service. To the contrary, as explained further below, the Trails Act expressly leaves undisturbed the Forest Service's administrative jurisdiction over lands in National Forests that are traversed by a national scenic trail like the Appalachian Trail.

B. The Trails Act Does Not Convert National Forest Lands Traversed By The Appalachian Trail Into "Lands In The National Park System"

The court of appeals determined that the National Forest lands traversed by the Appalachian Trail are converted into "lands in the National Park System,"

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be administered by the National Park Service"); 43 U.S.C. 2632 (authorizing Secretaries of the Interior and Agriculture to "exchange administrative jurisdiction" over certain "lands" in or near certain boundaries of a "national forest"); see also, *e.g.*, 16 U.S.C. 450ff-5 (authorizing heads of executive departments to "transfer to the Secretary of the Interior * * * administrative jurisdiction over [certain] federally owned lands" within the redefined boundary of a national historic site); 16 U.S.C. 460*l*-18(c) (authorizing "lands under the jurisdiction of any other Federal agency" to be transferred "to the jurisdiction of the Secretary of the Interior" for specified purposes); 43 U.S.C. 1702(g) and (j), 1714(a) (authorizing Secretary of the Interior to "withdraw[]" certain Federal lands—including by "transferring jurisdiction over an area of Federal land * * * from one department, bureau or agency to another"—subject to provisions and limitations in the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1701 *et seq.*); Act of June 11, 1966, Pub. L. No. 89-446, 80 Stat. 199 (authorizing Secretary of the Interior to "transfer to the Department of Agriculture [certain] lands under his jurisdiction").

30 U.S.C. 185(b)(1), based primarily on the following syllogism: The National Park System includes "any area of land and water administered by the Secretary [of the Interior]" through the Park Service, 54 U.S.C. 100501 (Supp. V. 2017); the Trails Act provides that the Appalachian Trail is "administered by the Secretary of the Interior, who delegated that duty to [the Park Service]," Pet. App. 55a (citing 16 U.S.C. 1244(a)(1)); therefore, "the [Appalachian Trail] is *land* in the National Park System," *ibid.* (emphasis added). The central flaw in the court's logic lies in the fact that the Appalachian Trail is a "trail," not "land." Congress's charge to the Secretary of the Interior to provide "overall administration of a trail," 16 U.S.C. 1246(a)(1)(A), does not transfer any administrative jurisdiction over the federal land that the trail traverses. Those lands remain under the administrative jurisdiction of their relevant federal land-management agencies. As such, National Forest lands crossed by the Appalachian Trail remain under the jurisdiction of the Forest Service.

1. Congress's designation of a national scenic trail does not transfer administrative authority over National Forest "lands" crossed by that trail

The Trails Act, which distinguishes between trails and the lands they traverse, designates the Appalachian Trail as a national scenic trail and then charges the Secretary of the Interior with administration of the "trail." 16 U.S.C. 1244(a)(1). That authority to undertake administration of a "trail" leaves unaltered other statutory authority to administer the lands traversed by the trail. Even if the Trails Act's original 1968 text had left doubt on the question, Congress's 1983 amendments to the Act now make clear that although the Act directs the Secretary of the Interior to exercise "overall admin-

istration of *a trail*," "[n]othing" in the Act "transfer[s] among Federal agencies any management responsibilities established under any other law for *federally administered lands*." 16 U.S.C. 1246(a)(1)(A) (emphases added). The government's implementation of the Act confirms that conclusion compelled by the Act's plain text.

a. The Trails Act, which distinguishes between a "trail" and the "lands" it traverses, charges the Secretary of the Interior only with administration of "a trail"

Section 1244(a)(1) provides that the Appalachian Trail is "a trail," which Congress has "designated" as a national scenic trail and which "shall be administered primarily as a footpath" by the Secretary of the Interior. 16 U.S.C. 1244(a)(1). That grant of authority to that Secretary for the "overall administration of a trail," 16 U.S.C. 1246(a)(1), confers responsibility to administer the Appalachian Trail as a "trail," but it does not confer additional authority to administer the various federal, state, and private "lands" over which that trail crosses.

i. Because the Trails Act does not define the word "trail," the word is interpreted in light of its "ordinary, contemporary, common meaning" at the time Congress passed the Act. *Food Mktg. Inst.* v. *Argus Leader Media*, 139 S. Ct. 2356, 2362 (2019) (citation omitted). A "trail" is a "blazed or otherwise marked path"—or a "track worn by passage"—"through a forest or mountainous region" or "through a wilderness or wild" area. *Webster's New International Dictionary* 2686 (2d ed. 1948); see *Webster's Third New International Dictionary* 2423 (1968) (similar); *American Heritage Dictionary 1361* (1969) ("A blazed path or beaten track, as through woods or wilderness."). In other words, a "trail" is simply a route "across," "over," or "through" a

region of land. See *ibid.*; *Random House Dictionary* 1502 (1966) ("A path or track made across a wild region, over rough country, or the like.").

That ordinary meaning of "trail" is reflected in Congress's instruction that the Appalachian Trail be administered "primarily as a footpath." 16 U.S.C. 1244(a)(1). The adverb "primarily" allows the Trail to continue to be utilized for horseback riding along segments on which such riding was previously "an accepted and customary recreation use." H.R. Conf. Rep. No. 1891, 90th Cong., 2d Sess. 11 (1968); see *1981 Comprehensive Plan* 8. Yet use as a footpath and use as a horsepath both reflect the ordinary meaning of "trail" as a way across, over, or through lands.

The Trails Act elsewhere embodies that basic distinction between a "trail" and the "land" that it traverses. The Act, for instance, provides that designated trails lie "on" privately owned lands, "cross" federal land, and thus also "pass[]" "through" lands administered by federal land-management agencies.[8] In its 1981 report to Congress detailing a "comprehensive plan" for the Appalachian Trail (16 U.S.C. 1244(e)), the Park Service provided a "[d]efinition of the Appalachian Trail" that embodies that same distinction: The Appalachian Trail is "a way"—"usually a simple footpath"—"for travel on foot *through* the wild, scenic, wooded,

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[8] See, *e.g.*, 16 U.S.C. 1243(b)(iii) (designation of national "trails on privately owned land"), 1245 (incorporation of auxiliary "trails on non-Federal lands"), 1246(c) (specifying different obligations where "trails cross lands" administered by Federal agencies from where the same "trails cross non-Federal lands"), 1246(i) (addressing authority of "Federal agencies administering lands through which" a "trail passes"), 1247(a) (encouraging "trails on lands" owned by States).

pastoral, and culturally significant *lands* of the Appalachian Mountains." *1981 Comprehensive Plan* (unnumbered page after title page) (emphasis added); cf. *id.* at 1-2 (distinguishing the "Trail" from the trail "corridor" and "Trailway").

Congress's instruction that "[t]he Appalachian National Scenic Trail" is "a trail" that "shall be administered primarily as a footpath by the Secretary of the Interior," 16 U.S.C. 1244(a)(1), therefore charges the Secretary with the administration only of "a trail," rather than of the lands that it traverses. The Park Service has long understood that distinction between its authority under Section 1244(a)(1) to administer the Appalachian Trail and the authority of federal agencies under other sources of law to administer the federal lands over which the Trail passes. In its report to Congress on the Appalachian Trail, the Park Service thus emphasized that "[w]hile responsibility for overall *Trail* administration lies with the National Park Service, land-managing agencies *retain their authority* on *lands* under their jurisdiction." *1981 Comprehensive Plan* 12-13 (emphases added).

ii. Had Congress intended in the Trails Act to transfer portions of federal agencies' preexisting administrative jurisdiction over federal lands, it would have followed the textual course charted in the Wild and Scenic Rivers Act, which Congress enacted on the same day. That Act, as noted, specifically addressed federal agencies "having administrative jurisdiction over any *lands*" within the boundaries of a designated national wild and scenic river, and it expressly provided for the "transfer" of "jurisdiction over [those] lands" to the agency administering the river. 16 U.S.C. 1277(e); see pp. 22-23, *supra*. The Trails Act has no analogous text.

In fact, Congress adopted the exact opposite approach for the Trails Act in 1983. After the Park Service had informed Congress that the Act made the Park Service "responsib[le] for overall Trail administration," but that "land-managing agencies retain[ed] their authority on lands under their jurisdiction," *Comprehensive Plan* 12-13, Congress amended the Act and ratified that understanding. Section 1246(a)(1)(A) now makes clear that while Congress has charged the Secretary of the Interior with "overall administration of *a trail*," "[n]othing" in the Act "shall be deemed to transfer among Federal agencies any management responsibilities established under any other law for *federally administered lands*." 16 U.S.C. 1246(a)(1)(A) (emphases added); see S. Rep. No. 1, 98th Cong., 1st Sess. 6 (1983) (disclaiming any change to preexisting "management responsibility for affected Federal lands"); H.R. Rep. No. 28, 98th Cong., 1st Sess. 5 (1983) (same). The Forest Service therefore continues to exercise its longstanding administrative jurisdiction over federal lands in National Forests, including where those lands are crossed by the Appalachian Trail.

b. The Trails Act's allocation of authority recognizes that Federal lands traversed by the Appalachian Trail remain under the administrative jurisdiction of other Federal agencies

The lands traversed by and adjacent to a trail, of course, have some bearing on the trail, particularly in the context of a nationally designated trail intended for public use. Among other things, the public must secure a legal entitlement to cross the lands traversed by the trail in order to use the trail and avoid trespass. The lands immediately surrounding a trail are also significant because their condition affects the trail user's

experience. And some degree of control over such lands is necessary for the trail's ongoing operation, development, and maintenance. The Trails Act addresses such trail-related functions involving those lands in a manner that confirms the distinction between the "trail" and the "lands" that it crosses. Those provisions also confirm that the Trails Act respects the preexisting administrative authority of federal land-management agencies having jurisdiction over such lands.

i. Selection of the Trail's right-of-way

Multiple provisions of the Trails Act facilitate the establishment of a continuous right-of-way over lands to enable the public to use the roughly 2000-mile Appalachian Trail. For example, as part of the appropriate Secretary's overall administration of a national scenic trail, that Secretary (here, the Secretary of the Interior) must first define the trail's overall route by "select[ing] the right[]-of-way" for the trail and publishing notice of that right-of-way in the Federal Register. 16 U.S.C. 1246(a)(2). Section 1246(a)(2) expressly recognizes that the necessary "rights-of-way" would in some areas run "across Federal *lands* under the *jurisdiction of another Federal agency*." *Ibid.* (emphases added). In those circumstances, Section 1246(a)(2) provides that the "location and width" of the designated rights-of-way will be determined by "agreement" between the head of the other federal agency with "jurisdiction" over the "Federal lands" and the Secretary administering the trail. *Ibid.*; see 16 U.S.C. 1246(b) (similarly authorizing the appropriate Secretary to "relocate" segments of a "trail right-of-way," but requiring the "concurrence of * * * the Federal agency having jurisdiction over the lands involved"). Because the Forest Service possesses administrative jurisdiction over all

National Forest lands, the Park Service and Forest Service implemented Section 1246(a)(2) in 1971 by reaching agreement on the "locations" and "width of the right-of-way" for the roughly "780 miles of [the selected] route within national forests." 36 Fed. Reg. 2676 (Feb. 9, 1971).

Congress also expressly authorized the federal land-management agencies having jurisdiction over "lands" crossed by the designated right-of-way route to use their lands for the trail and thus facilitate public use of the trail. The Trails Act provides that "Federal agencies may use lands for trail purposes" "[w]ithin the exterior boundaries of areas under their administration that are included in the right-of-way selected for [the] trail." 16 U.S.C. 1246(d). That authorization for each federal land-management agency to use lands under its administrative jurisdiction for a trail crossing those lands further demonstrates that the Trails Act retains the authority of the relevant land-management agency over land use and incorporates (without transferring) the preexisting distribution of administrative jurisdiction over federal lands. The Park Service and Forest Service accordingly acknowledged in their 1970 Appalachian Trail agreement following enactment of the Trails Act that "significant portions of the Appalachian National Scenic Trail traverse lands under the[ir] separate administrative jurisdictions." *Memorandum of Agreement between NPS and USFS concerning Appalachian National Scenic Trail* 2 (1970) (*1970 Agreement*), https://go.usa.gov/xpNru.

ii. Protection of the Trail's surrounding environment

Other provisions of the Trails Act specify that federal and state agencies should preserve the environment surrounding a nationally designated trail—and to

operate, develop, and maintain the trail—by entering into cooperative agreements with private entities to protect the trail and by obtaining land or interests in land for such purposes. Those provisions recognize the ongoing administrative jurisdiction of federal land-management agencies over federal lands traversed by a designated trail.

Inside "the exterior boundaries of areas under their administration that are included in the right-of-way selected" for a trail, the Trails Act authorizes "Federal agencies" to "acquire lands or interests in land" by "written cooperative agreement, donation, purchase with donated or appropriated funds[,] or exchange." 16 U.S.C. 1246(d). As the Secretary of the Interior contemplated in his original proposal for the Trails Act, the interests in land that federal land-management agencies may obtain within their respective areas of administration include right-of-way, open space, scenic, or conservation easements. See *Trails for America* 27; cf. 16 U.S.C. 1246(k). Such interests in land can secure "[p]ublic control of the trail" and protect the "natural and scenic qualities and historical features along and near" the trail by obtaining a "perpetual right for individuals to walk or ride along the specified trail" within privately owned lands and by imposing restrictions on future land "use" and "restrict[ing] specified development on the private lands." *Trails for America* 27.

"[O]utside of the exterior boundaries of [those] federally administered areas," the Secretary charged with the trail's overall administration must "encourage" state and local governments to take the actions that the relevant federal land-management agency would take inside federally administered areas, *i.e.*, (1) to "enter into written cooperative agreements" with landowners,

private organizations, and individuals to provide the necessary right-of-way, or (2) to acquire "lands or interest therein" to use for the Trail. 16 U.S.C. 1246(e). The appropriate Secretary "may" undertake those actions if state or local governments "fail" to do so. *Ibid.* But that backstopping role is a secondary one that applies only "outside of the exterior boundaries of federally administered areas." *Ibid.* Inside federally administered areas, Congress has relied on the relevant federal land-management agency to discharge these functions directly.

The Trails Act also leaves States responsible to "operate, develop, and maintain" a trail on lands "outside the boundaries of federally administered areas." 16 U.S.C. 1246(h)(1) (2012 & Supp. V 2017). The appropriate Secretary's responsibility for overall administration of the trail means that that Secretary must "cooperate with and encourage" States to perform those functions. *Ibid.* If it is "in the public interest," that Secretary may also enter "cooperative agreements" for "States or their political subdivisions, landowners, private organizations, or individuals to operate, develop, and maintain" such portions of the trail. *Ibid.* Such functions—cooperating with and encouraging States and entering agreements for others to act—reflect the primary authority of state and private entities over such lands, lands which the Secretary does not administer. The Secretary of the Interior's responsibility for the "overall administration of [the] trail," 16 U.S.C. 1246(a)(1)(A), quite plainly does not grant authority to the Secretary to administer all of the *state, local, and private* "lands" that the Trail traverses along its approximately 2000-mile route from Maine to Georgia. It likewise does not grant that Secretary authority to

administer lands owned by the United States and managed by other federal agencies.

iii. Overall administration of the Trail

Trails Act provisions governing the manner in which a Secretary must discharge overall administration of a trail likewise confirm that federal land-management agencies retain administrative jurisdiction over federal lands traversed by the trail. The Act, for instance, provides that the Secretary of the Interior may issue regulations concerning the Trail, but only "with the concurrence of the heads of any other Federal agencies *administering lands* through which [the] trail passes." 16 U.S.C. 1246(i) (emphasis added). In their 1970 agreement implementing the Trails Act, therefore, the Park Service and Forest Service agreed to cooperate to develop, insofar as possible, uniform regulations for the management, protection, administration, and use of the "segments of the Trail *located on Federal lands* under their separate jurisdictions." *1970 Agreement* 5 ¶ 8 (emphasis added). "[E]nforcement of [those regulations]," the agencies stated, "will be carried out by the agency administering the lands through which the Trail passes." *Id.* at 5-6 ¶ 8.

The Secretary administering a trail must also establish an "advisory council" for the trail and consult it on various trail-related matters until the council's statutory tenure terminates. 16 U.S.C. 1244(d). Section 1244(d) provides that the council's membership must include, *inter alia*, a representative from each Federal "agency administering lands through which the trail route passes." 16 U.S.C. 1244(d)(1). The Park Service's 1981 report thus informed Congress that, "[a]s required by the Act," the Appalachian Trail Advisory Council in-

cluded a representative from the Department of Agriculture as one of the "four federal agencies with the Trail *on their lands*." *1981 Comprehensive Plan* 14 (emphasis added).

In short, the Trails Act's text and its implementation by federal agencies confirm that Congress's grant of authority to the Secretary of the Interior to provide "overall administration" of the Appalachian Trail did not transfer authority to administer the federal lands traversed by the Trail. That ultimately reflects the on-the-ground reality that Congress faced when it enacted the Trails Act. Nationally significant trails that might be designated under that Act are typically lengthy and cross "lands that are administered by Federal, State, and local public agencies," as well as "other lands that are privately owned." *Trails for America* 25. More than 1300 miles of the Appalachian Trail's roughly 2000-mile route at the time crossed lands in private ownership (866 miles) and state ownership (452 miles), and the vast majority of the 682 miles of federal lands traversed by the Trail were lands under the Forest Service's jurisdiction (507 miles). *Id.* at 42. Rather than attempt to grant the Secretary of the Interior authority over all lands crossed by the Trail, Congress followed the Department of the Interior's recommendation that the Secretary be given overall responsibility for the Trail itself to "insure continuity" of the route and to "coordinate the efforts of the participating [federal and state] agencies." *Id.* at 25. That statutory choice left federal lands crossed by the Trail under the jurisdiction of the federal agencies administering those lands.

2. The broader legal and practical context confirms that National Forest lands traversed by the Trail remain under the Forest Service's administrative jurisdiction

The broader context surrounding the pipeline right-of-way through lands under the Appalachian Trail further demonstrates that the Secretary of the Interior's overall administration of "a trail" under the Trails Act, 16 U.S.C. 1244(a)(1), does not grant the Secretary jurisdiction to administer the "lands" crossed by that trail.

a. Interpreting the Trails Act to confer administrative jurisdiction over all federal lands crossed by a nationally designated trail would significantly alter the legal framework governing the administration of lands within the National Parks and National Monuments.

The Pacific Crest National Scenic Trail—the other initial component of the National Trails System—underscores that point. The Pacific Crest Trail is "a trail" that extends approximately 2350 miles "from the Mexican-California border northward generally along the mountain ranges of the west coast States to the Canadian-Washington border." 16 U.S.C. 1244(a)(2); see 16 U.S.C. 1241(b). Congress provided that the Pacific Crest Trail "shall be administered by the Secretary of Agriculture," 16 U.S.C. 1244(a)(2), and thus granted that Secretary the same authority for "the overall administration of [the] trail," 16 U.S.C. 1246(a)(1)(A), as it granted the Secretary of the Interior in this case. Yet the Forest Service (acting for the Secretary of Agriculture) and the Park Service acknowledged in their 1971 agreement for the Pacific Crest Trail that the trail's segments crossing eight National Parks and National Monuments "traverse lands" that remain under the "administrative jurisdiction[] of * * * the National Park

Service." USFS, *Comprehensive Management Plan for the Pacific Crest National Scenic Trail* App. D, at 1 (1982) (reproducing agreement), https://go.usa.gov/xpKnh; see *id.* at 6.

If the Trails Act's grant of authority to the Secretary of Agriculture to administer the Pacific Crest Trail also transferred to the Secretary of Agriculture the Park Service's preexisting jurisdiction to "administer" the "lands" in National Parks and National Monuments traversed by that trail, then, under the logic of the court of appeals' decision in this case, that transfer of jurisdiction would remove those lands from the National Park System. Cf. 54 U.S.C. 100102(2), 100501 (Supp. V. 2017) (defining National Park System as the areas of land or water "administered" by the Secretary of the Interior though the Park Service). And once lands have been removed from the National Park System, they no longer would be governed by statutory provisions protecting National Park System lands. Among other things, the transfer of administrative jurisdiction would, under the court of appeals' reasoning, authorize the Secretary of Agriculture to grant a pipeline right-of-way pursuant to the Mineral Leasing Act under the route of the Pacific Crest Trail through National Parks and National Monuments. See 30 U.S.C. 185(a) and (b)(1).

b. Legislation governing pipeline rights-of-way through lands in the Blue Ridge Parkway illustrates similar considerations in the same mountain region in which this case arises. The Appalachian Trail largely parallels the Blue Ridge Parkway, which runs about 469 miles southwesterly in the Blue Ridge Mountains from near Waynesboro, Virginia (where the Appalachian Trail enters the George Washington National

Forest) to near Bryson City, North Carolina (where the Trail lies about 10 miles from the Parkway). See NPS, *Blue Ridge Parkway Maps* (2019) (maps showing Appalachian Trail), https://go.usa.gov/xpkf5; see J.A. 133. Although the Parkway is part of the National Park System, 16 U.S.C. 460a-2, Congress has enacted special legislation to authorize rights-of-way (including pipeline rights-of-way) across "parkway lands" for purposes that the Secretary of the Interior determines are not "inconsistent with the use of such lands for parkway purposes." 16 U.S.C. 460a-3; see 16 U.S.C. 460a-8.[9]

Because the Blue Ridge Parkway and Appalachian Trail largely parallel each other, often in very close proximity, extended pipeline routes that would cross the mountains at the Blue Ridge Parkway would on relevant routes also need to cross the Appalachian Trail. If the Trails Act, however, were interpreted to transfer administrative jurisdiction over all federal lands crossed by the Appalachian Trail, such that those lands are converted into lands in the National Park System over which no pipeline right-of-way could be granted, the practical utility of the Secretary of the Interior's

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[9] The Mineral Leasing Act provides that "[n]o rights-of-way for the purposes provided for [in Section 185] shall be granted or renewed across Federal lands except" under Section 185. 30 U.S.C. 185(q). Section 185, however, addresses rights-of-way only through certain "Federal lands," 30 U.S.C. 185(a), and thus by its terms neither authorizes nor prohibits rights-of-way through "lands in the National Park System," 30 U.S.C. 185(b)(1). See *Sierra Club* v. *United States Dep't of the Interior*, 899 F.3d 260, 289-290 (4th Cir. 2018). Congress recognized that "separate authority" would be needed to grant pipeline "rights-of-way through the National Park System" and that "such separate authority exists, for example, with regard to the Blue Ridge Parkway." S. Rep. No. 207, 93d Cong., 1st Sess. 29 (1973) (citing 16 U.S.C. 460a-3 and 460a-8).

distinct statutory authority to grant pipeline rights-of-way through lands in the Blue Ridge Parkway would be significantly diminished. Nothing suggests that Congress intended that anomalous result.

c. The logic of the court of appeals' decision does not appear to be limited to federal lands. The court's decision rests exclusively on Section 1244(a)(1)'s grant of authority to "administer[]" the Appalachian Trail. Pet. App. 25a. But that provision affords no textual basis to limit its statement that the Secretary of the Interior shall "administer[]" the "Appalachian Trail" only to those portions of the Trail on federal lands. Section 1244(a) likewise grants the Secretary of the Interior authority to "administer[]" the entirety of each of the 22 other congressionally designated trails—five national scenic trails[10] and 17 national historic trails[11]—that the

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[10] Those national scenic trails are the North Country Trail (approximately 3200 miles), Ice Age Trail (1000 miles), Potomac Heritage National Scenic Trail (710 miles), Natchez Trace Trail (694 miles), and New England Trail (220 miles). 16 U.S.C. 1244(a)(8), (10)-(12), and (28); see NPS, *National Scenic Trails* (May 16, 2009), https://www.nps.gov/subjects/nationaltrailssystem/national-scenic-trails.htm.

[11] Those national historic trails, two of which the Park Service administers with the Bureau of Land Management, are the California Trail (approximately 5700 miles), Trail of Tears Trail (5045 miles), Lewis and Clark Trail (3700 miles), Captain John Smith Chesapeake Trail (3000 miles), Old Spanish Trail (2700 miles; co-administered), El Camino Real de los Tejas Trail (2580 miles), Oregon Trail (2000 miles), Pony Express Trail (1900 miles), Mormon Pioneer Trail (1300 miles), Juan Bautista de Anza Trail (1200 miles), Santa Fe Trail (950 miles), Washington-Rochambeau Revolutionary Route (600 miles), El Camino Real de Tierra Adentro Trail (404 miles; co-administered), Star-Spangled Banner Trail (290 miles), Overmountain Victory Trail (272 miles), Ala Kahakai Trail (175 miles), and Selma to Montgomery Trail (54 miles). 16 U.S.C. 1244(a)(3)-(4), (6),

Park Service administers and that consist of many thousands of miles of trail routes throughout the Nation. See 16 U.S.C. 1244(a)(1), (3)-(4), (6), (8)-(12), (15)-(20), (21)(C), (22)(C), (23)(C), (24)(C), (25)(C), (26)(C), (28), and (29)(C). The court of appeals' reasoning would thus appear to indicate that the *state and private* lands, not merely the federal lands, traversed by all 23 of those trails would all be "administered" by the Secretary of the Interior. That conclusion is obviously incorrect, and it underscores that the court of appeals' reasoning is also incorrect.

d. Such legal and practical considerations counsel strongly against interpreting Section 1244(a) to transfer administrative jurisdiction over federal lands traversed by a designated national trail from the agency charged with administering those lands to the Secretary charged with the administration of just the trail.

The "usual rule" for interpreting statutes is that "Congress 'does not alter the fundamental details of a regulatory scheme in vague terms or ancillary provisions—it does not, one might say, hide elephants in mouseholes.'" *Epic Sys. Corp.* v. *Lewis*, 138 S. Ct. 1612, 1626-1627 (2018) (quoting *Whitman* v. *American Trucking Ass'ns*, 531 U.S. 457, 468 (2001)). That interpretive principle applies with particular force here. Under the court of appeals' decision, Congress's modest text that simply directs that "a trail" be "administered primarily as a footpath by the Secretary of the Interior," 16 U.S.C. 1244(a)(1), and preserves each federal agency's management responsibility for "federally administered lands," 16 U.S.C. 1246(a)(1)(A), would hide not

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(9), (15)-(26), and (29); see NPS, *National Historic Trails* (May 16, 2009), https://www.nps.gov/subjects/nationaltrailssystem/national-historic-trails.htm.

one but at least two elephants: the transfer of the Forest Service's administrative jurisdiction over federal lands that by law must be "permanently * * * administered as national forest lands," 16 U.S.C. 521, and a sweeping prohibition against pipeline rights-of-ways under the Mineral Leasing Act for all federally owned land crossed by the roughly 2000-mile-long Appalachian Trail. The logic of the court's decision would also remove such right-of-way authority under the Mineral Leasing Act where any of the 22 other nationally designated trails administered by the Secretary of the Interior through the Park Service would cross federal lands under the jurisdiction of other federal agencies. Nothing in the Trails Act supports those results.

C. The Court Of Appeals Misinterpreted The Trails Act And Mineral Leasing Act

The court of appeals erred in holding that the Forest Service lacked authority under the Mineral Leasing Act to grant a pipeline right-of-way through National Forest lands traversed by the Appalachian Trail. Pet. App. 55a-59a. That error derives from two primary sources. First, the court failed to recognize the distinction between a "trail" and the "lands" that the trail traverses. That oversight led the court to believe that the Secretary of the Interior's authority to "administer[]" the Appalachian Trail, 16 U.S.C. 1244(a)(1), is the same as authority to administer the federal lands crossed by the Trail. On that premise, the court determined that "the [Trail] is land in the National Park System" for which the Mineral Leasing Act does not authorize a right-of-way, Pet. App. 55a. See *id.* at 55a-57a. Second, the court extended its conflation of trails and lands into a determination that the Chief of the Forest Service is not the appropriate "agency head" to grant a right-of-way.

Pet. App. 58a. Both determinations are significantly flawed.

1. The court of appeals ignored the Trails Act's distinction between a trail and the lands that it traverses

The court of appeals failed to apprehend the Trails Act's distinction between a trail and the lands that the trail traverses. The court deemed the authority to administer a trail to confer administrative jurisdiction over the underlying lands, which led the court to conclude "the [Appalachian Trail] is land in the National Park System" excluded from the Mineral Leasing Act's right-of-way authority. Pet. App. 55a. But as previously explained, the authority the Trails Act gives to the Secretary of the Interior to "administer[]" a "trail," 16 U.S.C. 1244(a)(1), does not transfer jurisdiction over federally administered "lands," 16 U.S.C. 1246(a)(1)(A). That jurisdiction remains with the land-management agency responsible for those lands. See pp. 25-35, *supra*.

Rather than parse the text of the Trails Act, the court of appeals largely relied on statements in the administrative record from the Park Service and FERC, which the court understood to show that the government itself believed that the entire Appalachian Trail is part of the National Park System. Pet. App. 55a (citing C.A. App. 1794, 1849, 3186). Even if the court were correct in that understanding (and it is not), any such agency statements could not displace Congress's unambiguous determination that its assignment of authority for the "overall administration of *a trail*" does not "transfer among Federal agencies any management responsibilities established under any other law for *federally administered lands*." 16 U.S.C. 1246(a)(1)(A) (emphases added). In any event, the agency statements do not support the court's conclusion.

a. In its comments on FERC's draft EIS in this case, the Park Service stated that it "administers the entire [Appalachian Trail]." J.A. 97 (C.A. App. 1849); cf. J.A. 118 (C.A. App. 3186) (draft EIS). It also explained that "the [Trail]'s protected *corridor*" is a "swath of land averaging about 1,000 feet in width," which was created by a decades-long "land acquisition and protection program" implemented by the Park Service, Forest Service, and some States. J.A. 97 (emphasis added). The Park Service further stated that it "considers the entire Trail *corridor*"—*i.e.*, an area of land that has been acquired for Trail purposes—"to be part of the [Appalachian Trail] park unit," and that it further "consider[s]" the Appalachian Trail to be a "unit[] of the National Park System." *Ibid.* (emphasis added). FERC's final EIS followed suit, stating that the Park Service is responsible for "administration of the entire [Appalachian Trail]" and that "the [Appalachian Trail * * * is a 'unit' of the national park system." J.A. 87 (C.A. App. 1794); see J.A. 58 (similar). Those comments, however, do not reflect agreement that the Appalachian Trail is "land" administered by the Park Service.

The Park Service has long used the term "corridor" to describe a "zone of land * * * in which recently acquired federal and state interests provide permanent protection *for the Trail*." *1981 Comprehensive Plan* 1 (emphasis added); see, *e.g.*, NPS, *Appalachian National Scenic Trail Resource Management Plan* I-3 (Sept. 2008) (*2008 Resource Management Plan*) ("More than 99% of the Trail now *lies within* a protective corridor of land.") (emphasis added), https://go.usa.gov/xpKQW. In other words, the protected corridor is distinct from the Trail itself, and it encompasses the "lands

or interests [in lands]" that Congress authorized government agencies to acquire and utilize for Trail purposes, 16 U.S.C. 1246(d) and (e). See pp. 32-33, *supra*.

But where the Appalachian Trail runs through a National Forest, it is the Forest Service that has administrative jurisdiction over those lands. Those lands are thus not "lands" in the "National Park System" under the Mineral Leasing Act, 30 U.S.C. 185(b)(1), because the Park Service does not "administer[]" them, 54 U.S.C. 100501 (Supp. V 2017). Both the Park Service and FERC recognized as much in this case. The Park Service stated early in the administrative proceedings that it lacked authority to grant a pipeline right-of-way for "National Park System units," but it "recommend-[ed] further assessment of [an] alternative" that had been proposed to "cross the [Appalachian Trail] on non-[Park Service] lands." J.A. 132. That suggestion to explore crossing the Trail on, for instance, federal lands administered by the Forest Service, is precisely the option that FERC later approved.

FERC's final EIS explains that "the lands acquired and administered by the [Forest Service] for the [Appalachian Trail] are [Forest Service] lands" that are "subject exclusively to [Forest Service] regulations and management authority." J.A. 58. And while FERC noted that "[b]oth the [Park Service] and [Forest Service] have acquired lands in the name of the U.S. Government specifically for the protection of the [Appalachian Trail]" "[n]ear the proposed [pipeline] route," the pipeline's "proposed [Appalachian Trail] crossing on [Forest Service] lands" did not require Park Service authorization. *Ibid.* Those statements reflect the Park Service's and Forest Service's longstanding view that the National Forest lands crossed by the Appalachian

Trail remain within the Forest Service's administrative jurisdiction. See, *e.g.*, pp. 28, 31, 34, *supra* (discussing views).

b. The Park Service's and FERC's statements indicating that "[t]he [Appalachian Trail] is a unit of the National Park [S]ystem," J.A. 58; see J.A. 87, 97, do not contradict that understanding. The Park Service first listed the Appalachian Trail as a National Park System "unit" in 1972, four years after the Trail's statutory designation as a national scenic trail. *Pending Legislation: Hearing on S. 599 and Other Bills Before the Subcomm. on National Parks of the Senate Comm. on Energy and Natural Resources*, 115th Cong., 2d Sess. 17 (2018) (*2018 Hearing*). In the mid-1980s, the Park Service then listed as "units" two other national scenic trails (the Potomac Heritage Trail and Natchez Trace Trail). *Ibid.* But that "choice" by the agency simply reflected that the agency "counted [those trails] as units administratively" based on an "administrative decision" reflecting the agency's assessment of factors such as "the extent" of the "Park Service's role in administering these trails" and the "actual or potential" amount of federally owned land that could be protected for the trails. *Id.* at 17-18. From 1978 on, however, although Congress has designated 20 additional national scenic and historic trails administered by the Secretary of the Interior through the Park Service, the Park Service has not "administratively listed" any of those trails as "units." *Id.* at 17; see p. 39 & nn.10-11, *supra*; NPS, *The National Parks: Shaping the System* 77 (2005) (stating that the Park Service did not list other congressionally designated trails as "units" because it did not consider its associated "administrative responsibilities sufficient to list them"), https://go.usa.gov/xpRWS. The agency's

administrative listing decisions are not related to statutory criteria and thus shed no meaningful light on this case. But even if the Trail itself is thought of as a "unit" of the National Park System in some sense, that again does not mean that all lands traversed by the Appalachian Trail would be part of that system.[12]

Respondents appear to suggest (Br. in Opp. 28-29) that the Park Service's description of the Trail as a "unit" of that system implicitly acknowledges that the Trail meets the statutory definition of "System unit" in 54 U.S.C. 100102(6) (Supp. V 2017). But that statutory provision defines the term "System unit" when used within the provisions of Title 54 of the United States Code. *Ibid.* (defining terms used "[i]n this title"). And because that definition was first enacted in 2014, it came long after the Park Service had adopted its practice of referring to the Trail with similar (but distinct) terminology. Moreover, an administrative listing of the Appalachian Trail as a "unit" of the National Park System does nothing to alter the Park Service's longstanding position, shared by the Forest Service, that, as a statutory matter, lands traversed by the Trail within National Forests remain within the Forest Service's administrative jurisdiction.

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[12] The Park Service's Deputy Director stated in the *2018 Hearing* (at 18) that "the long-distance trails administered by the National Park Service are, by law, part of the National Park System." The Deputy Director did not say that all of the *lands* traversed by those trails were part of the National Park System, even when those lands are under the jurisdiction of another federal agency. His unelaborated statement would be incorrect to the extent it were read to mean that the Trails Act required such a result.

2. The court of appeals misunderstood the Mineral Leasing Act's definition of "agency head"

The court of appeals' holding that "the Forest Service is *not* the 'appropriate agency head' for the [Appalachian Trail]" under the Mineral Leasing Act's right-of-way provision, Pet. App. 58a, also reflects the court's basic misunderstanding of the relevant inquiry. The Mineral Leasing Act vests the appropriate "agency head" with authority to grant a pipeline right-of-way through federal lands. 30 U.S.C. 185(a). That Act then defines "agency head" to mean the head of any federal department or agency, other than the Secretary of the Interior, "which has jurisdiction over Federal lands." 30 U.S.C. 185(b)(3). The appropriate agency head is therefore the head of the agency that possesses jurisdiction over the federal lands through which the right-of-way would be granted. The Forest Service exercises that "jurisdiction over [the] Federal lands" in the George Washington National Forest at issue here.

The court of appeals nevertheless determined that the Chief of the Forest Service was not the relevant agency head for purposes of Section 185 because "the Secretary of the Interior administers the entire [Appalachian Trail]" under the Trails Act. Pet. App. 58a (emphasis omitted). The court's ongoing failure to apprehend the distinction between a trail and the lands it traverses led the court to view Section 1246(a)(1)(A) as distinguishing only between trail administration and trail management, when the salient point of that provision is to distinguish between authority to administer or manage a *trail* and the separate authority to manage the *lands* underlying it. The court thus block quoted Section 1246(a)(1)(A) and added emphasis to administration- and management-related terms but added no emphasis

to the critical words "trail" and "lands." *Ibid.* Those words make Section 1246(a)(1)(A) one of the key provisions that confirms the government's position. Section 1246(a)(1)(A), like other provisions in the Trails Act, demonstrates that the Secretary of the Interior's role "in administering and managing *the trail*" does not transfer "any management responsibilities * * * for federally administered *lands.*" 16 U.S.C. 1246(a)(1)(A) (emphases added). "[J]urisdiction over [the] Federal lands" at issue here, 30 U.S.C. 185(b)(3), remains vested in the Forest Service.

CONCLUSION

The judgment of the court of appeals should be reversed, and the case should be remanded for further proceedings.

Respectfully submitted.

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DECEMBER 2019

APPENDIX

1. 16 U.S.C. 521 provides:

Lands acquired to be reserved, held, and administered as national forest lands; designation

Subject to the provisions of section 519 of this title the lands acquired under this Act shall be permanently reserved, held, and administered as national forest lands under the provisions of section 471[1] of this title and acts supplemental to and amendatory thereof. And the Secretary of Agriculture may from time to time divide the lands acquired under this Act into such specific national forests and so designate the same as he may deem best for administrative purposes.

2. 16 U.S.C. 1244 provides in pertinent part:

National scenic and national historic trails

(a) Establishment and designation; administration

National scenic and national historic trails shall be authorized and designated only by Act of Congress. There are hereby established the following National Scenic and National Historic Trails:

(1) The Appalachian National Scenic Trail, a trail of approximately two thousand miles extending generally along the Appalachian Mountains from Mount Katahdin, Maine, to Springer Mountain, Georgia. Insofar as practicable, the right-of-way for such trail shall comprise the trail depicted on the maps identified as

[1] See References in Text note below.

"Nationwide System of Trails, Proposed Appalachian Trail, NST-AT-101-May 1967", which shall be on file and available for public inspection in the office of the Director of the National Park Service. Where practicable, such rights-of-way shall include lands protected for it under agreements in effect as of October 2, 1968, to which Federal agencies and States were parties. The Appalachian Trail shall be administered primarily as a footpath by the Secretary of the Interior, in consultation with the Secretary of Agriculture.

(2) The Pacific Crest National Scenic Trail, a trail of approximately two thousand three hundred fifty miles, extending from the Mexican-California border northward generally along the mountain ranges of the west coast States to the Canadian-Washington border near Lake Ross, following the route as generally depicted on the map, identified as "Nationwide System of Trails, Proposed Pacific Crest Trail, NST–PC–103–May 1967" which shall be on file and available for public inspection in the office of the Chief of the Forest Service. The Pacific Crest Trail shall be administered by the Secretary of Agriculture, in consultation with the Secretary of the Interior.

* * * * *

(d) Trail advisory councils; establishment and termination; term and compensation; membership; chairman

The Secretary charged with the administration of each respective trail shall, within one year of the date of the addition of any national scenic or national historic trail to the System, and within sixty days of November 10, 1978, for the Appalachian and Pacific Crest National Scenic Trails, establish an advisory council for each

such trail, each of which councils shall expire ten years from the date of its establishment, except that the Advisory Council established for the Iditarod Historic Trail shall expire twenty years from the date of its establishment. If the appropriate Secretary is unable to establish such an advisory council because of the lack of adequate public interest, the Secretary shall so advise the appropriate committees of the Congress. The appropriate Secretary shall consult with such council from time to time with respect to matters relating to the trail, including the selection of rights-of-way, standards for the erection and maintenance of markers along the trail, and the administration of the trail. The members of each advisory council, which shall not exceed thirty-five in number, shall serve for a term of two years and without compensation as such, but the Secretary may pay, upon vouchers signed by the chairman of the council, the expenses reasonably incurred by the council and its members in carrying out their responsibilities under this section. Members of each council shall be appointed by the appropriate Secretary as follows:

(1) the head of each Federal department or independent agency administering lands through which the trail route passes, or his designee;

(2) a member appointed to represent each State through which the trail passes, and such appointments shall be made from recommendations of the Governors of such States;

(3) one or more members appointed to represent private organizations, including corporate and individual landowners and land users, which in the opinion of the Secretary, have an established and

recognized interest in the trail, and such appointments shall be made from recommendations of the heads of such organizations: *Provided*, That the Appalachian Trail Conference shall be represented by a sufficient number of persons to represent the various sections of the country through which the Appalachian Trail passes; and

(4) the Secretary shall designate one member to be chairman and shall fill vacancies in the same manner as the original appointment.

(e) Comprehensive national scenic trail plan; consultation; submission to Congressional committees

Within two complete fiscal years of the date of enactment of legislation designating a national scenic trail, except for the Continental Divide National Scenic Trail and the North Country National Scenic Trail, as part of the system, and within two complete fiscal years of November 10, 1978, for the Pacific Crest and Appalachian Trails, the responsible Secretary shall, after full consultation with affected Federal land managing agencies, the Governors of the affected States, the relevant advisory council established pursuant to subsection (d) of this section, and the Appalachian Trail Conference in the case of the Appalachian Trail, submit to the Committee on Natural Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate, a comprehensive plan for the acquisition, management, development, and use of the trail, including but not limited to, the following items:

(1) specific objectives and practices to be observed in the management of the trail, including the identification of all significant natural, historical, and cultural resources to be preserved (along with high

potential historic sites and high potential route segments in the case of national historic trails), details of anticipated cooperative agreements to be consummated with other entities, and an identified carrying capacity of the trail and a plan for its implementation;

(2) an acquisition or protection plan, by fiscal year, for all lands to be acquired by fee title or lesser interest, along with detailed explanation of anticipated necessary cooperative agreements for any lands not to be acquired; and

(3) general and site-specific development plans including anticipated costs.

* * * * *

3. 16 U.S.C. 1246 (2012 & Supp. V 2017) provides in pertinent part:

Administration and development of national trails system

(a) Consultation of Secretary with other agencies; transfer of management responsibilities; selection of rights-of-way; criteria for selection; notice; impact upon established uses

(1)(A) The Secretary charged with the overall administration of a trail pursuant to section 1244(a) of this title shall, in administering and managing the trail, consult with the heads of all other affected State and Federal agencies. Nothing contained in this chapter shall be deemed to transfer among Federal agencies any management responsibilities established under any other law for federally administered lands which are components of the National Trails System. Any transfer of

management responsibilities may be carried out between the Secretary of the Interior and the Secretary of Agriculture only as provided under subparagraph (B).

(B) The Secretary charged with the overall administration of any trail pursuant to section 1244(a) of this title may transfer management of any specified trail segment of such trail to the other appropriate Secretary pursuant to a joint memorandum of agreement containing such terms and conditions as the Secretaries consider most appropriate to accomplish the purposes of this chapter. During any period in which management responsibilities for any trail segment are transferred under such an agreement, the management of any such segment shall be subject to the laws, rules, and regulations of the Secretary provided with the management authority under the agreement, except to such extent as the agreement may otherwise expressly provide.

(2) Pursuant to section 1244(a) of this title, the appropriate Secretary shall select the rights-of-way for national scenic and national historic trails and shall publish notice of the availability of appropriate maps or descriptions in the Federal Register: *Provided*, That in selecting the rights-of-way full consideration shall be given to minimizing the adverse effects upon the adjacent landowner or user and his operation. Development and management of each segment of the National Trails System shall be designed to harmonize with and complement any established multiple-use plans for that specific area in order to insure continued maximum benefits from the land. The location and width of such rights-of-way across Federal lands under the jurisdiction of another Federal agency shall be by agreement between the head of that agency and the appropriate

Secretary. In selecting rights-of-way for trail purposes, the Secretary shall obtain the advice and assistance of the States, local governments, private organizations, and landowners and land users concerned.

(b) Relocation of segment of national, scenic or historic, trail right-of-way; determination of necessity with official having jurisdiction; necessity for Act of Congress

After publication of notice of the availability of appropriate maps or descriptions in the Federal Register, the Secretary charged with the administration of a national scenic or national historic trail may relocate segments of a national scenic or national historic trail right-of-way, with the concurrence of the head of the Federal agency having jurisdiction over the lands involved, upon a determination that: (i) such a relocation is necessary to preserve the purposes for which the trail was established, or (ii) the relocation is necessary to promote a sound land management program in accordance with established multiple-use principles: *Provided*, That a substantial relocation of the rights-of-way for such trail shall be by Act of Congress.

(c) Facilities on national, scenic or historic, trails; permissible activities; use of motorized vehicles; trail markers; establishment of uniform marker; placement of uniform markers; trail interpretation sites

National scenic or national historic trails may contain campsites, shelters, and related-public-use facilities. Other uses along the trail, which will not substantially interfere with the nature and purposes of the trail, may be permitted by the Secretary charged with the administration of the trail. Reasonable efforts shall be

made to provide sufficient access opportunities to such trails and, to the extent practicable, efforts shall be made to avoid activities incompatible with the purposes for which such trails were established. The use of motorized vehicles by the general public along any national scenic trail shall be prohibited and nothing in this chapter shall be construed as authorizing the use of motorized vehicles within the natural and historical areas of the national park system, the national wildlife refuge system, the national wilderness preservation system where they are presently prohibited or on other Federal lands where trails are designated as being closed to such use by the appropriate Secretary: *Provided*, That the Secretary charged with the administration of such trail shall establish regulations which shall authorize the use of motorized vehicles when, in his judgment, such vehicles are necessary to meet emergencies or to enable adjacent landowners or land users to have reasonable access to their lands or timber rights: *Provided further*, That private lands included in the national recreation, national scenic, or national historic trails by cooperative agreement of a landowner shall not preclude such owner from using motorized vehicles on or across such trails or adjacent lands from time to time in accordance with regulations to be established by the appropriate Secretary. Where a national historic trail follows existing public roads, developed rights-of-way or waterways, and similar features of man's nonhistorically related development, approximating the original location of a historic route, such segments may be marked to facilitate retracement of the historic route, and where a national historic trail parallels an existing public road, such road may be marked to commemorate the historic route. Other uses along the historic trails and the Continental

Divide National Scenic Trail, which will not substantially interfere with the nature and purposes of the trail, and which, at the time of designation, are allowed by administrative regulations, including the use of motorized vehicles, shall be permitted by the Secretary charged with the administration of the trail. The Secretary of the Interior and the Secretary of Agriculture, in consultation with appropriate governmental agencies and public and private organizations, shall establish a uniform marker, including thereon an appropriate and distinctive symbol for each national recreation, national scenic, and national historic trail. Where the trails cross lands administered by Federal agencies such markers shall be erected at appropriate points along the trails and maintained by the Federal agency administering the trail in accordance with standards established by the appropriate Secretary and where the trails cross non-Federal lands, in accordance with written cooperative agreements, the appropriate Secretary shall provide such uniform markers to cooperating agencies and shall require such agencies to erect and maintain them in accordance with the standards established. The appropriate Secretary may also provide for trail interpretation sites, which shall be located at historic sites along the route of any national scenic or national historic trail, in order to present information to the public about the trail, at the lowest possible cost, with emphasis on the portion of the trail passing through the State in which the site is located. Wherever possible, the sites shall be maintained by a State agency under a cooperative agreement between the appropriate Secretary and the State agency.

(d) Use and acquisition of lands within exterior boundaries of areas included within right-of-way

Within the exterior boundaries of areas under their administration that are included in the right-of-way selected for a national recreation, national scenic, or national historic trail, the heads of Federal agencies may use lands for trail purposes and may acquire lands or interests in lands by written cooperative agreement, donation, purchase with donated or appropriated funds or exchange.

(e) Right-of-way lands outside exterior boundaries of federally administered areas; cooperative agreements or acquisition; failure to agree or acquire; agreement or acquisition by Secretary concerned; right of first refusal for original owner upon disposal

Where the lands included in a national scenic or national historic trail right-of-way are outside of the exterior boundaries of federally administered areas, the Secretary charged with the administration of such trail shall encourage the States or local governments involved (1) to enter into written cooperative agreements with landowners, private organizations, and individuals to provide the necessary trail right-of-way, or (2) to acquire such lands or interests therein to be utilized as segments of the national scenic or national historic trail: *Provided*, That if the State or local governments fail to enter into such written cooperative agreements or to acquire such lands or interests therein after notice of the selection of the right-of-way is published, the appropriate Secretary may (i) enter into such agreements with landowners, States, local governments, private organi-

zations, and individuals for the use of lands for trail purposes, or (ii) acquire private lands or interests therein by donation, purchase with donated or appropriated funds or exchange in accordance with the provisions of subsection (f) of this section: *Provided further*, That the appropriate Secretary may acquire lands or interests therein from local governments or governmental corporations with the consent of such entities. The lands involved in such rights-of-way should be acquired in fee, if other methods of public control are not sufficient to assure their use for the purpose for which they are acquired: *Provided*, That if the Secretary charged with the administration of such trail permanently relocates the right-of-way and disposes of all title or interest in the land, the original owner, or his heirs or assigns, shall be offered, by notice given at the former owner's last known address, the right of first refusal at the fair market price.

(f) Exchange of property within the right-of-way by Secretary of the Interior; property subject to exchange; equalization of value of property; exchange of national forest lands by Secretary of Agriculture; tracts lying outside trail acquisition area

(1) The Secretary of the Interior, in the exercise of his exchange authority, may accept title to any non-Federal property within the right-of-way and in exchange therefor he may convey to the grantor of such property any federally owned property under his jurisdiction which is located in the State wherein such property is located and which he classifies as suitable for exchange or other disposal. The values of the properties so exchanged either shall be approximately equal, or if they are not approximately equal the values shall be equalized by the payment of cash to the grantor or to

the Secretary as the circumstances require. The Secretary of Agriculture, in the exercise of his exchange authority, may utilize authorities and procedures available to him in connection with exchanges of national forest lands.

(2) In acquiring lands or interests therein for a National Scenic or Historic Trail, the appropriate Secretary may, with consent of a landowner, acquire whole tracts notwithstanding that parts of such tracts may lie outside the area of trail acquisition. In furtherance of the purposes of this chapter, lands so acquired outside the area of trail acquisition may be exchanged for any non-Federal lands or interests therein within the trail right-of-way, or disposed of in accordance with such procedures or regulations as the appropriate Secretary shall prescribe, including: (i) provisions for conveyance of such acquired lands or interests therein at not less than fair market value to the highest bidder, and (ii) provisions for allowing the last owners of record a right to purchase said acquired lands or interests therein upon payment or agreement to pay an amount equal to the highest bid price. For lands designated for exchange or disposal, the appropriate Secretary may convey these lands with any reservations or covenants deemed desirable to further the purposes of this chapter. The proceeds from any disposal shall be credited to the appropriation bearing the costs of land acquisition for the affected trail.

(g) Condemnation proceedings to acquire private lands; limitations; availability of funds for acquisition of lands or interests therein; acquisition of high potential, route segments or historic sites

The appropriate Secretary may utilize condemnation proceedings without the consent of the owner to acquire private lands or interests therein pursuant to this section only in cases where, in his judgment, all reasonable efforts to acquire such lands or interests therein by negotiation have failed, and in such cases he shall acquire only such title as, in his judgment, is reasonably necessary to provide passage across such lands: *Provided*, That condemnation proceedings may not be utilized to acquire fee title or lesser interests to more than an average of one hundred and twenty-five acres per mile. Money appropriated for Federal purposes from the land and water conservation fund shall, without prejudice to appropriations from other sources, be available to Federal departments for the acquisition of lands or interests in lands for the purposes of this chapter. For national historic trails, direct Federal acquisition for trail purposes shall be limited to those areas indicated by the study report or by the comprehensive plan as high potential route segments or high potential historic sites. Except for designated protected components of the trail, no land or site located along a designated national historic trail or along the Continental Divide National Scenic Trail shall be subject to the provisions of section 303 of title 49 unless such land or site is deemed to be of historical significance under appropriate historical site criteria such as those for the National Register of Historic Places.

(h) Development and maintenance of national, scenic or historic, trails; cooperation with States over portions located outside of federally administered areas; cooperative agreements; participation of volunteers; reservation of right-of-way for trails in conveyances by Secretary of the Interior

(1) The Secretary charged with the administration of a national recreation, national scenic, or national historic trail shall provide for the development and maintenance of such trails within federally administered areas and shall cooperate with and encourage the States to operate, develop, and maintain portions of such trails which are located outside the boundaries of federally administered areas. When deemed to be in the public interest, such Secretary may enter written cooperative agreements with the States or their political subdivisions, landowners, private organizations, or individuals to operate, develop, and maintain any portion of such a trail either within or outside a federally administered area. Such agreements may include provisions for limited financial assistance to encourage participation in the acquisition, protection, operation, development, or maintenance of such trails, provisions providing volunteer in the park or volunteer in the forest status (in accordance with section 102301 of title 54 and the Volunteers in the Forests Act of 1972 [16 U.S.C. 558a et seq.]) to individuals, private organizations, or landowners participating in such activities, or provisions of both types. The appropriate Secretary shall also initiate consultations with affected States and their political subdivisions to encourage—

(A) the development and implementation by such entities of appropriate measures to protect private landowners from trespass resulting from trail

use and from unreasonable personal liability and property damage caused by trail use, and

(B) the development and implementation by such entities of provisions for land practices, compatible with the purposes of this chapter,

for property within or adjacent to trail rights-of-way. After consulting with States and their political subdivisions under the preceding sentence, the Secretary may provide assistance to such entities under appropriate cooperative agreements in the manner provided by this subsection.

(2) Whenever the Secretary of the Interior makes any conveyance of land under any of the public land laws, he may reserve a right-of-way for trails to the extent he deems necessary to carry out the purposes of this chapter.

(i) Regulations; issuance; concurrence and consultation; revision; publication; violations; penalties; utilization of national park or national forest authorities

The appropriate Secretary, with the concurrence of the heads of any other Federal agencies administering lands through which a national recreation, national scenic, or national historic trail passes, and after consultation with the States, local governments, and organizations concerned, may issue regulations, which may be revised from time to time, governing the use, protection, management, development, and administration of trails of the national trails system. In order to maintain good conduct on and along the trails located within federally administered areas and to provide for the proper government and protection of such trails, the Secretary of the Interior and the Secretary of Agriculture shall

prescribe and publish such uniform regulations as they deem necessary and any person who violates such regulations shall be guilty of a misdemeanor, and may be punished by a fine of not more than $500, or by imprisonment not exceeding six months, or by both such fine and imprisonment. The Secretary responsible for the administration of any segment of any component of the National Trails System (as determined in a manner consistent with subsection (a)(1) of this section) may also utilize authorities related to units of the national park system or the national forest system, as the case may be, in carrying out his administrative responsibilities for such component.

* * * * *

(k) Donations or other conveyances of qualified real property interests

For the conservation purpose of preserving or enhancing the recreational, scenic, natural, or historical values of components of the national trails system, and environs thereof as determined by the appropriate Secretary, landowners are authorized to donate or otherwise convey qualified real property interests to qualified organizations consistent with section 170(h)(3) of title 26, including, but not limited to, right-of-way, open space, scenic, or conservation easements, without regard to any limitation on the nature of the estate or interest otherwise transferable within the jurisdiction where the land is located. The conveyance of any such interest in land in accordance with this subsection shall be deemed to further a Federal conservation policy and yield a significant public benefit for purposes of section 6 of Public Law 96-541.

4. 30 U.S.C. 185 provides in pertinent part:

Rights-of-way for pipelines through Federal lands

(a) Grant of authority

Rights-of-way through any Federal lands may be granted by the Secretary of the Interior or appropriate agency head for pipeline purposes for the transportation of oil, natural gas, synthetic liquid or gaseous fuels, or any refined product produced therefrom to any applicant possessing the qualifications provided in section 181 of this title in accordance with the provisions of this section.

(b) Definitions

(1) For the purposes of this section "Federal lands" means all lands owned by the United States except lands in the National Park System, lands held in trust for an Indian or Indian tribe, and lands on the Outer Continental Shelf. A right-of-way through a Federal reservation shall not be granted if the Secretary or agency head determines that it would be inconsistent with the purposes of the reservation.

(2) "Secretary" means the Secretary of the Interior.

(3) "Agency head" means the head of any Federal department or independent Federal office or agency, other than the Secretary of the Interior, which has jurisdiction over Federal lands.

(c) Inter-agency coordination

(1) Where the surface of all of the Federal lands involved in a proposed right-of-way or permit is under the jurisdiction of one Federal agency, the agency head, rather than the Secretary, is authorized to grant or renew

the right-of-way or permit for the purposes set forth in this section.

* * * * *

(q) Statutes

No rights-of-way for the purposes provided for in this section shall be granted or renewed across Federal lands except under and subject to the provisions, limitations, and conditions of this section. Any application for a right-of-way filed under any other law prior to the effective date of this provision may, at the applicant's option, be considered as an application under this section. The Secretary or agency head may require the applicant to submit any additional information he deems necessary to comply with the requirements of this section.

* * * * *

5. 54 U.S.C. 100102 (Supp. V 2017) provides:

Definitions

In this title:

(1) DIRECTOR.—The term "Director" means the Director of the National Park Service.

(2) NATIONAL PARK SYSTEM.—The term "National Park System" means the areas of land and water described in section 100501 of this title.

(3) SECRETARY.—The term "Secretary" means the Secretary of the Interior.

(4) SERVICE.—The term "Service" means the National Park Service.

(5) SYSTEM.—The term "System" means the National Park System.

(6) SYSTEM UNIT.—The term "System unit" means one of the areas described in section 100501 of this title.

6. 54 U.S.C. 100501 (Supp. V 2017) provides:

Areas included in System

The System shall include any area of land and water administered by the Secretary, acting through the Director, for park, monument, historic, parkway, recreational, or other purposes.