No. 18-1587

In the
Supreme Court of the United States

ATLANTIC COAST PIPELINE, LLC,

Petitioner,

v.

COWPASTURE RIVER PRESERVATION ASSOCIATION; HIGHLANDERS FOR RESPONSIBLE DEVELOPMENT; SHENANDOAH VALLEY BATTLEFIELDS FOUNDATION; SHENANDOAH VALLEY NETWORK; SIERRA CLUB; VIRGINIA WILDERNESS COMMITTEE; WILD VIRGINIA,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

REPLY BRIEF FOR PETITIONER

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February 14, 2020

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REPLY BRIEF

Respondents' attempt to convert the Appalachian Trail into a massive barrier separating natural resources from consumers rests on two critical assumptions: that there is no meaningful distinction between a trail and the lands it traverses, and that Congress created this barrier (and repealed the Weeks Act) through an opaque three-step process without ever acknowledging the impact on pipeline development. Neither assumption withstands scrutiny. In reality, the Trails Act draws a stark distinction between the thousands of miles of trails it authorizes and the lands they traverse—a distinction that is well grounded in property law—and makes clear that it assigns administrative authority over the former without reassigning jurisdiction or ownership over the latter. That distinction allows all the relevant statutes to peacefully co-exist and explains how Congress could assign administration of the Appalachian Trail to Interior and the Pacific Crest Trail to Agriculture without converting large swaths of forestland into parkland and vice-versa, and without creating a massive barrier to pipeline infrastructure from Maine to Georgia.

Respondents' position, by contrast, depends on the highly implausible theory that three pieces of innocuous government action together worked a statutory repeal and erected a pipeline barrier without Congress (or the executive) ever acknowledging either result. This Court's cases demand unmistakable language of repeal, not triple bank shots, and they roundly reject efforts to locate 2,200-mile-wide elephants in mouseholes.

The Mineral Leasing Act (MLA) generally made it easier for federal agencies to grant pipeline rights-of-way across federal lands, but it carved out "lands in the National Park System." National trails are not "lands in the National Park System"; they are something else: "components of the National Trails System." The lengthy trails traverse all manner of land—private, state, national forests, and parkland—and do not transform, Midas-like, the lands they traverse into forest lands or park lands depending on which federal agency administers the trail. There is, in short, a fundamental distinction between authority to administer a trail and jurisdiction/ownership of the lands traversed by that trail. The consequences of ignoring that distinction are untenable: statutes are repealed, land is transferred, jobs are lost, resources are severed from consumers. The decision below should be reversed.

I. The Forest Service Has Authority Under The Mineral Leasing Act To Grant Rights-Of-Way Across Forest Service Lands Traversed By The Appalachian Trail.

A. The Trails Act Leaves the Forest Service's Jurisdiction over National Forest Lands Undisturbed.

1. The MLA authorizes "the Secretary of the Interior or appropriate agency head" with "jurisdiction over Federal lands," to grant "[r]ights-of-way through any Federal lands … for pipeline purposes." 30 U.S.C. §§185(a), 185(b)(3). The MLA exempts "lands in the National Park System." All agree that the lands at issue here were under the "jurisdiction" of the Forest Service for decades before the Trails Act. The salient

question, then, is whether these lands were subsequently transferred by the Trails Act (and/or some related federal actions) and transformed into lands under Park Service jurisdiction for MLA purposes. If they remain forest lands, all agree that the Forest Service director is the "appropriate agency head" and may grant rights-of-way for pipeline purposes.

The case for the Forest Service having jurisdiction over these lands would seem to be overwhelming. All agree that the "lands are owned by the United States," and the United States has never wavered in its view that these are national forest lands and have been for over 100 years. That is not just the United States' consistent position in this litigation; it is what the United States' own maps reflect. Where the pipeline right-of-way goes beneath the Trail, the Trail is plainly traversing the George Washington National Forest (GWNF). JA145. The Blue Ridge Parkway, with a narrow swath of parkland on each side, is just a few hundred feet away. The boundary is clearly marked, and the Trail is plainly in the GWNF.

The government's unwavering view follows directly from the relevant statutes. Congress declared over a century ago that these lands "shall be permanently reserved, held, and administered as national forest lands." 16 U.S.C. §521. Respondents concede that to convert such "national forest lands" into "lands in the National Park System," Congress would need to partially repeal the Weeks Act. Resp.Br.40. Respondents contend that Congress and the executive worked an implied repeal through a subtle combination of the Trails Act, the Park Service

Act's definitional provisions, and the Interior Secretary's designation of the Park Service Director to administer the Trail. That argument fails at every turn. It depends on conflating administrative authority over a trail and jurisdiction over the lands the trail traverses. It ignores both the demanding standard for implied repeals and the text of the Trails Act. And it creates untenable practical consequences: converting thousands of miles of trails into barriers to infrastructure and causing massive land transfers.

2. The most fundamental problem with respondents' theory is that it ignores the critical difference between a trail and the land it traverses. Respondents deny that any meaningful distinction exists or is drawn by the Trails Act. They are wrong on both counts. At the outset, no one disputes that what a trail traverses is land, so respondents' elaborate efforts to prove as much get them nowhere. A trail is unassailably *on land*, but a trail and the underlying land are not one and the same. A person walking on a trail across a neighbor's yard is most assuredly on land, but not on her own land. That is true even if the neighbor grants an easement or delegates authority to maintain the trail. Thus, when the Trails Act entrusts a particular Secretary "with the overall administration of a trail," 16 U.S.C. §1246(a)(1)(A), it does not transfer jurisdiction over the lands underlying the trail, as both the statutory text and bedrock property-law principles confirm.

Multiple provisions of the Trails Act reflect the fundamental distinctions between trails and lands, and between the administration of the former and jurisdiction/ownership of the latter. Indeed, those

distinctions follow directly from the ambitious scope of the Trails Act and the National Trails System it established. The Trails Act not only established the Appalachian Trail and Pacific Crest Trail, but set the stage for dozens of trails—recreational, scenic, and historic—criss-crossing the Nation and collectively covering tens of thousands of miles. *See* 16 U.S.C. §1244(a) (establishing scenic and historic trails of a combined 49,170 miles in length); 16 U.S.C. §1244(c) (authorizing study of additional trail routes). Congress was under no delusion that all the lands traversed by tens of thousands of miles of trails were or would become federal lands, which presumably explains why Congress addressed the trails' length without specifying their width or acreage. Similarly, when Congress assigned administrative authority over the trails, it paid little heed to which agency exercised jurisdiction over the traversed federal lands or which designation would minimize the need for land transfers. Thus, for example, Congress assigned administrative authority over the Pacific Northwest National Scenic Trail to the Agriculture Secretary even though Congress expressly provided that the trail would originate and terminate in national parks. 16 U.S.C. §1244(a)(30). Congress' approach makes perfect sense if what it assigned was administrative authority over a trail and trail route, but no sense at all if untold acres in Glacier and Olympia National Parks were being transferred to the Forest Service.

These same differences are reflected in the mechanics of the Trails Act. Congress did not authorize the administrating Secretary to acquire all lands traversed by the trail in fee, or even to consolidate all federal trail-traversed lands under her

jurisdiction. Instead, Congress took the more modest step of authorizing the administering Secretary to establish a trail route and obtain rights-of-way from private or state landowners and "across Federal lands under the jurisdiction of another federal agency" so that the public could traverse those lands. 16 U.S.C. §1246(a)(2).

It is black-letter property law that a right-of-way does not transfer possession or jurisdiction over the underlying lands. A "right-of-way" is instead merely a "right to pass through property owned by another," Black's Law Dictionary (11th ed. 2019)—or as this Court put it, "a 'nonpossessory right to enter and use land in the possession of another,'" *Marvin M. Brandt Revocable Tr. v. United States*, 572 U.S. 93, 105 (2014) (quoting Restatement (Third) of Property: Servitudes §1.2(1) (1998)). Moreover, a right-of-way to traverse the surface of the lands has no effect on subsurface property interests. *Cf. Great N. Ry. Co. v. United States*, 315 U.S. 262, 279 (1942) ("Since petitioner's right of way is but an easement, it has no right to the underlying oil and minerals.").

Respondents invoke unusual contexts and dissenting opinions to suggest that sometimes "right-of-way" connotes broader possessory rights. Resp.Br.26 & n.35. But that secondary meaning reflects that in some contexts, like railroads, the law grants a power to condemn all land within a right-of-way, with a resulting transfer of ownership. Congress could hardly have been clearer that the Trails Act was *not* adopting that condemnation approach as the default option for federal trails. To the contrary, Congress first required the trail route to be

established by designation of a right-of-way that plainly left ownership undisturbed, and then granted only narrow and carefully-circumscribed authority for the federal government to obtain ownership of some property along some trail routes. *See*, *e.g.*, 16 U.S.C. §1246(g) (authorizing limited condemnation authority as a last resort); 16 U.S.C. §1244(a)(25)(D) (precluding non-voluntary acquisition of private land for particular trail). Thus, under the Trails Act, neither the grant of administrative authority over a trail nor the subsequent designation of a trail right-of-way transfers jurisdiction over the underlying land. Petr.Br.20-27.

Respondents concede that the Trails Act employs only the primary, non-possessory meaning of right-of-way when it comes to state and private lands. Resp.Br.47. There is no logical reason why a right-of-way "across Federal lands under the jurisdiction of another federal agency" would be fundamentally different (or cede the very jurisdiction that empowered the other federal agency to grant the right-of-way). *See Merrill Lynch, Pierce, Fenner & Smith Inc. v. Dabit*, 547 U.S. 71, 86 (2006) ("identical words used in different parts of the same statute are … presumed to have the same meaning"). In fact, the Trails Act affirmatively precludes that perverse conclusion by underscoring that it "shall [not] 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).

3. Given that respondents' entire argument is an elaborate effort to read the Trails Act (and/or related

actions) to do just that—*i.e.*, to "transfer … management responsibilities" established under other laws (like the Weeks Act and MLA) "for federally administered lands," §1246(a)(1)(A) would seem to be a formidable obstacle. Respondents' efforts to wish §1246(a)(1)(A) away are unavailing. They first suggest that its reference to "federally administered lands which are components of the National Trails System" supports their view that a trail and the lands it traverses are one and the same. Resp.Br.35. But that misses the point of the provision entirely. The prior sentence refers to the administration of "a trail" and "administering and managing the trail"—not land—and acknowledges that the Trails Act grants that authority over the trail to a particular agency. What the provision expressly preserves is the broader "management responsibilities" over the traversed "federally administered lands"—not trails—"established under any other law," which obviously includes the Weeks Act and MLA.

Respondents next contend that §1246(a)(1)(A)'s distinction between "administration" and "management" leaves other "Federal agencies" only with "day-to-day" "*management* responsibilities" over matters like "local visitor services" and "visitor use." Resp.Br.35 (emphasis added). But that is simply not what §1246(a)(1)(A) says. It does not draw a distinction between *administrating* the trail and *managing* it (with the latter somehow limited to visitor services); the Secretary charged with "overall administration" is responsible both for "administering *and managing* the trail," 16 U.S.C. §1246(a)(1) (emphasis added). Thus, under respondents' reading of §1246(a)(1), the "management responsibilities" that

Congress went out of its way to preserve would turn out to be a null set. In reality, §1246(a)(1) draws a different distinction, not between administering the trail versus managing it, but between administering *and* managing *the trail* versus the broader management responsibilities for the underlying *lands*, which are expressly preserved for the agency with jurisdiction over them.

Respondents have no meaningful answer to the many other provisions of the Trails Act that likewise distinguish a trail from the land it traverses, and confirm that administrative power over the former does not alter jurisdiction over the latter. Petr.Br.25-26. The best they can offer is a theory that the many provisions recognizing that a trail can traverse "Federal lands under the jurisdiction of another federal agency" refer only to the state of play *before* the lands are designated for trail inclusion. Resp.Br.27-29. But that theory cannot be reconciled either with the numerous Trails Act provisions that plainly reference the *post*-designation state of affairs, *see, e.g.*, 16 U.S.C. §§1244(d); 1246(i), or with the many statements both before and after its passage confirming that the Trails Act would not and did not change the jurisdictional status quo, *see* U.S.Br.30-35. Section 1244(d) is particularly telling. It was added in 1978, ten years after the trail route for the Appalachian Trail was established, and yet requires the convening of an advisory council for the Trail to include "the head of each federal department or administrating agency administering lands through which the trail route passes." That provision is inexplicable under respondents' view.

B. Other Statutes Confirm that the Trails Act Does Not Transfer Jurisdiction.

Respondents' argument is further undermined by the fact that when Congress wants to convert Forest System lands into Park System lands (or vice versa), it says so expressly. Indeed, Congress did so in the Rivers Act *on the very same day* it passed the Trails Act. The Rivers Act provides: "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 "[t]he *lands* involved shall be subject to … the Act[] under which the national park system … is administered" and in the case of any conflict between the Rivers Act and Park System rules "the more restrictive provisions shall apply." 16 U.S.C. §1281(c) (emphasis added). And because the Rivers Act transfers jurisdiction over lands, it requires the establishment of "detailed boundaries" of such land on "both sides of the river," 16 U.S.C. §1274(b), and includes a section specifically addressing the chapter's effect on the mineral leasing laws, *see* 16 U.S.C. §1280. The Trails Act contains no comparable language, presumably because the length of the authorized trails, and the interests in creating recreational trails near urban centers and locating historic trails where historical events actually occurred all called for a different approach.

Respondents try to downplay that stark contrast by suggesting that what Congress did for rivers in one fell swoop was accomplished for trails via a circuitous three-step process. Resp.Br.42. But the first step of their three-step theory depends on reading the Trails

Act as transferring to the Interior Secretary the Forest Service's Weeks Act authority to "administer[] as national forest lands" the Forest System lands through which the Trail passes. 16 U.S.C. §521. Otherwise, the Secretary would not have the requisite power over those lands (as distinct from the Trail itself) to delegate to the Park Service. But that is where the textual contrast between the Rivers Act and the Trails Act dooms their argument. When it came to the trails, the only thing transferred to the administrating Secretary was authority to administer the trail. Jurisdiction over the underlying lands was unaffected.

Respondents face much the same problem with Congress' treatment of the Blue Ridge Parkway, which again illustrates that when Congress wants to transfer jurisdiction over federal land, it does so expressly. In 1952, for example, Congress authorized the Interior Secretary "to transfer to the jurisdiction of the Secretary of Agriculture for national forest purposes" certain "lands or interests in lands" previously "acquired for or in connection with the Blue Ridge Parkway." 66 Stat. 69 (1952). In so doing, Congress made clear that "[l]ands transferred under this section shall become national forest lands." *Id.* And in 1968, Congress authorized other agencies with "jurisdiction over such lands … to transfer to the Secretary of the Interior the part of the Federal lands" to be used for a proposed Parkway extension. 82 Stat. 967, 967 (1968), *codified at* 16 U.S.C. §460a-6. The same 1968 Act described "portions of the Appalachian Trail" (established a week earlier) as "national forest lands." 16 U.S.C. §460a-7(3).

Respondents note that Congress did not use comparable language in the 1936 and 1940 Acts that created the Parkway. Resp.Br.44. But those earlier laws still used language very different from that in the Trails Act. The Parkway Act expressly refers to the "lands" designated for the Parkway and makes clear that those lands "shall be administered and maintained by the Secretary of the Interior through the National Park Service, subject to the provisions of" the Park Service's Organic Act, "the provisions of which Act, as amended and supplemented, are extended over and made applicable to said parkway." 16 U.S.C. §460a-2. The Trails Act, by contrast, does not grant any authority over *lands* to the Park Service, let alone expressly "extend" and "apply" the Organic Act to the Appalachian Trail.

Respondents' bigger problem with the Blue Ridge Parkway is that they have no coherent explanation why Congress would have authorized pipeline rights-of-way beneath the 469-mile-long Parkway (which all agree is park land) but precluded such rights-of-way for the much longer Trail, which closely parallels the Parkway. They quibble about geography by suggesting that at points the Parkway and Trail are separated by "as much as 40 miles." Resp.Br.40. But 40 miles is not much when it comes to pipelines, and for much of their length, including the stretch here, the Trail and Parkway are separated by less than a mile. And where the Trail and Parkway diverge near Roanoke and Asheville, the Trail runs *west* of the Parkway, which is the wrong way round for getting inland energy resources to city dwellers.

Respondents also quibble about timing, suggesting that the Parkway right-of-way authority in 16 U.S.C. §460a-3 pre-dated the Trails Act and the MLA amendments. Resp.Br.45. But that sequencing only underscores the anomaly. Long before the Trails Act and the MLA amendments, Congress generally precluded pipeline rights-of-way through national parks. Yet when Congress created the Parkway, an unusually long and narrow national park with a distinct potential to block development for hundreds of miles, Congress expressly authorized rights-of-way. Having already made that judgment for the 469-mile-long Parkway, it would make no sense for Congress to *later* reach a contrary judgment for the 2,200-mile Appalachian Trail. And it would have made even less sense for Congress to *reaffirm* the right-of-way authority for the Parkway a week after the Trails Act if that Act had just rendered such authority practically worthless. *See* 82 Stat. 968 (1968) (codified as 16 U.S.C. §460a-8).

The weakness of respondents' position is well illustrated by the reality that the proposed pipeline route crosses beneath the Parkway and the Trail in a single bore (hundreds of feet below both) at a point where the Parkway and Trail are less than 1000 feet apart. JA147. And just a few thousand feet away, the Trail and Parkway intersect, such that the Trail itself is on Parkway land. JA145. The logic of respondents' position is that the Park Service would have authority to grant a right-of-way under the Parkway *and* Trail where the Trail is on Parkway land, but the Forest Service lacks the same authority less than a thousand feet away where the Trail traverses forest land.

Respondents alternatively suggest that §460a-3 does not actually allow rights-of-way for pipelines. Resp.Br.45. That claim is difficult to reconcile with the text, as it is hard to see how a pipeline crossing hundreds of feet beneath the Parkway would be "inconsistent with the use of [parkway] lands for parkway purposes." 16 U.S.C. §460a-3. It is even harder to reconcile with the Senate Report for the MLA amendments, which specifically cited the Blue Ridge Parkway (and §460a-3 and §460a-8) as an example of Park System lands as to which "separate authority exists" to grant pipeline rights-of-way. S. Rep. 93-207 (June 12, 1973). Indeed, the only court to suggest sympathy with this argument is the same panel that issued the decision below and has erected obstacles to pipelines at every turn. *See Sierra Club v. U.S. Dept. of the Interior*, 899 F.3d 260, 266 (4th Cir. 2018).

II. Respondent's Theory Is Deeply Flawed, Contrary To The Park Service's Longstanding Views, And Would Have Anomalous Consequences That Congress Could Not Have Intended.

A. Respondents' Reliance on the Organic Act Is Misplaced.

Respondents' response to all this—the plain text of the Trails Act, the implied repeal, the enormous unintended consequences for everything from pipeline development to jurisdiction over Yosemite—is a flawed syllogism. They argue that the MLA authorizes pipeline development on "all lands owned by the United States," except "lands in the National Park System," 30 U.S.C. §185(b)(1); that under the

Park Service Act, the Park System includes "any area of land … administered by the [Interior] Secretary, … acting through the [Park Service] Director, for … recreational or other purposes"; and that the Secretary designated the Trail to be administered by the Park Service Director for recreational purposes. Thus, respondents conclude that the Trail is land in the National Park System for MLA purposes.

There are multiple problems with respondents' syllogism, starting with the fundamental distinction between lands and the trails that traverse them, already discussed at length. The entirety of the Appalachian Trail is undoubtedly a trail administered by the Park Service Director, but that does not make all the land traversed by the trail "lands in National Park System." That is most obvious for the private and state lands traversed by the Trail. Respondents invite the Court to ignore these lands because the MLA addresses only *federal* lands. But that is no answer to the problem that the federal actions on which their syllogism depends do not distinguish among private, state, or federal lands. The Trails Act gave the Interior Secretary administrative authority over the *entire* Appalachian Trail, not just the portions that traverse federal lands. And when the Interior Secretary designated the Park Service Director to administer the Trail, the designation covered the *entire* Trail. Finally, the Organic Act definition of the National Park System includes any "area of land" administered by the Director for recreational or other purposes. Thus, under respondents' syllogism, every mile of the Trail (and every other Park-Service-administered trail), whether in private, state, or

Forest Service hands, constitutes "lands in the National Park System." That cannot be correct.

The problems with respondents' syllogism do not end there. If Congress really wanted to carve out every Park-Service-administered trail from the MLA, it had a simple expedient. It could have exempted "components of the National Trails System administered by the Park Service." That it did not exempt that large universe, *see* Add.1, but exempted only the smaller universe of "lands in the National Park System," *see* Add.2, is telling. As respondents emphasize, when Congress revised the MLA it would have had the recently enacted Trails Act firmly in mind. Congress would have been acutely aware that it had already designated thousands of miles of national trails while paving the way for tens of thousands of miles more. It also would have recognized that administrative authority over most of those trails was vested in the Interior Secretary, who could (and likely would) delegate administrative authority over many of them to the Park Service. Under respondents' view, then, Congress, in the midst of an effort to facilitate pipeline development, rendered untold acres of federal lands traversed by thousands and thousands of miles of trail routes potentially off limits to pipeline infrastructure without regard to whether the trail-traversed federal lands were Bureau of Land Management (BLM) lands or forest lands otherwise open for pipeline development. Odder still, under respondents' view, Congress ceded the ultimate determination whether a trail would be a barrier to pipeline infrastructure to the Interior Secretary. If the Interior Secretary designates the Park Service Director as trail

administrator, land traversed by the trail becomes land in the National Park System. But if the Interior Secretary taps another subordinate, such as BLM, the trail route is not transformed into a pipeline barrier. And, by respondents' telling, all this was accomplished not by the direct route of exempting components of the National Trail System administered by the Park Service, but via a triple bank shot.

B. Both the Park Service and the Forest Service Agree that the Lands Here Are Forest System Lands.

Respondents continue to insist that the Park Service shares their view that all the lands the Trail traverses are Park System lands. That respondents cling to this view in the face of a Solicitor General brief rejecting it is remarkable. To be sure, the Solicitor General nominally represents the Forest Service, not the Park Service. But that is only because respondents sued the former, not the latter. There is not so much as a hint that the Solicitor General's brief (joined by Interior's Solicitor) does not reflect the considered view of the entire United States government, including the Park Service, that the lands here are forest lands and the correct agency head granted the right-of-way.

Not surprisingly, then, respondents' effort to attribute their views to the Park Service amounts to little more than word play. They claim that "[f]or almost 50 years, the Park Service has acknowledged that the Appalachian Trail is in the Park System and that the Authorities Act made it so." Resp.Br.19. Indeed. No one doubts that the Trail "is in the Park System" to the extent that the Park Service

administers *the Trail*. But that is a far cry from a Park Service admission that the forest lands traversed by the Trail are Park Service lands. To the contrary, the Comprehensive Plan respondents cite distinguishes between the Trail and the lands it traverses, noting: "While responsibility for overall Trail administration lies with the National Park Service, land-managing agencies retain their authority on lands under their jurisdiction."[1] The Park Service has drawn that same distinction consistently across different administrations. As a 1993 Memorandum of Agreement between the Interior and Agriculture Secretaries succinctly put it, "[t]he Appalachian Trail traverses lands which are components of the National Park System, the National Forest System, other Federal lands, and State and private lands." Sec'y of the Interior & Sec'y of Agric., *Memorandum of Agreement for the Management of the Appalachian National Scenic Trail* (Jan. 26, 1993), http://bit.ly/2TqeUmC.[2]

Instead of addressing these and other statements that refute their argument, respondents emphasize

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[1] Comprehensive Plan 12-13 (Sept. 1981), https://www.nps.gov/appa/getinvolved/upload/AT-Comprehensive-Plan-1981-Part1.pdf.

[2] Respondents' amici emphasize that this memorandum reserves to the Park Service the power to authorize "oil or gas pipeline crossings." *See* Underhill Br.21. But as the memorandum makes clear, the Park Service had right-of-way powers to reserve over those tracts because they were lands *acquired by the Park Service*, not Forest Service lands. *See* Mem. §3 ("the National Park Service has acquired tracts of land lying outside the proclaimed or designated boundaries of existing National Parks and National Forests").

that the Park Service has, at times, identified the Trail as a "unit" of the Park System. JA58; *see* JA87, 97. But as the Solicitor General has explained, "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." U.S.Br.46. Moreover, that "unit" listing is not synonymous with a "system unit" under the Organic Act, and the Park Service has not been consistent in its terminology, as it has identified the Trail as *both* a "unit" and a "related area," which is an area "administered in connection with the System," not a part of the System itself, 54 U.S.C. §100801(3)(A), (C). *See* Park Service, "National Park System," *available at* https://www.nps.gov/aboutus/national-park-system.htm.[3]

In all events, the Park Service's administrative classification of the Trail cannot possibly dictate whether the lands traversed by the Trail are under the jurisdiction of the National Park System for MLA purposes. If one looks long enough, one can find statements about the Park Service's authority over the Trail without drawing a careful distinction between authority over the Trail and the land it

[3] In invoking Park Service statements, respondents repeatedly conflate the Trail and the corridor of land surrounding it. *See, e.g.*, Resp.Br.2, 20-21. The two are not one and the same, and the Park Service does not treat them interchangeably. *See* U.S.Br.43.

traverses. But no one would ever suggest that some imprecision in an administrative document sufficed to transfer the authority to grant rights-of-ways from private landowners and states to the Park Service. There is no reason for a different result when it comes to lands permanently reserved as forest lands a century ago and under Forest Service jurisdiction ever since, especially given the enormous consequences of treating trail-designation as synonymous with jurisdiction-transfer.

C. Respondents Have No Answer to the Anomalous Results Their Position Would Produce.

If there were any lingering doubt, the truly anomalous results respondents' interpretation would produce confirm that Congress could not have intended the Trails Act, the Authorities Act, or anything else to effect a *sub silentio* jurisdictional transfer of 2,200 miles of land to the Park Service.

First, respondents largely ignore the transformative effect their argument would have on the lands, including bona fide national parks, traversed by the Pacific Crest Trail, which the Agriculture Secretary administers under the Trails Act. There is just no getting around that, under their theory, thousands of acres that have always been understood to be lands in Yosemite and Sequoia National Parks (incidentally traversed by a forest-service-administered trail) became Forest Service land in 1968 and are open to pipeline development. Respondents can protest that such a pipeline route would be impractical or that the Forest Service would withhold a right-of-way, but that is at best an

argument that absurd results will not inevitably be accompanied by practical disasters. It also leaves respondents without any answer to why Congress would want to swap thousands of acres of western parkland for thousands of acres of eastern forest lands, or treat the two coasts radically differently for purposes of pipeline development. Given the obvious alternative explanation that Congress simply decided to keep both agencies happy by giving each administrative authority (without any land transfers) over one of the two preeminent trails authorized by the Act, respondents' theory has nothing to recommend it.

The anomalies are hardly limited to Yosemite and Sequoia. The Trails Act grants the Agriculture Secretary administrative authority over, *inter alia*, the 3,100-mile Continental Divide National Scenic Trail, the 1,170-mile Nez Perce National Historic Trail, and the 1,200-mile Pacific Northwest National Scenic Trail, which starts in Glacier National Park and ends in Olympic National Park, but is nonetheless administered by the Forest Service. 16 U.S.C. §1244(a)(5), (14), (30). The sheer amount of national parkland transferred to the Forest Service under respondents' theory is staggering.

Second, respondents have no coherent theory about what their arguments mean for private landowners and states. In their lofty rhetoric about the sacred nature of the land traversed by the Trail, they forget that not all that land "belong[s] to the American people." Resp.Br.3. Much of it remains in state and private hands, or at least those landowners have always thought as much. Respondents' view that

all lands traversed by a Park Service-administered trail become lands in the Park System would threaten that understanding.

Respondents' amici are quick to disclaim the implications of respondents' arguments and insist that because the MLA addresses only federal lands, petitioner need only divert its pipeline to cross the Trail on private or state land. That argument undercuts much of the rhetorical force of amici's submissions. If the Trail really is "a sacred part of our nation's identity," Wintergreen Property Owners Association Br.7, it is a little hard to see how a carefully vetted right-of-way 600-feet below the Trail denigrates it, while a less regulated crossing under private lands a day's hike away is inconsequential. (It is, of course, easier to see why a trail crossing in someone else's backyard helps the Wintergreen Property Owners.) Nor do amici explain why the environment will benefit from a needless detour from the FERC-approved route, or hazard a guess why Congress would prefer crossings on private or state land, rather than on forest lands, when it has generally encouraged the use of forest lands for development, including pipeline crossings.

Respondents themselves are far more coy about the effect on state and private landowners. Although they note that the MLA does not address "the ability of a state or private landowner to grant a pipeline right-of-way," they promptly add the ominous qualifier that "the inclusion of the Appalachian Trail in the Park System gives the Park Service some authority (if it chooses to exercise it) over land the United States does not own," Resp.Br.47, and follow

with a dubious theory that §1246(c) categorically bars pipeline crossings, Resp.Br.48. Thus, while respondents' arguments may appear to preserve some wiggle-room, their subtext is plain: If they prevail here, their next argument will be that the Trails Act compels the Park Service to prohibit pipelines from Maine to Georgia, including on state and private land.

Respondents' assurances (at 47-48) that *existing* pipelines are safe because they cross under nonfederal lands or under federal land via pre-Trails-Act easements are thus cold comfort. As petitioner noted (and respondents conspicuously never deny), many of those pipelines will eventually require replacement or reauthorizations, *see, e.g.*, *Sierra Club v. U.S. Forest Serv.*, 828 F.3d 402, 404-05 (6th Cir. 2016), and under respondents' theory such actions must be denied regardless of whether the lands are federal or private. Respondents' position also means that countless other rights-of-way for non-pipeline purposes were granted by the wrong federal agency. *See* Petr.Br.48-49.

Finally, respondents do not even try to deny that their statutory position would be a death knell for the Atlantic Coast Pipeline and the countless jobs, tax revenues, and energy savings it promises. Never mind the thousands of hours that expert federal agencies have spent studying energy needs, pipeline routes, and environmental impact; in the view of respondents and their amici, FERC cannot be trusted to assess energy needs, and the federal government cannot be trusted to know whether a stretch of trail is on park land or forest land. Unfortunately, a panel of the Fourth Circuit has adopted the same view, second-guessing every decision of federal regulators and

deciding that it must speak for the trees. The cost of that approach in terms of lost jobs, foregone tax revenues, and unmet energy needs is real.

In the end, the practical consequences of respondents' position underscore that it has no grounding in the Trails Act or the MLA. While it is theoretically possible that Congress empowered the Interior Secretary to put tens of thousands of miles of federal lands off-limits to pipeline development and transferred large swaths of Yosemite and Sequoia (and Glacier and Olympia) National Parks to the Forest Service, there is a far more plausible explanation: Congress wanted to establish a National Trails System, and understood that thousand-mile trails are different from national parks, no matter who administers them. Accordingly, Congress enacted the Trails Act, divvied up administrative authority over the trails, and left underlying lands and the state of pipeline infrastructure blissfully unaffected. The choice between those alternatives is not close.

CONCLUSION

For the foregoing reasons, this Court should reverse.

Respectfully submitted,

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February 14, 2020

ADDENDUM

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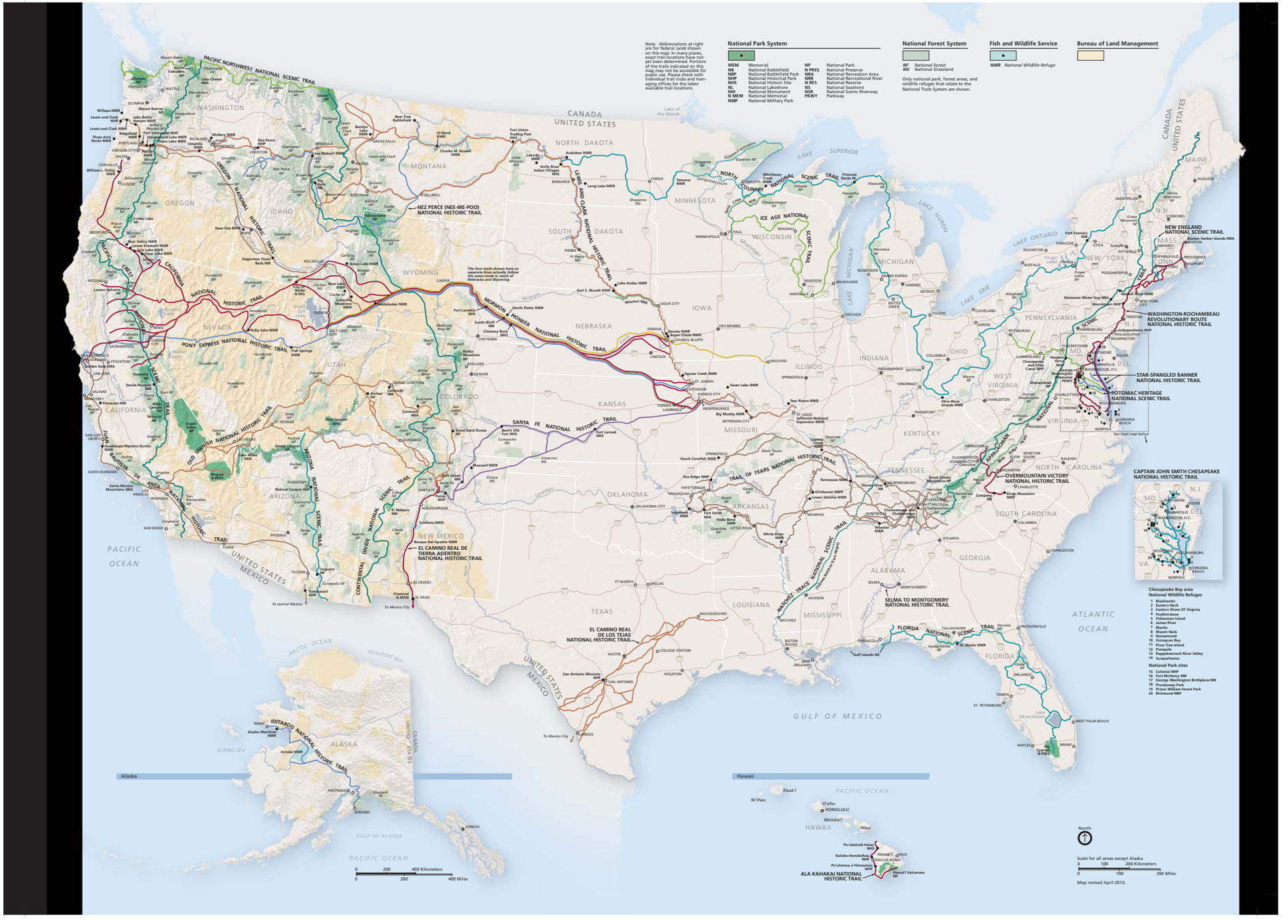
National parks, trails, and federal land, available at
https://www.nps.gov/carto/hfc/carto/media/NationalTrailsmap.pdf



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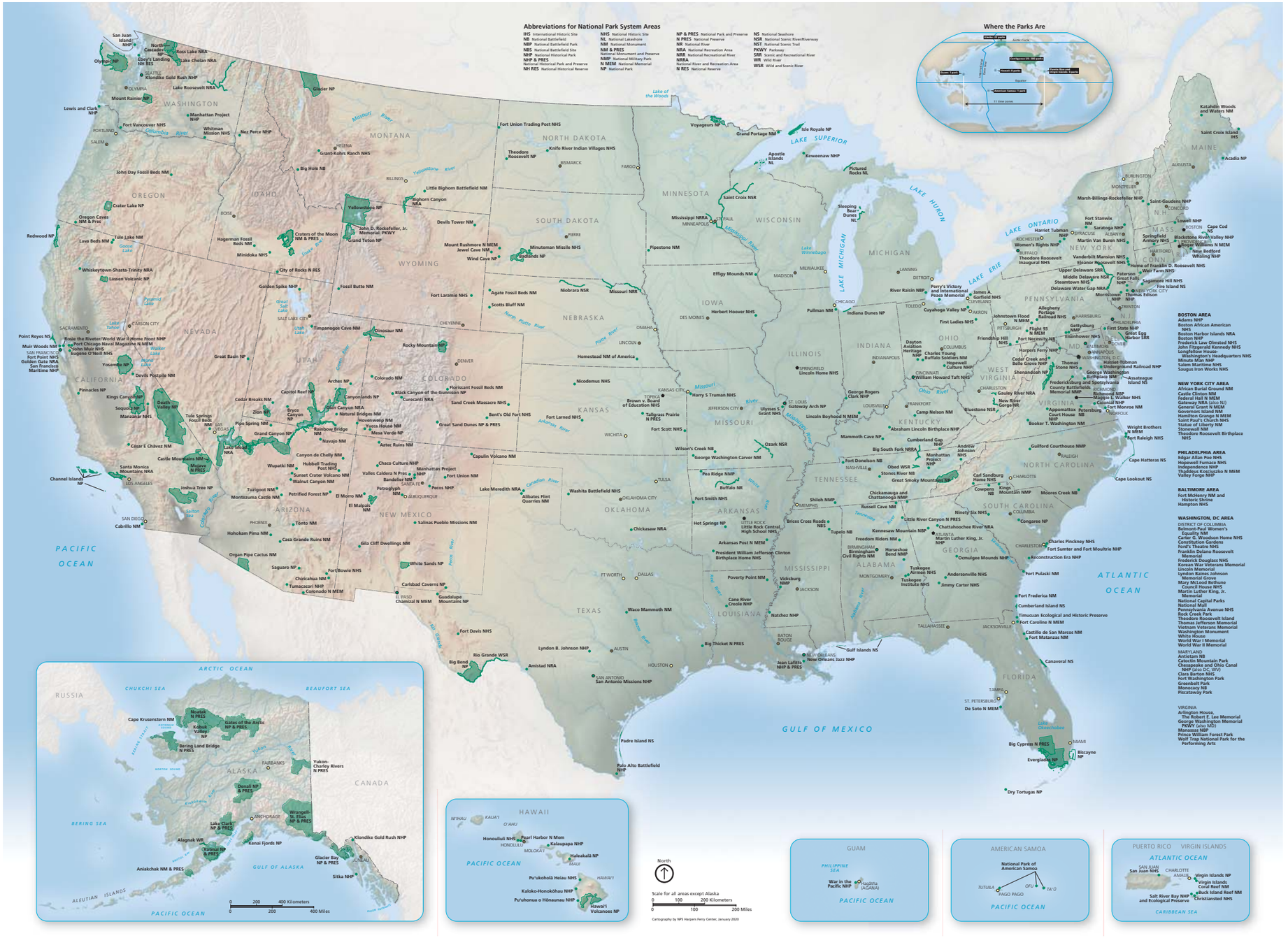
Map of major national parks (excluding parkways) generated using data available at https://www.nps.gov/carto/hfc/carto/media/NPSWallMap.jpg



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