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

REPLY BRIEF FOR THE FEDERAL PETITIONERS

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The court of appeals' decision rests on the proposition that, in the National Trails System Act (Trails Act), 16 U.S.C. 1241 *et seq.*, a designated "trail" is itself "land." The Act's instruction that the "Appalachian Trail shall be administered primarily as a footpath by the Secretary of the Interior," 16 U.S.C. 1244(a)(1), thus purportedly grants that Secretary authority to "administer" the over 2100 miles of federal, state, and private

"lands" crossed by the Appalachian Trail (Trail). Consequently, under that theory, the Act places those "lands" within a statutory definition of the "National Park System," 54 U.S.C. 100102(2), 100501 (Supp. V 2017), which placement excludes them (as "lands in the National Park System," 30 U.S.C. 185(b)(1)) from the Mineral Leasing Act's general authority for pipeline rights-of-way through federal lands, 30 U.S.C. 185(a). Given the breadth of that theory, as respondents acknowledge (Br. 49), "this case is not about whether the Pipeline is a good idea," it is about whether *any* oil or gas pipeline crossing under the Trail on federal land—even one that fully complies with all applicable environmental statutes—could *ever* be authorized under the Mineral Leasing Act.

The government's opening brief explains (at 20-23) that Congress speaks clearly when it wishes to displace the Weeks Act's requirement that National Forest "lands" like those at issue here be permanently held and "administered" by the Forest Service as forest lands. The brief also explains (at 24-35, 41-48) that the Trails Act does not convert National Forest lands traversed by the Trail into lands in the National Park System, because multiple provisions of the Act—like their implementation by the National Park Service (NPS)—distinguish the "trail" being administered and the "lands" traversed by the trail. It follows that the Act's instruction that the Secretary shall "administer" the "trail," 16 U.S.C. 1244(a)(1), simply assigns responsibility for "overall administration of [the] trail," 16 U.S.C. 1246(a)(1)(A), and transfers no "lands" for the Secretary's "administration" that might be converted into lands in the National Park System.

A. A "Trail" Is Distinct From The Land That It Traverses

Congress employed the ordinary meaning of the term "trail" in the Trails Act: a path or route that crosses through a tract or region of land, not the land itself. Gov't Br. 26-28. The Act thus specifically describes many of its statutorily designated "Trail[s]" as "route[s]." 16 U.S.C. 1244(a)(3)-(4), (7), (13), (16)(A), (18)-(19), and (24)-(25). Respondents' contrary contentions are based on an incorrect reading of the word "trail"; an inapt comparison of a trail to a strip of land; mistakenly conflating the Trail with a protected "corridor" of land and rights-of-way acquired for the Trail; and a disregard of the textual clarity (lacking here) with which Congress acts when it intends to transfer administration of lands between federal agencies.

1. Respondents first assert (Br. 23) that a "[t]rail is 'land,'" but they neither cite a supporting definition for "trail," nor directly address the definitions showing otherwise. Respondents assert (*ibid.*) that a "trail" is like certain "feature[s] of the land"—mountains, ridges, or water gaps—which might be understood to cross other land features. But a "ridge" (the "upper part" of "a range of hills or mountains") and "water gap" (an aquatic "pass in a mountain range") are naturally occurring, intrinsically fixed features of "mountains," which are themselves a high "*land* mass." *Webster's Third New International Dictionary* 1477, 1953, 2583 (1968) (*Webster's Third*) (emphasis added). A "trail," by contrast, is a human-made route across the *surface* of lands that is not inherently fixed and can be relocated to traverse different land. Relocating a trail does not relocate the land, because the trail—a route—is distinct from the land that it crosses.

The Appalachian Trail has itself been repeatedly relocated with "countless re-routings, large and small." Appalachian Trail Project Office, NPS, *Comprehensive Plan for the Protection, Management, Development and Use of the Appalachian National Scenic Trail* 23 (1981), https://go.usa.gov/xpNYg and https://go.usa.gov/xpNY4. (*1981 Comprehensive Plan*). "Minor alterations in the [Trail's] location," for instance, are made without consulting the Park Service and are "at the discretion of the local [agency and volunteer organization]" designated for each trail section. *Ibid.*; cf. *id.* at 12-13 & App. I (discussing and listing a local "trail club" and "designated government agency" for each section). More significant relocations—which might result in the Trail's "lateral displacement of up to a mile" or the complete repositioning of up to a 15-mile-long trail segment, *United States* v. *13.10 Acres of Land*, 737 F. Supp. 212, 217 (S.D.N.Y. 1990)—involve consultation with the Park Service, Forest Service, and the nonprofit Appalachian Trail Conservancy. *1981 Comprehensive Plan* 23; cf. Resp. Br. 9 n.10 (citing discussion of 2014 relocation).

The fact that the Trail can be moved—sometimes without even consulting the Park Service—illustrates that the Trail is a route distinct from the land on which it lies. And if respondents were correct that the Trail is "land" within the National Park System, then routine relocations of the Trail would alter the legal status of the underlying lands, which would gain and lose National Park System status (and its associated legal requirements) based solely on often-local decisions made by nonfederal actors.

2. Respondents next contend (Br. 25-26 & n.35) that the Appalachian Trail is best understood as a strip of "land" that has "a length and a width," Br. 24 n.32. But

when Congress has conferred rights to a strip of land along a route, it has at least specified the strip's width. See *Northern Pac. Ry. Co.* v. *Townsend*, 190 U.S. 267, 271-272 (1903) (400-foot-wide strip along railroad route); *New Mexico* v. *United States Trust Co.*, 172 U.S. 171, 182 (1898) (200-foot-wide strip).

Respondents do not specify any specific width. Yet specifying that width would be critical to any practical application of respondents' theory, because one must know that width to define the area that respondents contend is "land" in the "National Park System." If, as respondents acknowledge (Br. 47), their theory requires that privately owned lands traversed by the Trail be transformed into "lands" in the "National Park System," then one would need to know the relevant width to know which private property may be regulated under the distinct statutory authorities governing lands in that System. Such property includes unencumbered privately owned parcels that the Trail still traverses, where ongoing Trail use requires the landowners' continuing (nonbinding) assent. Cf. Gov't Br. 7. Similarly, if a pipeline right-of-way were proposed to run near and parallel to the Trail in a National Forest, it would be necessary to know the width of the strip deemed "land" in the National Park System to determine if the right-of-way could be granted under the Mineral Leasing Act. Is the width five feet, 50 feet, 500 feet, or a mile on each side? Respondents' silence underscores that the Trail itself has never been understood to be "land" having such a width.

3. Respondents repeatedly seize (Br. 2, 6, 21-23, 24 n.32) upon agency statements about a protected "corridor" of land for the Trail in order to assert that "the Appalachian Trail is a 'protected corridor (a swath of

land averaging about 1,000 feet in width'"), Br. 2 (quoting J.A. 97). But the cited statements do not indicate that the Trail is such land. They instead discuss the "*ANST's*"—*i.e.*, the *Appalachian National Scenic Trail's* —"protected corridor." J.A. 97 (emphasis added). The Park Service has long distinguished that corridor from the Trail, defining the "'[c]orridor'" as a "'zone of land'" in which property interests have been acquired to "'provide permanent protection *for the Trail*.'" Gov't Br. 43-44 (quoting definition for "corridor" at *1981 Comprehensive Plan* 1).

Respondents are wrong in their related contention (Br. 2, 22) that Park Service acreage calculations show that the Appalachian Trail is "land." Those calculations document the results of the Park Service's post-1978 land-acquisition project to create a protected corridor for the Trail. The 1978 amendments to the Trails Act reflected Congress's concern that the government had "not acquired any lands [for the Trail] outside of those established national forests and national park units[] through which the Trail runs," and that an "increasing threat to the Trail" arose from instances in which "the Trail ha[d] been *forced off a parcel of land* due to a change in use or ownership" or "incompatible developments ha[d] been allowed to advance *within yards* of certain segments of the Trail." S. Rep. No. 636, 95th Cong., 2d Sess. 3, 6 (1978) (1978 Senate Report) (emphases added). Congress accordingly instructed the Secretary of the Interior to "move expeditiously to protect lands in those areas where prompt action [was] necessary to protect the Trail," *id.* at 6, and increased the total authorization for acquiring such "lands or interests in lands" from $5 million to $95 million. 16 U.S.C. 1249(a)(1); see *1981 Comprehensive Plan* 22.

The Park Service has informed this Office that its cited acreage calculations generally reflect the tracts of lands and interests therein that were targeted in its ensuing land-protection project, *i.e.*, the tracts of land and interests therein that (1) the Park Service (starting in 1978) had identified for future acquisition to protect the roughly 800 miles of remaining unprotected Trail, and (2) were subsequently acquired (in fee) or protected (with easements) for the Trail by either the Park Service, Forest Service, state or local agencies, or private entities. Cf. *1981 Comprehensive Plan* App. B1 (listing status of such acquisition plans for the 816.7 miles of Trail "[u]nprotected as of March 1978"); *id.* at B2 (listing past protection and future plans).[1] Because the acreage calculations document a post-March 1978 project to acquire additional lands to serve as a protected "corridor for the Trail," 1978 Senate Report 3, the calculations reinforce the longstanding distinction between the Trail and the lands that it traverses.[2]

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[1] The acreage calculated thus does not generally account for lands crossed by the Trail's remaining roughly 1200 miles that had been deemed adequately protected by March 1978.

[2] The Park Service office managing those (ongoing) acquisitions has informed this Office that about 1661 miles of the current 2170-mile-long Trail is on federally owned lands (with 663 and 991 miles on Park Service and Forest Service lands, respectively), while the rest is on nonfederal lands protected by easements for the Trail (113 miles), and on state/local-government-owned (387 miles) and privately owned (nine miles) lands without such easements. The 542 miles of the Trail in Virginia lie mostly on federal lands (502 miles) with the rest on nonfederal lands protected by Trail easements (25 miles), and on state/local-government-owned (13 miles) and privately owned (two miles) lands without such easements.

4. Respondents also conflate (Br. 24-26) the Trail with a right-of-way for the Trail, citing snippets of provisions that simply reflect, for instance, that the "right-of-way *for such trail*" should "include lands" already protected under agreements in effect in 1968, 16 U.S.C. 1244(a)(1) (emphasis added). See, *e.g.*, 16 U.S.C. 1246(e) (providing that, outside the boundaries of federally administered areas, the "necessary trail right-of-way" can be provided by cooperative agreements or "lands or interests therein" can instead be acquired "to be *utilized as* segments of the [Trail]") (emphasis added). None of the provisions reflects that the Trail is itself "land."

5. If Congress had intended to depart from the Weeks Act's requirement that National Forest "lands" be permanently held and "administered [by the Forest Service] as national forest lands," 16 U.S.C. 521, it would have used clear text placing Trail-related "lands" under the administration of the Secretary of the Interior, using language like that employed in the Wild and Scenic Rivers Act (Rivers Act), 16 U.S.C. 1271 *et seq.*, enacted the same day as the Trails Act, and in the Blue Ridge Parkway statute, 16 U.S.C. 460a-6, enacted seven days later. Gov't Br. 22-23.

Respondents concede that the Rivers Act is textually different, but they argue (Br. 41-43) that they do not rely on the "Trails Act, standing alone," but also on the 1970 definition of "National Park System," which includes "land" if "administered" by the Park Service, 16 U.S.C. 1c(a) (1970) (repealed 2014). Respondents miss the point. The Rivers Act—unlike the Trails Act—expressly provides for reallocating the *administration* of *land*. It designates "rivers *and the land adjacent thereto*" as components of the National Wild and Scenic Rivers System; requires the establishment of "detailed

boundaries therefor" on "both sides of [each] river," 16 U.S.C. 1274(a) and (b) (emphasis added); and then authorizes the federal "agency having administrative jurisdiction over any *lands*" within those boundaries "to transfer to the appropriate secretary *jurisdiction over such lands for administration*," 16 U.S.C. 1277(e) (emphases added). The Rivers Act further provides that each Rivers System component "administered" by the Park Service "shall become a part of the national park system," and that "[t]he *lands involved* shall be subject to the [Rivers Act] and the Acts under which the national park system * * * is administered." 16 U.S.C. 1281(c) (emphasis added). Other provisions of the Rivers Act and Trails Act that share certain characteristics (Resp. Br. 42-43) themselves highlight that Congress's use of *different* "administration"-assigning text in the Trails Act—providing that the "Appalachian Trail shall be administered primarily as a footpath by the Secretary of the Interior," 16 U.S.C. 1244(a)(1)—assigns to the Secretary of the Interior only the administration of a "trail," and thus transfers no "lands" for his "administration."

The Blue Ridge Parkway statute similarly shows that Congress has used clear language when transferring administrative jurisdiction over federal lands. Respondents observe (Br. 43) that the parkway extension authorized by 16 U.S.C. 460a-6 was not completed, but they fail to respond to the clarity of that provision's text concerning administration of federal lands. See Gov't Br. 23. Moreover, the original 1936 Blue Ridge Parkway statute was similarly clear. Magic words such as "transfer jurisdiction," Resp. Br. 43-44, are unnecessary. Congress acted clearly by defining the "Blue Ridge Parkway" to be a specific set of "lands and

easements"—including those involving "Government-owned lands"—and then specifying that the Parkway "shall be administered * * * by the Secretary of the Interior." 16 U.S.C. 460a-2. The Trails Act's authority to administer a trail, by contrast, provides no basis for superseding the Weeks Act's requirement that the "lands" here be permanently "administered" by the Forest Service as National Forest lands.

B. Multiple Trails Act Provisions Confirm That A "Trail" Is Distinct From The "Land" It Traverses

The Trails Act additionally assigns authority by using statutory text that itself acknowledges that land traversed by the Appalachian Trail remains under the preexisting administrative jurisdiction of the relevant federal land-management agency. Gov't Br. 29-35. And significantly, Section 1246(a)(1)(A), as amended in 1983, confirms that "[n]othing contained in [the Trails 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" (emphasis added). The Forest Service, as the land-managing agency charged with administering National Forest lands, thus retains its jurisdiction to administer such lands traversed by the Trail.

1. Respondents' various attempts (Br. 35-37) to explain away Section 1246(a)(1)(A) are unavailing. They first argue (Br. 35) that Section 1246's reference to "federally administered lands which are components of the National Trails System," 16 U.S.C. 1246(a)(1)(A), suggests that designated trails are "lands." That is incorrect. The language ensures that the Act is not itself deemed to transfer statutory land-management responsibility for *any* federal lands affected by designation of

a trail, by referring categorically to "federally administered lands" acquired or used for trail purposes as components of the National Trails System.

Respondents next assert (Br. 35) that Section 1246(a)(1)(A) distinguishes between the "overall administration of a trail" assigned to a particular federal agency, 16 U.S.C. 1246(a)(1)(A), and day-to-day "management responsibilities" for a trail, which can be distributed among other entities. See Resp. Br. 36 (discussing "[t]rail administration [a]s distinguished from on-the-ground trail management") (citation omitted). But respondents fail to recognize that the Act uses the words "administration" and "management" not only in reference to trail-related functions, *e.g.*, 16 U.S.C. 1246(a)(1)(A) ("administering and managing the trail"), but also in reference to the land-management responsibilities established by laws other than the Trails Act—like those governing the National Forest System—for land-managing agencies administering the underlying lands, *e.g.*, 16 U.S.C. 1244(e) (discussing such "Federal land managing agencies"), 1246(a)(1)(A) ("management responsibilities * * * for federally administered lands").

That textual feature explains respondents' misreading of Section 1246(a)(1)(A)'s relevant language, which does not concern transfers of management responsibilities *for a trail*, but rather confirms that the Act's provisions for "administering and managing the trail" transfer no "management *responsibilities* established under any other law *for federally administered lands.*" 16 U.S.C. 1246(a)(1)(A) (emphases added). Section 1246(a)(1)(A) accordingly ensures that "trail designation" will not itself yield "any transfer of management responsibility for affected Federal lands," H.R. Rep. No. 28, 98th Cong., 1st Sess. 5 (1983), by making clear

that while "overall Trail administration" is vested in the Park Service here, the relevant federal "land-managing agencies retain their authority on lands under their jurisdiction," *1981 Comprehensive Plan* 12-13.

Respondents carry their failure to distinguish between trail-focused and land-focused text into their discussion (Br. 35-36) of the post-1970 definition of "'National Park System,'" which focuses on whether areas of "land" are "administered" by the Park Service, 54 U.S.C. 100102(2), 100501 (Supp. V 2017). That provision is not implicated by the Forest Service lands at issue here, because the Trails Act does not alter the Forest Service's longstanding authority over those "federally administered lands," 16 U.S.C. 1246(a)(1)(A).

Finally, respondents contend (Br. 37) that Section 1246(a)(1)(A) is purportedly inapplicable because it concerns only "transfers" of management authority between agencies and, here, "no 'transfer'" of authority can occur because (respondents assert) "no agency can grant pipeline rights-of-way" through lands in the National Park System. But the relevant authority that has not been transferred, and that remains vested in the Forest Service, is the authority to administer National Forest land. For that reason, National Forest land traversed by the trail is not "land * * * administered by [the Park Service]"; cannot qualify as "land" in the "National Park System," 54 U.S.C. 100102(2), 100501 (Supp. V 2017); and therefore is not excluded from the Mineral Leasing Act's grant of right-of-way authority, 30 U.S.C. 185(b)(1).

2. Respondents argue (Br. 28 & n.39) that Section 1248(a) vests authority to grant rights-of-way in the Secretary charged with administering a trail (here, the

Secretary of the Interior), rather than in the agency administering the relevant lands. That is incorrect. Section 1248(a) provides that "[t]he Secretary of the Interior or the Secretary of Agriculture as the case may be," may grant easements and rights-of-way across a component of the national trails system "in accordance with the laws applicable to the national park system and the national forest system, respectively," provided that "any conditions contained in such easements and rights-of-way" are related to the Trails Act's policy and purposes. 16 U.S.C. 1248(a). That provision confirms that the Secretaries of the Interior and Agriculture may in this context "grant the *usual* easements and rights-of-way permitted with respect to units of the national park system or the national forest system," respectively. H.R. Rep. No. 1631, 90th Cong., 2d Sess. 12 (1968) (emphasis added). That includes the "usual" (*ibid.*) Mineral Leasing Act rights-of-way granted by the Secretary who administers the particular *lands* in question. See 30 U.S.C. 185(b)(3). Cf. Resp. Br. 7 (conceding that the Mineral Leasing Act is the "applicable law" under Section 1248(a)).

Respondents argue (Br. 28 n.39) that Section 1248(a) shows that only the Secretary charged with administration of a trail may grant such rights-of-way, because it refers to "[t]he Secretary of the Interior or the Secretary of Agriculture as the case may be." That is incorrect. The Trails Act repeatedly denominates the trail-administering Secretary as the "Secretary charged with the administration of [a/the] trail," 16 U.S.C. 1244(d), 1246(b), (c), (e), and (h)(1), or the "Secretary charged with the overall administration of a trail," 16 U.S.C. 1246(a)(1)(A) and (B). And "when 'Congress includes particular language in one section of a statute

but omits it in another,'" "this Court 'presume[s]' that Congress intended a difference in meaning." *Loughrin* v. *United States*, 573 U.S. 351, 358 (2014) (quoting *Russello* v. *United States*, 464 U.S. 16, 23 (1983)) (brackets in original).

Section 1248(a)'s right-of-way provisions for good reason apply only to the Departments of the Interior and Agriculture, leaving undisturbed the authority of other federal agencies that administer lands traversed by a trail. Congress would have known that the Tennessee Valley Authority (TVA) administered lands crossed by the Appalachian Trail. Gov't Br. 7 (three miles in 1966). Section 1248(a) leaves such agencies generally administering small amounts of trail-relevant lands to manage those lands under their separate authorities without modification. The Trail, for instance, crosses—and is located directly on top of—TVA's Watauga Dam and Fontana Dam, both of which TVA operates for flood control and hydroelectric power generation.[3] Under respondents' view, not only would administrative jurisdiction over a strip of land across the full length of each operational dam be transferred from TVA to the Park Service (which has no relevant hydroelectric-dam expertise), but also that land would be governed by special laws for the National Park System designed not for flood control and power generation but to conserve the natural environment "unimpaired for the enjoyment of future generations," 54 U.S.C. 100101(a) (Supp. V 2017). Congress clearly did not intend to alter TVA's special statutory authorities in that manner.

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[3] See TVA, *Overlook Trail*, https://go.usa.gov/xdK2T; TVA, *Watagua*, https://go.usa.gov/xdK2Z; TVA, *Fontana*, https://go.usa.gov/xdk9Q.

3. Respondents suggest (Br. 40) that Section 1246(i) unambiguously displaces the Weeks Act's assignment of administrative authority over National Forest lands. But the relevant text, which Congress added in 1983, simply authorizes the Secretary of the Interior, in administering segments of components of the National Trails System like the Appalachian Trail, to "utilize authorities related to units of the national park system." 16 U.S.C. 1246(i). That provision allows recourse to those distinct authorities when administering a trail *notwithstanding* that those authorities would not apply by their own terms, because such trails do not constitute "land" in "National Park System." "[Section] 1246(i)" thereby provides a statutory "[l]inkage between the authorities for administration of national trails and other national park areas," NPS, *Director's Order #45*, § 2.2 (May 24, 2013), https://go.usa.gov/xd8F9, without any transfer of administrative jurisdiction over federal lands.

4. Respondents' efforts to reconcile their position with other Trails Act provisions are unavailing. Respondents assert (Br. 29) that the statutory requirement to include on a trail's advisory council each "agency administering lands through which the trail route passes," 16 U.S.C. 1244(d)(1), refers only to those agencies administering lands that surround the trail, not lands on which the Trail lies. Respondents ignore the fact that the Park Service explained to Congress that the Trail's council—"[a]s required by [Section 5(d)] the [Trails] Act"—includes the "agencies with the Trail on their lands," *1981 Comprehensive Plan* 14. See Gov't Br. 34-35. Respondents similarly invoke (Br. 27) a provision authorizing the issuance of regulations for trails. 16 U.S.C. 1246(i). But they ignore that such regulations

require the "concurrence" of "any other Federal agencies *administering lands* though which [the] trail passes," *ibid.* (emphasis added); that the 1970 agreement between the Park Service and Forest Service implementing that provision concludes that the Trail is "*located on Federal lands* under *their separate jurisdictions*"; and that each agency would separately enforce such regulations on their own lands. Gov't Br. 34 (emphases added; citation omitted).

C. The 1970 Amendment To The Definition Of "National Park System" Did Not Convert The Trail Into Park System Lands

Respondents place particular reliance (Br. 15-17, 20-21, 30-31, 33) on Congress's 1970 amendment to the definition of "national park system" in 16 U.S.C. 1c(a) (1970), which was later replaced by 54 U.S.C. 100102(2) and 100501 (Supp. V 2017); the 2014 definition of "System unit"; the Park Service's use of the word "unit"; and acreage calculations for the Trail's corridor. But these do not aid respondents' position.

1. Respondents appear to contend (Br. 15-17) that the 1970 amendment was designed to broaden the term "national park system" to capture all so-called "miscellaneous areas," which included "lands under the administrative jurisdiction of another Federal agency" over which the Park Service, "pursuant to [a] cooperative agreement" with the other agency, exercised "supervis[ion]" for specified purposes, 16 U.S.C. 1c(b) (1964). In respondents' view (Br. 15), that amendment means that Congress intended to include "all land administered by the National Park Service" in the National Park System.

As an initial matter, it is unclear whether respondents believe their reliance on the 1970 amendment depends on a predicate showing (Resp. Br. 15) that the Trail constitutes "land administered by the National Park Service." Cf. p. 12, *supra*. In any event, respondents misunderstand the 1970 amendment.

The pre-1970 definition of the term "'National Park System'" included only those "lands" which were "administered under the direction of the Secretary of the Interior" in accordance with provisions applicable to the Park Service "*and* which [we]re grouped into [six enumerated] descriptive categories" for parks, monuments, and parkways. 16 U.S.C. 1c(a) (1964) (emphasis added). The Secretary proposed a bill with text (later enacted by Congress) to redefine the term then "defined only in terms of [those] six specific types of areas" and thereby encompass "all areas administered by the Secretary through the National Park Service," including those used for "recreational" and other purposes. H.R. Rep. No. 1265, 91st Cong., 2d Sess. 8 (1970) (1970 House Report) (letter from Secretary); see *id.* at 10-14 (reproducing Secretary's proposed bill).

The revised definition of "'national park system'" now extends to areas administered "for park, monument, historic, parkway, *recreational, or other purposes*," but it continues to be restricted only to areas of "land" (or water) "administered by the Secretary of the Interior through the National Park Service." 16 U.S.C. 1c(a) (1970) (emphases added) (repealed); see 54 U.S.C. 100102(2), 100501 (Supp. V 2017). The amendment thus ensured the uniform "administration of the various *types of parklands* within the national park system." 1970 House Report 4 (emphasis added). It did not expand the National Park System to areas of federal land

that other agencies administer under distinct statutory authorities.

2. Respondents repeatedly contend (Br. 2, 6, 20-21, 30-31) that agency statements indicating that the Appalachian Trail is a "unit" of the National Park System show that the trail is land administered by the Park Service. But as previously explained (Gov't Br. 45-46), the Park Service's "unit" label has been a purely administrative designation, which is not based on statutory criteria. The fact that the Park Service has declined to administratively list as "units" 20 of the 23 designated trails it administers dispels any notion that such listings reflect an administrative conclusion that each such "trail" is itself "land" falling within the statutory definition of "National Park System." *Id.* at 45. Respondents' suggestion (Br. 19 & n.20) that the revised 1970 statutory definition of that term prompted the agency to list the Trail in its 1972 index of *National Parks & Landmarks* likewise cannot be squared with the existence of the same listing before that amendment. See *NPS, National Parks & Landmarks* 72 (Jan. 1, 1970), http://npshistory.com/publications/index-1970.pdf.

Respondents also rely (Br. 30) on the 2014 definition of "System unit" as an area of "land * * * administered by the Secretary [of the Interior], acting through [the Park Service]." 54 U.S.C. 100102(6), 100501 (Supp. V 2017). That definition sheds no light on this case because it was enacted decades after the Service adopted its practice of referring to the Trail as a "unit" of the Park System. And although the word "unit" had been used in some earlier statutory provisions in other contexts to describe certain Park Service properties (Br. 30 & n.43), "unit" was never a defined statutory term with an established meaning that the Park Service might

have adopted when it used the same word to refer to the Trail.

The Park Service has informed this Office that it has treated corridor *lands* acquired for the Trail by the Park Service's Appalachian Trail office (see pp. 6-7, *supra*) as a "System unit" under the 2014 definition. But the lands in question here were neither acquired by, nor transferred to the administration of, the Park Service. They therefore do not fall within the coverage of a "System unit."[4]

3. Respondents suggest (Br. 33) that Park Service statistics listing "Other Federal Fee Acres" for the Appalachian Trail unit "indicate" that the Park Service may administer land that another agency has been charged with administering for other purposes. That is incorrect. The Park Service explains that its "Other Federal Fee Acres" data simply identify "[t]racts under the administration of another federal agency (e.g., U.S. Forest Service[])," and that the Park Service "does not administer National Forests" or "other public lands available for visitor use" administered by other federal agencies. NPS, *Statistical Abstract: 2017*, 60, 97-98 (Apr. 2018), https://go.usa.gov/xd8aM.

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[4] The government's trial position in *United States* v. *Reed*, No. 1:05-cv-10 (W.D. Va.), does not suggest otherwise. Cf. Resp. Br. 31. The government there brought suit for damage to a railroad trestle crossed by the Appalachian Trail under a provision imposing liability for damaging any "resource" in "a unit of the National Park System," 16 U.S.C. 19jj(d), 19jj-1(a) (2000) (repealed 2014). But in 2005, no statutory definition of "unit" existed. The government reasonably pursued its claim where it was understood that the Service exercised "own[ership]" authority over the trestle itself, Doc. 26-6, at 4, *Reed*, *supra* (Oct. 26, 2005), and had administratively designated the Trail as one of its "units."

Respondents unsuccessfully attempt (Br. 33) to identify lands administered by the Park Service that are also administered by another agency. Federal "lands" in the Manhattan Project National Historical Park remain "under the administrative jurisdiction of the Department of Energy," 16 U.S.C. 410uuu(d)(1) and (f)(2), unless the Secretary of the Interior by agreement "acquire[s] land" through the "transfer of [that] administrative jurisdiction," 16 U.S.C. 410uuu(f)(4)(A)(i).

The Port Chicago Memorial Act of 1992, Pub. L. No. 102-562, Tit. II, § 203(b) and (c), 106 Stat. 4235, conferred no authority over any lands. A later statute instead requires that the Memorial (as opposed to any associated lands) be administered "as a unit of the National Park System in accordance with" "laws generally applicable to [such] units." National Defense Authorization Act for Fiscal Year 2010, Pub. L. No. 111-84, § 2853(a), 123 Stat. 2685. The statute then separately directs that the "Secretary of the Army shall transfer to the Secretary of the Interior administrative jurisdiction over a [specific] parcel of land" if he deems it unnecessary for military purposes, and that, after such transfer, the transferred "[l]and" "shall be administered" as a unit of the National Park System. *Ibid.*

While respondents assert (Br. 33) it is "not uncommon" for the Park Service to exercise administrative authority over another federal agency's lands, respondents fail to identify relevant statutes. And respondents' theory, if adopted, would result in a collision of contradictory statutory commands under which National Forest lands "shall be administered" for multiple uses, including the "sustained yield" of "timber" resources, 16 U.S.C. 528-529; see 16 U.S.C. 475, while National Park System lands shall be administered to conserve

the natural environment "unimpaired for the enjoyment of future generations," 54 U.S.C. 100101(a) (Supp. V 2017). We have found no authority supporting respondents' position, and the Departments of the Interior and Agriculture inform this Office that they are aware of no instance of similar dual, coterminous and contemporaneous administrative jurisdiction over federal lands.

D. The Broader Legal And Practical Context Confirms That Respondents' Position Is Incorrect

The practical difficulties inherent in respondent's position illustrate the flaws in their theory. See Gov't Br. 41-46.

1. Nothing suggests that Congress would have intended to prohibit all oil and gas pipeline rights-of-way over federal lands crossed by the Trail, even those that fully comply with all applicable environmental statutes and can be sited consistent with Trail values. The Park Service's ongoing acquisition of lands to protect the trail diminishes the availability of nonfederal gaps in the land the Trail traverses. See p. 7 & n.2, *supra*. That is true in Virginia, where the Trail spans the core of the Nation's eastern seaboard, and about 502 of the 542 miles of the Trail now lie on federal lands (with only about two miles of Trail remaining on unencumbered privately owned lands). See p. 7 n.2, *supra*. Long, continuous blocks of federal land beneath the Trail would, under respondents' theory, impose significant barriers to pipeline development that advances the National interest.

In addition, the Forest Service has identified two special-use permits for natural-gas pipelines crossing the Trail, including a Columbia Gas pipeline in the George Washington National Forest's Glenwood-Pedlar District, that it has approved under the Mineral Leasing

Act. Cf. Gov't Cert. Reply Br. 7 (noting other permit renewal that was granted before the Trail was relocated); Resp. Br. 8. Upon expiration, any such permit would need to be renewed under that same Act.[5]

2. Finally, respondents embrace (Br. 47) the conclusion that Congress intended to give the Park Service administrative jurisdiction over the hundreds of miles of privately owned land that had been traversed by the Appalachian Trail as well as regulatory authority over such lands. Cf. Gov't Br. 7 (866 miles in 1966), 39-40. But such a substantial change in the traditional operation of the Trail would be inconsistent with the statutory design. Congress was solicitous of the rights of private landowners, authorizing agencies to use condemnation proceedings for obtaining "private lands or interests therein" only after "all reasonable" "negotiation [efforts] have failed" and then to "acquire only such title" as "reasonably necessary to provide passage across such lands." 16 U.S.C. 1246(g). That solicitude contradicts respondents' understanding that the Trails Act converted private lands under hundreds of miles of the Trail into federally administered lands within the National Park System subject to Park Service regulation without the consent of the landowners.

Congress conferred no such authority. It instead charged the Secretary of the Interior with "the overall

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[5] Respondents appear to concede (Br. 48) that their position would result in lands in eight National Parks crossed by the Pacific Crest Trail being transferred for administration by the Forest Service, which would possess Mineral Leasing Act authority to grant rights-of-way through those lands. Respondents think it "[im]plausible" (*ibid.*) that such authority would be exercised due to other constraints and practicalities. But it is unclear that smaller projects could not overcome such hurdles. Cf. Resp. Br. 47 (noting pipelines).

administration of [the] trail." 16 U.S.C. 1244(a)(1), 1246(a)(1)(A). That administration is conducted within a cooperative management system, which has long governed the Trail and includes a "decentralized" decisionmaking process for local trail issues by locally situated agencies and private clubs. *1981 Comprehensive Plan* 9, 12, 15. Such authority to administer a "trail" is distinct from authority to administer all federal, state, and private lands that the Trail traverses.

In short, because Congress did not authorize the Secretary of the Interior to administer National Forest lands traversed by the Trail, that responsibility remains vested in the Forest Service. The Mineral Leasing Act accordingly provides the Forest Service with authority to grant a pipeline right-of-way through those lands.

* * * * *

For the foregoing reasons and those stated in our opening brief, the judgment of the court of appeals should be reversed, and the case should be remanded for further proceedings.

Respectfully submitted.

NOEL J. FRANCISCO
Solicitor General

FEBRUARY 2020

APPENDIX

1. 16 U.S.C. 1c (1964) provided:

Definitions.

(a) The term "National Park System" means all federally owned or controlled lands which are administered under the direction of the Secretary of the Interior in accordance with the provisions of sections 1 and 2-4 of this title, and which are grouped into the following descriptive categories: (1) National parks, (2) national monuments, (3) national historical parks, (4) national memorials, (5) national parkways, and (6) national capital parks.

(b) The term "miscellaneous areas" includes lands under the administrative jurisdiction of another Federal agency, or lands in private ownership, and over which the National Park Service, under the direction of the Secretary of the Interior, pursuant to cooperative agreement, exercises supervision for recreational, historical, or other related purposes, and also any lands under the care and custody of the National Park Service other than those heretofore described in this section.

2. 16 U.S.C. 1c(a) (1970) provided:

Same; general provisions.

(a) Definition.

The "national park system" shall include any area of land and water now or hereafter administered by the Secretary of the Interior through the National Park Service for park, monument, historic, parkway, recreational, or other purposes.

3. 16 U.S.C. 1248(a) provides:

Easements and rights-of-way

(a) Authorization; conditions

The Secretary of the Interior or the Secretary of Agriculture as the case may be, may grant easements and rights-of-way upon, over, under, across, or along any component of the national trails system in accordance with the laws applicable to the national park system and the national forest system, respectively: *Provided*, That any conditions contained in such easements and rights-of-way shall be related to the policy and purposes of this chapter.

4. 16 U.S.C. 1274 provides in pertinent part:

Component rivers and adjacent lands

(a) Designation

The following rivers and the land adjacent thereto are hereby designated as components of the national wild and scenic rivers system:

* * * * *

(b) Establishment of boundaries; classification

The agency charged with the administration of each component of the national wild and scenic rivers system designated by subsection (a) of this section shall, within one year from the date of designation of such component under subsection (a) (except where a different date if[14] provided in subsection (a)), establish detailed boundaries

[14] So in original. Probably should be "is".

therefor (which boundaries shall include an average of not more than 320 acres of land per mile measured from the ordinary high water mark on both sides of the river); and determine which of the classes outlined in section 1273(b) of this title best fit the river or its various segments.

* * * * *

5. 16 U.S.C. 1277(e) provides:

Land acquisition

(e) Transfer of jurisdiction over federally owned property to appropriate Secretary

The head of any Federal department or agency having administrative jurisdiction over any lands or interests in land within the authorized boundaries of any federally administered component of the national wild and scenic rivers system designated in section 1274 of this title or hereafter designated for inclusion in the system by Act of Congress is authorized to transfer to the appropriate secretary jurisdiction over such lands for administration in accordance with the provisions of this chapter. Lands acquired by or transferred to the Secretary of Agriculture for the purposes of this chapter within or adjacent to a national forest shall upon such acquisition or transfer become national forest lands.

6. 16 U.S.C. 1281(c) provides:

Administration

(c) Areas administered by National Park Service and Fish and Wildlife Service

Any component of the national wild and scenic rivers system that is administered by the Secretary of the Interior through the National Park Service shall become a part of the national park system, and any such component that is administered by the Secretary through the Fish and Wildlife Service shall become a part of the national wildlife refuge system. The lands involved shall be subject to the provisions of this chapter and the Acts under which the national park system or national wildlife system, as the case may be, is administered, and in case of conflict between the provisions of this chapter and such Acts, the more restrictive provisions shall apply. The Secretary of the Interior, in his administration of any component of the national wild and scenic rivers system, may utilize such general statutory authorities relating to areas of the national park system and such general statutory authorities otherwise available to him for recreation and preservation purposes and for the conservation and management of natural resources as he deems appropriate to carry out the purposes of this chapter.

7. 16 U.S.C. 1284(g) provides:

Existing State jurisdiction and responsibilities

(g) Easements and rights-of-way

The Secretary of the Interior or the Secretary of Agriculture, as the case may be, may grant easements and rights-of-way upon, over, under, across, or through any component of the national wild and scenic rivers system in accordance with the laws applicable to the national park system and the national forest system, respectively: *Provided*, That any conditions precedent to granting such easements and rights-of-way shall be related to the policy and purpose of this chapter.