Nos. 18-1584 & 18-1587

IN THE

Supreme Court of the United States

UNITED STATES FOREST SERVICE, ET AL.,
Petitioners,

AND

ATLANTIC COAST PIPELINE, LLC,
Petitioner,

v.

COWPASTURE RIVER PRESERVATION ASSOCIATION, ET AL.,
Respondents.

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

BRIEF IN OPPOSITION FOR RESPONDENTS

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QUESTION PRESENTED

Whether the United States Forest Service has statutory authority under the Mineral Leasing Act to grant a gas pipeline right-of-way across the Appalachian National Scenic Trail.

RULE 29.6 STATEMENTS

Pursuant to Rule 29.6 of the Rules of this Court, respondents Cowpasture River Preservation Association, Highlanders for Responsible Development, Shenandoah Valley Battlefields Foundation, Shenandoah Valley Network, Sierra Club, Virginia Wilderness Committee, and Wild Virginia, Inc. state the following:

None of the respondents is a publicly held entity; none of the respondents has a parent company; and none of the respondents has issued stock to any publicly held company.

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INTRODUCTION

Petitioners ask this Court to render an advisory opinion on the Mineral Leasing Act ("MLA"). The Fourth Circuit's decision to vacate pipeline rights-of-way granted by the U.S. Forest Service rested on four independent bases. Petitioners seek review of only one – one the Forest Service previously recognized "was unnecessary to the judgment" of the Fourth Circuit. But the remaining three bases for the judgment below threaten to make irrelevant any decision this Court reaches.

Relying on two other federal statutes, the Fourth Circuit required the Forest Service on remand to study routes that avoid national forests and required a reroute if those alternatives can accommodate the pipeline. That holding is not challenged here. Indeed, at Atlantic's request, the Forest Service has already started the work of evaluating potential reroutes. If the Forest Service on remand identifies a suitable alternative route across non-federal lands, then the pipeline will not cross the Appalachian Trail on federal land. In that event, any decision this Court renders on the MLA would be purely advisory. The same is true if the Forest Service determines that the environmental impacts of the proposed pipeline are too severe or finds other defects in the proposal that the Fourth Circuit required it to consider on remand.

Petitioners' insistence that this Court nonetheless decide the MLA issue now is particularly unwarranted because there is no circuit split on the question presented. To the contrary, the Fourth Circuit's decision is consistent with those of other circuits that have decided similar issues.

Even if the MLA issue were squarely presented for this Court's review, moreover, this case presents no

question of substantial national importance. Atlantic – but not the government – hyperbolically argues without citation that the Fourth Circuit's decision threatens to choke off the flow of natural gas to the east coast. But Atlantic is factually mistaken; numerous sites remain available for pipeline construction, including two alternatives that Atlantic itself identified but declined to study in the agency proceedings below.

The government argues that the Fourth Circuit's ruling nonetheless raises "questions" about the division of administrative authority between federal agencies; but it ignores that those questions were already answered, correctly, by the Fourth Circuit, which confirmed the Forest Service's authority to manage segments of the Appalachian Trail on the national forest under statutes other than the MLA.

In any event, the Fourth Circuit's decision is correct on the merits. There is no dispute that the entire Appalachian Trail is a unit of the National Park System, including where it crosses a national forest. There is no dispute that the MLA prohibits pipeline crossings over federal lands in the National Park System. And there is no dispute that the relevant parcel where Atlantic seeks to cross the Trail is federal land. Accordingly, this is federal land in the National Park System, and a pipeline cannot cross it without congressional authorization.

The petitions for certiorari should be denied.

STATEMENT OF THE CASE

A. The Appalachian National Scenic Trail

Congress recognized the Appalachian National Scenic Trail ("Appalachian Trail" or "Trail") in 1968 as one of the first two national scenic trails under the National Trails System Act ("NTSA"). The Trail runs from Maine to Georgia and provides the backcountry experience of a hiking trail in a conserved landscape. The Trail itself and the landscape through which it passes have been celebrated in American nature writing from Henry David Thoreau's *The Maine Woods* to Bill Bryson's *A Walk in the Woods*. Millions of people hike portions of the Trail every year, and several thousand attempt a thru-hike of the entire 2,200 miles. The Trail is a monument to the country's desire to preserve an outstanding natural landscape in its pristine, pre-industrial condition.

Volunteers developed the Appalachian Trail between 1921 and 1937 from private, state, and federal land owned by multiple agencies. Congress later included all those lands in the national trail, without assuming federal ownership of them all. 16 U.S.C. § 1244(a)(1). The NTSA entrusts each landowner with day-to-day "management responsibilities" for trail segments on its land. *Id.* § 1246(a)(1). But Congress charged one federal agency with administration of the entire Trail. The administrator can transfer "management" responsibility for segments to other agencies, but not congressionally assigned "administration" of the entire Trail. *Id.* § 1246(a)(1)(B). Those administration duties include selecting, acquiring, and regulating the land that makes up the Trail. *Id.* § 1246(a)-(c), (h)-(i). Congress decided that "[t]he Appalachian Trail shall be administered primarily as a footpath by the Secretary of the Interior," who has delegated that duty to

the National Park Service ("Park Service" or "NPS"). *Id.* § 1244(a)(1).

The Park Service administers land in the National Park System. Its Organic Act defines the Park System to include "any area of land and water administered by" the Park Service. 54 U.S.C. § 100501. Congress adopted that definition in 1970 to incorporate all areas administered by the Park Service into "one National Park System." H.R. Rep. No. 91-1265, at 10 (1970). All nationally significant areas of land administered by the Park Service are National Park "System unit[s]." 54 U.S.C. § 100102(6). The Park Service designates the entire Appalachian Trail as a "System unit" of the National Park System, regardless of underlying land ownership. C.A.App.3674.

In administering National Park System units such as the Appalachian Trail, the Park Service is prohibited from exercising its authority "in derogation of the values and purposes for which the System units have been established." 54 U.S.C. § 100101(b)(2).

B. The Mineral Leasing Act

The MLA, as amended in 1973, is Congress's definitive statement on gas pipeline rights-of-way across federal property. 30 U.S.C. § 185. The Act supersedes all other federal statutes as applied to pipeline rights-of-way on federal land. *Id.* § 185(q). It authorizes federal agencies to grant pipeline rights-of-way across "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." *Id.* § 185(b)(1) (emphasis added). Under the MLA, no agency has authority to grant a gas pipeline right-of-way across a unit of the National Park System. *Id.*

C. The Atlantic Coast Pipeline

The Atlantic Coast Pipeline ("ACP") is a proposed 600-mile natural gas pipeline from West Virginia to North Carolina approved by the Federal Energy Regulatory Commission ("FERC") in 2017. App. 2a-3a.[1]

Twenty-one miles of ACP's proposed route will cross two national forests. C.A.App.0009-10. Petitioner Atlantic Coast Pipeline, LLC ("Atlantic") will clear-cut a 125-foot right-of-way for most of that distance, directly impacting nearly 12,000 acres of national forest. C.A.App.1515.

The terrain is rugged, with steep slopes, highly erosive soils, and soluble limestone bedrock. C.A.App.1575, 1620, 1629. Most forest land the pipeline would cross has a "high susceptibility to landslides." C.A.App.1604, 1611. The majority of the proposed route through the forest will follow mountain ridgetops, which Atlantic will blast down by as much as 20 feet. C.A.App.1468, 1613.

To cross the Appalachian Trail, Atlantic proposes to drill a one-mile-long, 3.5-foot diameter hole through a mountain. C.A.App.1793. This alone will require more than a year of around-the-clock operations with heavy construction equipment operating continuously. C.A.App.0044, 1811.

Construction of ACP requires the approval of multiple agencies. Most sought no public comment and provided no administrative review process. Several

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[1] FERC's determination that ACP is needed to meet the region's energy demand is a disputed issue in petitions for review pending in the D.C. Circuit. *See Atlantic Coast Pipeline, LLC v. FERC*, Nos. 18-1224 *et al.* (D.C. Cir.). As the Forest Service acknowledges, the completion of several other pipelines recently has significantly increased the interstate pipeline system's capacity to address regional demand. USFS Pet. 28.

legal challenges followed; the Fourth Circuit has heard – and rejected – a number of them. *See*, *e.g.*, *Appalachian Voices v. State Water Control Bd.*, 912 F.3d 746 (4th Cir. 2019) (upholding ACP water-quality certification); *In re Appalachian Voices*, No. 18-1271, ECF #27 (4th Cir. Mar. 21, 2018) (denying All Writs Act petition for stay of FERC certificate order); *De Luca v. North Carolina Dep't of Envtl. Quality*, No. 18-1336, ECF #32 (4th Cir. Aug. 23, 2018) (dismissing challenge to state water-quality certification).

As relevant here, the Forest Service issued ACP a right-of-way and special-use permit to cross two national forests in 2017 pursuant to the MLA. The Forest Service contemporaneously granted similar permission to a proposed Mountain Valley Pipeline ("MVP"). This was the first time that any federal agency had authorized a pipeline crossing of the Appalachian Trail under the MLA.[2]

D. The Fourth Circuit's Decision

Following administrative appeals, respondents appealed to the Fourth Circuit raising several independent errors.

First, respondents challenged the Forest Service's failure to comply with its Planning Rule. 36 C.F.R. Pt. 219. Because ACP could not meet forest-plan standards that protect soil, water quality, and wildlife, the agency amended its plans to exempt ACP from them. App. 18a. Such amendments must comply with minimum standards of the Planning Rule, if the purpose or effects of the amendments are "directly

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[2] The Forest Service approval for MVP was vacated and remanded for further proceedings on multiple grounds. *See Sierra Club, Inc. v. U.S. Forest Serv.*, 897 F.3d 582, 587, 596, 601-06 (4th Cir. 2018). MVP is currently pursuing an administrative work-around. *See infra* pp. 18-19.

related" to those standards. App. 16a. Although the Forest Service's purpose for the plan amendments was to weaken standards for soil, water quality, and wildlife, and would have effects on those resources, it ignored directly related standards in its Planning Rule. App. 19a-20a. The Fourth Circuit vacated and remanded to the Forest Service to apply those standards to the proposed plan amendments.

Second, respondents challenged the Forest Service's failure to consider alternative pipeline routes that would avoid national forests, under two separate laws. The National Environmental Policy Act of 1969 ("NEPA") requires federal agencies to evaluate such alternatives. 42 U.S.C. § 4332(C)(iii). And the National Forest Management Act of 1976 ("NFMA") requires the Forest Service to comply with its forest plans. 16 U.S.C. § 1604(i). The relevant forest plans prohibit pipeline rights-of-way unless the need for them "cannot be reasonably met" or "accommodated" off of the national forests. App. 30a-31a. Because the record confirmed "[n]o analysis of a National Forest Avoidance Alternative has been conducted," the court vacated the Forest Service's decision for violating both NEPA and NFMA. App. 38a-39a, 41a-42a.

Third, respondents challenged the Forest Service's analysis of landslide risks, erosion impacts, and water-quality degradation as deficient. NEPA requires agencies to provide a "detailed discussion" of possible mitigation measures for impacts such as these and requires "particular care" when a proposed project crosses protected areas like national forests. App. 43a. The Fourth Circuit held that the Forest Service failed to take a hard look at these effects and mitigation alternatives. App. 44a-45a.

Finally, the Fourth Circuit concluded that "the Forest Service does not have statutory authority to grant pipeline rights of way across the [Appalachian Trial] pursuant [to] the MLA." App. 59a. The MLA is inapplicable to federal "land[] in the National Park System." 30 U.S.C. § 185(b)(1). On the record before it, the court concluded that "[t]he parties are generally in agreement" that the Appalachian Trail "is land in the National Park System." App. 55a. As a result, ACP's proposal to cross the Trail on federal land was outside the scope of the MLA.

Petitioners sought rehearing en banc from the Fourth Circuit. Because no judge on the Fourth Circuit asked for a poll of the court, the Fourth Circuit summarily denied the petitions. App. 241a-242a.

REASONS TO DENY THE PETITIONS

I. THIS CASE IS NOT A SUITABLE VEHICLE TO ADDRESS THE QUESTION PRESENTED

A. Petitioners Seek Review of Just One of the Fourth Circuit's Four Independent Bases for Its Judgment

Petitioners ask this Court to render an advisory opinion. Even if this Court ruled for petitioners, the Fourth Circuit's judgment would require invalidation of the right-of-way issued by the Forest Service for several independent reasons. As the Forest Service acknowledged below, in its Petition for Rehearing En Banc, the MLA issue – the sole issue on which it now seeks cert – "was unnecessary to the judgment" of the panel. ECF #124, at 1. As a result, this Court's review will not alter the judgment below and may have no practical effect on the ultimate outcome of the case. Because "'[t]his Court . . . reviews judgments, not statements in opinions,'" *FCC v. Pacifica Found.*, 438 U.S. 726, 734 (1978) (quoting *Black v. Cutter Labs.*,

351 U.S. 292, 297 (1956)) (ellipsis in *Pacifica*), review should be denied for that reason alone.

Before ACP can proceed with its currently planned route, the Fourth Circuit's holding requires the Forest Service to reexamine three issues:

(1) The Forest Service must evaluate whether its proposed forest plan amendments exempting ACP from soil, water-quality and wildlife standards are consistent with the minimum requirements of its 2012 Planning Rule. App. 18a-28a.

(2) The Forest Service must, under NEPA and NFMA, study alternative routes that avoid national forest lands and demonstrate that ACP cannot be accommodated on them. App. 30a-34a.

(3) The Forest Service must take a hard look at environmental consequences, such as landslide risks, erosion, and water-quality concerns and use that evaluation in considering ACP alternatives. App. 54a-55a.

Those three remand issues create substantial doubt as to whether ACP can proceed on any route crossing the forest, including its preferred route, regardless of whether this Court reviews the MLA issue. Yet petitioners have not challenged any of those three independent bases for the Fourth Circuit's decision.

The Forest Service has already started re-evaluating the pipeline, which requires consideration of potential reroutes that would moot this case.[3] Such routes are available. Atlantic previously identified locations in Virginia where it could cross the Appalachian Trail on non-federal lands. *See* ACP, Resource Report 10:

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[3] ACP asked the Forest Service to renew consideration of its pipeline on April 30, 2019. http://bit.ly/ACPFSCorr.

Alternatives, at 10-62 to 10-64, FERC Dkt. CP15-554-000 (Sept. 2015).[4] One route to the west would cross the Trail on private industrial property. *See id.* At least two options to the east would cross on state lands.[5] More alternatives may be available, but there is no indication Atlantic or the Forest Service has looked for them. Under the Fourth Circuit's decision, a reroute that avoids national forests is mandatory if it can accommodate the pipeline. App. 30a-34a. Because Atlantic may nonetheless be required to reroute around national forests, negating any need for a right-of-way under the MLA, this Court's review will be purely advisory.

Even if the routing alternatives are not fatal to ACP's preferred route, either of the other two independent bases for the Fourth Circuit's remand may be.[6] The record makes clear – largely in concerns raised by the Forest Service itself – that soil and bedrock in this area pose substantial risks for erosion, landslides, degraded water quality, and other issues. C.A.App.1659, 1663, 3379. These risks still have not been fully studied. App. 43a-44a. After full evaluation of those risks, NEPA requires the Forest Service to identify alternatives that avoid or minimize them and may compel ACP to reroute. *See* 40 C.F.R. § 1500.2(e). Similarly, compliance with minimum

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[4] http://bit.ly/ACPapplication (file name: ACP_SHP_RR10_Alternatives.PDF).

[5] Appalachian National Scenic Trail Resource Management Plan at I-26 (2008) ("AT Management Plan") (confirming the Trail crosses "two state land holdings" in Virginia), https://bit.ly/2ZrzCpn.

[6] In addition, ongoing proceedings in the D.C. Circuit may conclude that the entire pipeline is unnecessary. *See supra* note 1.

standards of the Forest Service's Planning Rule may render Atlantic's preferred route infeasible.

Atlantic blithely suggests that these independent defects can be "fixed by adding further details or explanations on remand." Pet. 35; *cf.* USFS Pet. 13 (Fourth Circuit's other holdings "can be resolved by the Forest Service on remand"). That is not how judicial review of agency action works: courts assume not that an agency will reach a particular result after a remand, but that it will "deal with the problem afresh, performing the function delegated to it by Congress." *SEC v. Chenery Corp.*, 332 U.S. 194, 201 (1947). In any event, Atlantic will require a right-of-way across the Appalachian Trail on the national forest only *if* the Forest Service properly approves the same route following a remand, and only *if* the Forest Service resolves all of the remaining issues in favor of ACP. *Cf. California v. Rooney*, 483 U.S. 307, 312-13 (1987) (per curiam) ("There are two too many 'ifs' in that proposition to make our review appropriate at this stage.").

In the meantime, there are good reasons for the Court not to issue a decision with no operative force. *See*, *e.g.*, *Medellin v. Dretke*, 544 U.S. 660, 662-64 (2005) (per curiam) (dismissing writ as improvidently granted where "[t]here are several threshold issues that could independently preclude [relief], and thus render advisory or academic our consideration of the questions presented"); *Montana v. Imlay*, 506 U.S. 5, 6 (1992) (Stevens, J., concurring in per curiam dismissal as improvidently granted) ("[N]either counsel identified any way in which the interests of his client would be advanced by a favorable decision on the merits – except, of course, for the potential benefit that might flow from an advisory opinion. Because it is not the business of this Court to render such

opinions, it wisely decides to dismiss a petition that should not have been granted in the first place.") (footnote omitted). Here, where petitioners do not even ask this Court to rule that the three alternative bases for the Fourth Circuit's judgment were incorrect, that prudential approach weighs against review.

Petitioners will undoubtedly argue in reply that this Court will not be able to reach the MLA issue following a remand unless the Forest Service defies the Fourth Circuit and issues a permit under the MLA. That is incorrect. If, as both petitioners contend, the other defects identified by the Fourth Circuit can be resolved on remand, then the only basis for denying the permit would be the MLA prohibition identified by the court below. Atlantic could then appeal from that denial, preserve the issue in the Fourth Circuit, and, along with the Forest Service, seek review from this Court, when the MLA issue will be dispositive of the final result. *See Rooney*, 483 U.S. at 312-13.

B. The Decision Below Does Not Conflict with Other Circuits

Neither petitioner suggests that the Fourth Circuit deviated from established precedent in other circuits. In fact, multiple courts, applying the plain language of the Park Service's Organic Act, have reached the same conclusion: nationally significant park units administered by the Park Service are, by statutory definition, part of the National Park System. *See Richmond, Fredericksburg & Potomac R.R. Co. v. United States*, 945 F.2d 765, 767 (4th Cir. 1991) (because "George Washington Memorial Parkway . . . was to be administered by what is now the National Park Service," it is "a part of the National Park System"); *Brown v. U.S. Dep't of Interior*, 679 F.2d 747, 749 (8th Cir. 1982) (because Interior is required

"to 'administer, protect and develop'" a river "under the National Park Service," the river is "part of the National Park System"); *Daingerfield Island Protective Soc'y v. Babbitt*, 823 F. Supp. 950, 955 (D.D.C. 1993) (similar), *aff'd*, 40 F.3d 442 (D.C. Cir. 1994).

II. THE QUESTION PRESENTED DOES NOT WARRANT REVIEW

A. The Decision Below Does Not Present an Issue of National Importance Because ACP and Other Pipelines Can Cross the Appalachian Trail

Atlantic represents, without supporting citation, that the decision below will cause dire consequences not only for its own pipeline, but also for existing pipelines, all future pipelines, and other infrastructure like powerlines across the Eastern Seaboard. Pet. 31-36. The Forest Service, for the most part, does not repeat Atlantic's hyperbole, for good reason: Atlantic is mistaken.

The Fourth Circuit decided only that the Forest Service cannot grant new rights-of-way for oil and gas pipelines across the Appalachian Trail in national forests under the MLA. That decision does not affect other Forest Service authorities or rights-of-way granted without the MLA, which applies in its relevant terms only to oil and gas pipelines. Nor does it restrict the rights of private or state landowners. It has no effect on existing pipeline rights-of-way. Nor does the decision below prevent new pipelines from crossing the Trail using authority outside the MLA, as multiple pipelines have done in recent years. Moreover, because the record-driven decision below is factually specific to the Trail, which the Forest Service conceded is a unit of the Park System regardless of land ownership, other national trails are unaffected.

Even with respect to Atlantic, the decision below has, at most, one consequence: Atlantic must reroute to avoid crossing the Appalachian Trail on federal land. The record suggests at least two such routes in Virginia, and likely there are others. Atlantic's desire to cross the Trail at its preferred location on its preferred timetable is not an issue of national importance warranting this Court's review.

1. Existing pipelines are unaffected by the decision below because none were authorized by the Forest Service to cross the Appalachian Trail under the MLA

Atlantic argues that the Fourth Circuit's decision is inconsistent with a history of federal approvals of pipelines crossing the Appalachian Trail and that the decision imperils those existing pipelines. Atlantic is wrong in both respects.

In the 51 years since Congress designated the Appalachian Trail, the Forest Service had never granted a new right-of-way to an oil or gas pipeline to cross the Trail in a national forest.

Atlantic's statements that the Forest Service previously "grant[ed] rights-of-ways pursuant to the MLA" to cross the Appalachian Trail and that the agency decision here "was hardly unprecedented" are wrong. Pet. 1, 25. Petitioners have not named a single existing pipeline authorized to cross the Trail in a national forest under the authority of the MLA. They cannot, because there is none.

A study submitted to FERC by the Southern Environmental Law Center confirms that 55 existing oil and gas pipelines cross the Appalachian Trail, at 34

locations (pipelines are often co-located).[7] Of these 34 crossing locations, 15 are within parcels owned by state or private landowners. Crossing those parcels does not require any authorization under the MLA, which applies only to lands "owned" by the federal government. 30 U.S.C. § 185(a), (b)(1). The remaining 19 crossings are within parcels owned by the Park Service but predate either federal ownership or congressional designation of the Trail as a park unit. Because the federal government took ownership subject to pre-existing pipeline easements, no new authorizations under the MLA were required.[8]

Simply put, no existing pipeline was authorized under the MLA to cross the Trail within a parcel owned by the Forest Service.

Atlantic argues that existing pipelines crossing the Appalachian Trail are nonetheless threatened by the decision below because "federal agency approvals for such crossings are subject to renewal." Pet. 34 (citing *Sierra Club v. U.S. Forest Serv.*, 828 F.3d 402, 404-05 (6th Cir. 2016)). In support, Atlantic cites a decision addressing the renewal of a temporary special-use permit for a pipeline that did not cross a park unit. *Id*. Neither that case nor the decision below affects permanent easements granted before federal acquisition or before designation of the Trail as a park unit. The MLA applies only to the initial grant or renewal of temporary rights-of-way by federal agencies; it

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[7] http://bit.ly/USFSltrANST. The letter attaches a map of every pipeline crossing and a list identifying each location's property owner.

[8] The Park Service's standard deed for Appalachian Trail lands acknowledges that it takes ownership subject "to those rights outstanding in third parties for existing easements for . . . pipelines." *See* http://bit.ly/APPADeed (example deed at 3).

does not terminate or require renewal of permanent easements that predate federal ownership. 30 U.S.C. § 185(a), (q).

2. The decision below does not prevent construction of new pipelines

Contrary to Atlantic's assertion (at 13) that the Fourth Circuit "imperiled the Eastern Seaboard's ability to access inland oil and gas sources," there remain ample possibilities for pipelines to reach the East.

New pipelines can cross the Appalachian Trail on state or private land. State and private landowners do not need MLA authority to grant rights-of-way across their property. As Atlantic acknowledges, the Trail "crosses hundreds of miles of private land" and "60 state game lands, forests, or parks." Pet. 5; *see* USFS Pet. 3.

This is not hypothetical: multiple pipelines have been approved in recent years to cross the Appalachian Trail on state or private lands. For example, a 2016 expansion of the Transco pipeline crossed the Trail on Pennsylvania game lands.[9] Similarly, in 2017, FERC approved the PennEast pipeline to cross the Trail on state game lands,[10] and FERC is currently evaluating a proposed reroute, also on state game lands.[11] In 2014, a reroute of the Trail allowed an

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[9] Penn. State Game Comm'n, "Right-of-Way Agreement Adds Acreage to Game Lands" (July 19, 2016), http://bit.ly/PGCROWpress.

[10] FERC, PennEast Pipeline Project ("PennEast"), Docket No. CP15-558-000, Final Environmental Impact Statement at 4-164 (Apr. 2017), http://bit.ly/PennEastFEIS.

[11] PennEast Application for Amendment (Feb. 1, 2019), FERC eLibrary No. 20190201-5212, http://bit.ly/PennEastRelocation (file name: PennEast_Application_for_Amendment_to_Certificate.PDF).

extension of a Columbia Gas pipeline to cross the Trail on private property near Pearisburg, Virginia, avoiding a crossing on national forest property.[12]

New pipelines can also cross the Appalachian Trail on federal lands if they co-locate within existing easements, which are unaffected by the MLA. In 2002, the Park Service approved a construction permit (but no new right-of-way) for East Tennessee Natural Gas Co.'s Patriot Project to cross the Trail on a parcel within the outer statutory boundary of a national forest, but owned by the Park Service. Because the new pipeline was within an easement for an existing pipeline, no authorization under the MLA was required.[13]

And, of course, Congress can always approve a specific gas pipeline to cross a unit of the National Park System, including the Appalachian Trail. According to recent congressional testimony by the Department of Interior, "exclusion of national parks from the MLA has not prevented the issuing of rights of way for pipelines through national park units" and Interior "has supported legislation authorizing rights of way . . . on a park by park basis." Statement of Timothy Spisak on H.R. 2295 (May 20, 2015).[14]

Prior to 2017, the Forest Service had never granted a right-of-way across the Appalachian Trail in a national forest, but that had not hampered construction of pipelines in the East. Pipelines have ample opportunities to cross the Trail on non-federal land or

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[12] Forest Serv., Environmental Assessment: Natural Gas Pipeline Construction Project, Columbia Gas of Virginia at 2-3 (Sept. 2013), http://bit.ly/ColumbiaEA.

[13] FERC, Patriot Project, Docket No. CP01-415-000, Final Environmental Impact Statement, Appendix H-1, at 1 (Sept. 2002), http://bit.ly/PatriotFEIS.

[14] http://bit.ly/TSpisak.

through existing easements on federal land. Atlantic has similar options available (and an unchallenged basis for the Fourth Circuit's decision requires the Forest Service to consider them).

3. Atlantic publicly assured investors that even its current route is viable without Supreme Court review

Atlantic argues that "this Court's intervention [is] imperative" because it faces the "risk of investments stranded" if the decision below stands. Pet. 35-36. That representation is not credible: Atlantic's backers have expressly stated otherwise. After the Fourth Circuit denied rehearing, Dominion Energy, a part owner of Atlantic, released a press statement stating: "We are confident that the U.S. Departments of Interior and Agriculture have the authority to resolve the Appalachian Trail crossing issue administratively . . . in a timeframe consistent with a restart of at least partial construction during the third quarter" of 2019.[15] In a recent investor call, Dominion's CEO was asked if ACP was "waiting for a SCOTUS affirmation that they would take on the case, before . . . disclosing what the administrative fix is," and responded by confirming "there are other avenues that we just feel it's better not to talk about right at the moment."[16]

The only other pipeline potentially affected by the decision below, MVP, also believes it has an administrative path forward. As the Forest Service's petition acknowledged, MVP recently initiated that administrative process with a proposal for a "land exchange," swapping private land for an easement

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[15] Dominion Energy Releases Statement Regarding Atlantic Coast Pipeline (Feb. 26, 2019), http://bit.ly/DominionATоptions.

[16] Dominion Energy, Inc. (D) Q1 2019 Earnings Call Transcript (May 3, 2019), http://bit.ly/DomQ12019call.

across the Appalachian Trail. Pet. 27 n.15. MVP reassured investors in late July 2019 that it "believe[s] firmly that the land exchange is well within the discretion of the Department of Interior" and that "this is a viable and timely solution for us."[17] Dominion subsequently confirmed that this same strategy would "be applicable to the Atlantic Coast Pipeline."[18] Atlantic's insistence that ACP cannot proceed without this Court's intervention is not supportable given those representations to investors.

In any event, Atlantic's insistence that "this Court's intervention [is] imperative," Pet. 35-36, is wrong on its own merits. In an unchallenged holding, the Fourth Circuit required the Forest Service to evaluate alternative routes for ACP that avoid national forests. The record confirms multiple alternatives available for Atlantic to cross the Appalachian Trail on non-federal lands. Under the Fourth Circuit's ruling, those alternative routes are mandatory if they can accommodate ACP. Such a reroute will allow ACP to cross the Trail without MLA approval – and without any intervention by this Court.

B. Other Forest Service Authorities and Rights-of-Way Are Unaffected by the Decision Below

The government's principal argument as to the importance of the issues for this Court's review is that the decision below "casts doubt on" the Forest Service's authority to manage the Appalachian Trail or issue other rights-of-way, like power lines, water

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[17] EQM Midstream Partners LP (EQM) Q2 2019 Earnings Call Transcript (July 30, 2019), http://bit.ly/EQMQ22019call.

[18] Dominion Energy, Inc. (D) CEO Thomas Farrell on Q2 2019 Results – Earnings Call Transcript (July 31, 2019), http://bit.ly/DomQ22019call.

facilities, and communication towers. Pet. 14; *see* Atl. Pet. 2-3. The Fourth Circuit's decision does no such thing.

The decision below addressed a specific question: whether "the MLA authorizes the Forest Service to grant pipeline rights of way on Forest Service land traversed by the [Trail]." App. 56a. As noted, the relevant MLA provisions apply only to oil and gas pipelines, and the Fourth Circuit did not consider any other right-of-way authority.

The government nonetheless contends that the Fourth Circuit's decision "casts doubt on" existing authorizations under the Federal Land Policy and Management Act of 1976 ("FLPMA"). Pet. 28-29. But the government never explains precisely how the decision below would implicate FLPMA in any way – and for good reason: the Fourth Circuit's decision does not even mention FLPMA. Moreover, as respondents themselves pointed out below, the Forest Service retains its own management authorities over the Appalachian Trail, including any statute without an exclusion for "lands in the National Park System." ECF #79, at 22.

Petitioners urge this Court to read into the Fourth Circuit's decision dicta about a statute the court did not mention on a theory the parties before it expressly disavowed. But even accepting petitioners' strained reading – that now only the Park Service can authorize powerlines and other infrastructure to cross the Appalachian Trail – the decision below would not prohibit such infrastructure. Congress empowered the Park Service to grant rights-of-way to powerlines, water lines, and other uses (excluding oil and gas pipelines) across units of the National Park System. 54 U.S.C. § 100902.

The government further argues that, under the Fourth Circuit's decision, "questions would arise whether the Park Service would be required to *manage* the narrow slices of national forest land crossed by the Appalachian Trail's footpath." Pet. 30 (emphasis added). The Fourth Circuit left no room for such questions. The court ruled: "the [NTSA] is clear that the Secretary of the Interior *administers* the entire [Appalachian Trail], while 'other affected State and Federal agencies,' like the Forest Service, *manage* trail components under their jurisdiction." App. 58a. As the Fourth Circuit recognized, the Act distinguishes between management of trail segments and administration of the whole trail. *See infra* p. 33. The decision below confirms Forest Service authority to "manage" segments of the Appalachian Trail on national forest using any statutory authority that, unlike the MLA, does not explicitly exclude "lands in the National Park System."

The decision requires no change from the system by which the Forest Service previously managed the Appalachian Trail on Forest Service lands. This is the first time the Forest Service cited the MLA to authorize a gas pipeline across the Trail, and the decision only clarifies that such authority is inapplicable to park units.

III. THE FOURTH CIRCUIT'S DECISION IS CORRECT AND SUPPORTED BY THE RECORD

The Fourth Circuit correctly held that the Forest Service's decision was without statutory authority under the MLA.

The MLA does not distinguish between federal agencies; no agency can grant pipeline rights-of-way across federal "lands in the National Park System"

under that statute. 30 U.S.C. § 185(b)(1); *see also* USFS Pet. 8 ("no federal department or agency has authority under that statute to grant a right-of-way" across federal land in the National Park System).

ACP proposes to cross the Appalachian Trail on federal land. The agency record – including statements by the Forest Service and the Park Service – expressly confirms that the entire Trail is a unit of the National Park System, including where it crosses the national forest. Because ACP seeks to cross the Trail on an area of federal land in the National Park System, the MLA provides no authority for that right-of-way. Petitioners' arguments against this straightforward reasoning lack merit.

A. The Entire Appalachian Trail Is a Unit of the National Park System

The Fourth Circuit's decision was based on a clear administrative record. In comments addressing ACP, the Park Service advised FERC that "Congress clearly intended that *National Park System units* be exempt from a general grant of authority to issue oil and gas pipeline rights-of-way" under the MLA. C.A.App.3674 (emphasis added). The Forest Service, the Park Service, and FERC all agreed that the entire Appalachian Trail is such a unit, including where it crosses the national forest.

FERC's draft Environmental Impact Statement ("EIS") for ACP erroneously asserted that "[Forest Service]-acquired lands . . . are not considered to be a part of the [Appalachian Trail] as a unit of the National Park system." C.A.App.3186. The Park Service objected that was "not accurate" and clarified:

> The [Appalachian Trail] is one of three national trails administered by the NPS that are considered to be units of the National Park System. . . .

> The NPS administers the entire [Trail] and as such considers *the entire Trail corridor to be a part of the [Trail] park unit*.

C.A.App.1849 (emphasis added). The Forest Service likewise stated: "NPS[] is lead federal administrator agency for the entire [Appalachian Trail], *regardless of land ownership*." C.A.App.3611 (emphasis added). FERC's final EIS, adopted by the Forest Service, was updated as a result, concluding that the Park Service administers "*the entire [Trail]*," which "is a 'unit' of the national park system." C.A.App.1794 (emphasis added).

The agencies' representations are consistent with their well-established position that the Appalachian Trail is a unit of the National Park System. If land administered by the Park Service "represent[s] some nationally significant aspect of our natural or cultural heritage," as does the Trail, the Park Service designates it a System unit "[r]egardless of . . . names and official designations." Management Policies § 1.2 (2006).[19]

The Park Service administers multiple national trails, but designates only three as System units under this test. For that reason, the decision below, which is specific to the Appalachian Trail and the record before the Fourth Circuit, does not affect other national trails the Park Service has not designated as units of the National Park System. The Foundation Document for the Appalachian Trail explains why that Trail's "resources and values are important enough to merit designation as a unit of the national park system." Foundation Document at 5 (Dec.

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[19] http://bit.ly/NPSMP2006.

2014).[20] As a result, the Park Service's official index of the National Park System identifies the Trail as "a unit of the National Park System." The National Parks: Index 2012-2016, at 142 (2016).[21] All but two other national trails are identified as "related areas," not park units. *Id*. at 114.

Park Service guidance explains the significance of this determination:

> Several components of the National Trails System which are administered by the Service[] have been designated as units of the national park system. These trails are therefore *managed as national park areas* . . . .

Management Policies § 9.2.2.7 (emphasis added). This threshold determination triggers all the Park Service's duties and authorities. *See* 54 U.S.C. §§ 100101(a) (NPS shall "conform to the fundamental purpose of the *System units*"), 100751(a) (NPS regulates "use and management of *System units*") (emphases added). Like other "park areas," the Appalachian Trail is outside the scope of the MLA.

B. The MLA Excludes All Federal Land in the National Park System Owned by Any Federal Agency

As a unit of the National Park System, the entire Appalachian Trail falls outside the scope of the MLA. 30 U.S.C. § 185(b)(1). Petitioners argue that the location of the relevant portion of the Trail in a national forest should make a difference to the outcome. USFS Pet. 14; Atl. Pet. 9. It does not.

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[20] http://bit.ly/APPAFoundationDoc. "Foundation documents are at the core of each park's planning portfolio." *See* http://bit.ly/NPSFoundationUnitDoc.

[21] http://bit.ly/NPSIndex.

Rather than limit the authority of particular agencies under the MLA, Congress protected broad categories of federally owned land: the National Park System, the Outer Continental Shelf, and lands held in trust for Indian Tribes. 30 U.S.C. § 185(a)-(b). Congress considered all lands "in the National Park System" – regardless of which agency held title to the land – categorically unsuitable for gas pipelines.

The congressional history of the MLA confirms this. The 1973 amendments to the MLA were a Conference Committee compromise. A House bill would have authorized pipelines across all federally owned lands, but the Senate excluded federal lands in the National Park System, among others. The Committee authoring the Senate bill clarified "[i]t is not intended to grant rights-of-way through the National Park System under this bill." S. Rep. No. 93-207, at 29 (1973). The Conference Committee later confirmed the final bill "excluded three categories": "the National Park System, the Outer Continental Shelf, and Indian lands." H.R. Conf. Rep. No. 93-624, at 21 (1973).

Congress knew that the entire Appalachian Trail was land in the National Park System in 1973, when it limited pipelines across federal lands in that system. 30 U.S.C. § 185(b)(1). Congress created the Trail in 1968 as one of the first two national scenic trails and the only trail then administered by the Park Service. From its inception, the Trail included Park Service-owned land, private land, and "lands protected for it under agreements" with other federal agencies, like the Forest Service. 16 U.S.C. § 1244(a)(1).

In 1968, it was already well-established that the National Park System included "all federally owned or controlled lands" administered by the Park Service for defined purposes, not just Park Service-owned lands.

Act of Aug. 8, 1953, ch. 384, § 2(a), 67 Stat. 495, 496, formerly codified at 16 U.S.C. § 1c(a) (repealed 2014). Some ambiguity remained, however, about areas administered as recreation resources and lands "supervised" by the Park Service pursuant to cooperative agreements but "administered" by other agencies. *Id*. § 2(b), 67 Stat. 496, formerly codified at 16 U.S.C. § 1c(b) (repealed 2014). Those lands were separately defined as non-system "miscellaneous areas." *Id.*

Congress eliminated that ambiguity when it passed the General Authorities Act of 1970. That statute deleted "miscellaneous areas" from the Organic Act and wrapped those lands into the National Park System. Pub. L. No. 91-383, § 2(a), 84 Stat. 825, 826. The Secretary of Interior supported expanding the National Park System to include recreation areas and "areas[] administered pursuant to cooperative agreement" with other agencies. H.R. Rep. No. 91-1265, at 8; S. Rep. No. 91-1014, at 6 (1970) (same). According to identical House and Senate reports, Congress intended to incorporate "all existing areas administered by the National Park Service and all conceivable additions" into "one National Park System." H.R. Rep. No. 91-1265, at 4, 10; S. Rep. No. 91-1014, at 3, 8-9 (same). At that time, Congress adopted the current definition of the National Park System, including "any area of land and water administered" by the Park Service for recreation and other defined purposes. 54 U.S.C. § 100501.

The General Authorities Act left no doubt. Congress knew the entire Appalachian Trail is in the National Park System when it excluded federal land in that system from the MLA. That is why both the Park Service and the Forest Service confirmed in the agency record that the Trail is a unit of the National Park System.

Thus, regardless of whether the Trail passes through lands owned by the Forest Service or any other agency, it remains a unit of the National Park System outside the bounds of the MLA.

C. Petitioners' Argument That the Appalachian Trail Is Merely a "Footpath" or "Right-of-Way" Has No Legal Basis

Petitioners now contend the Appalachian Trail is not federal "land" in the National Park System, but merely a "footpath" or "right-of-way." USFS Pet. 13; Atl. Pet. 15. They argue, as a result, that this part of the National Park System is not excluded from the MLA. Petitioners never raised this argument before the panel below.[22] In any event, this new argument cannot be squared with the record or the law.

By definition, a "System unit" is an "area[] of land" in the National Park System. *See* 54 U.S.C. §§ 100102(6) (defining "System unit" to be an "area" described in § 100501), 100501 (defining National Park System to include "any area of land and water administered" by the Park Service). Because petitioners do not dispute – and have expressly conceded – that the entire Appalachian Trail is a Park "System

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[22] Petitioners raise several arguments for the first time in this Court. Arguments that the Trail is a mere "footpath" or "right-of-way," that the decision below undermines other right-of-way authorities, and that it conflicts with the Wild and Scenic Rivers Act, were not presented to the panel below, only in petitions for rehearing. Because those petitions were denied without responsive briefing, this Court would hear those arguments for the first time. *See Chaidez v. United States*, 568 U.S. 342, 358 n.16 (2013) (this Court is "a court of review, not of first view"); *Taylor v. Freeland & Kronz*, 503 U.S. 638, 645-46 (1992) ("Ordinarily, this Court does not decide questions not raised or resolved in the lower courts.") (brackets omitted).

unit," they cannot deny that it is "land" in the National Park System.

The NTSA clearly identifies the "area[] of land" the Park Service administers for the Appalachian Trail, as depicted on official maps "in the office of the Director of the National Park Service." 16 U.S.C. § 1244(a)(1). Congress created the Trail to "include *lands* protected for it under agreements" with federal agencies like the Forest Service. *Id.* (emphasis added). And, as discussed below, Congress empowered the Park Service, as administrator, to acquire, dispose of, regulate, and otherwise administer the land that makes up the Trail. *See infra* pp. 31-32.

Petitioners ask the Court to treat this land *as if* it is not federal land in the National Park System for purposes of rights-of-way under the MLA. Lacking statutory support, petitioners base that argument on Congress's statement of purpose that the Appalachian Trail "shall be administered primarily as a footpath" by the Park Service. 16 U.S.C. § 1244(a)(1). But Congress's statement of purpose does not draw a distinction between the Trail and the land it occupies. It simply defines Congress's purpose for including the land in the park unit.

The AT Management Plan explains the "[l]egislative intent" of the phrase "[p]rimarily as a footpath" this way: "The Appalachian Trail was conceived, designed, and constructed to be a footpath for pedestrian use. The only recognized divergences from use as a footpath are along three sections where horseback riding was permitted." AT Management Plan at I-4.

The Park Service administers the Appalachian Trail for recreational purposes "primarily as a footpath" in a conserved landscape, 16 U.S.C. § 1244(a)(1), and may not derogate the "purposes for which th[at]

System unit[]" has been established, 54 U.S.C. § 100101(b)(2). In service of that purpose, Congress established the Appalachian Trail park unit as more than just the footpath; the park unit includes a "protective corridor of land" approximately 1,000 feet wide. AT Management Plan at I-3.

Petitioners hang more weight on the single word "footpath" than it can bear. They argue all national trails are excluded from the National Park System, but their textual support, the word "footpath," applies only to the Appalachian Trail. It is found nowhere else in the statute. If the word "footpath" made the difference, petitioners would have to embrace all other trails administered by the Park Service as lands in the National Park System, which they are clearly unprepared to do.

Petitioners also suggest that, because the NTSA provides an Appalachian Trail "right-of-way" across the national forest, rather than fee simple ownership, the Trail is not "land" in the National Park System. USFS Pet. 22; Atl. Pet. 6. But this Court has recognized that land ownership does not determine whether land is "in the National Park System." *See Sturgeon v. Frost*, 139 S. Ct. 1066, 1076 (2019) (Park Service's "statutory grants of power make no distinctions based on the ownership of either lands or waters"). Park Service regulations likewise encompass "*federally owned* lands" administered by the Park Service, not only Park Service-owned lands. 36 C.F.R. § 1.2(a)(1) (emphasis added).

Moreover, for purposes of the MLA, the relevant distinction is whether the Appalachian Trail is federally owned land "in the National Park System." Petitioners effectively ask the Court to rewrite the MLA to exclude only federal "land [owned in fee

simple by the Park Service] in the National Park System" rather than federal "land in the National Park System." 30 U.S.C. § 185(b)(1). But the MLA, by its plain terms, excludes all federal lands "in the National Park System" regardless of whether those lands are owned by the Forest Service, the Park Service, or any other agency.

Petitioners point to private and state land within the boundary of the Appalachian Trail park unit as evidence Congress did not intend the entire Trail to be in the National Park System. But that is a red herring; the MLA applies only to *federally owned* lands in the National Park System. Congress knew that Park System units may encompass state- and private-owned land and ensured that the MLA affected only federal land in those units. Moreover, other statutes confirm that Congress knows Park System units may encompass non-federal land: it empowered the Park Service "to consolidate Federal land ownership" and to "accept title to any non-Federal property" within the boundary of a Park System unit. 54 U.S.C. §§ 101102(a)(1), 102901(b)(1). The inclusion of non-federal land in a Park System unit does not negate Congress's authority to regulate federal land in those units.

D. The Park Service Administers the Entire Appalachian Trail

Multiple state, private, and federal entities, including the Forest Service, "manage" segments of the Appalachian Trail on land they own, but the NTSA directs that the Trail "shall be *administered* . . . by the Secretary of the Interior," who delegated that duty to the Park Service. 16 U.S.C. § 1244(a)(1) (emphasis

added).[23] And it is administration by the Park Service that qualifies a nationally significant "area of land" for the National Park System. 54 U.S.C. §§ 100102(6), 100501. As a result, ACP's proposed crossing location is federal land "in the National Park System." 30 U.S.C. § 185(b)(1).[24]

The Forest Service conceded in the record that the Park Service administers the entire Appalachian Trail as a unit of the National Park System, "regardless of land ownership." C.A.App.3611. Now, however, it argues that the Park Service's role as Trail administrator does not touch the land that makes up the Trail. USFS Pet. 13; *see* Atl. Pet. 18. To the contrary, the NTSA provides the Trail administrator substantial authority over the land within the Trail corridor. The Trail administrator can "select the rights-of-way" for the Trail or relocate it, 16 U.S.C. § 1246(a)(2), (b); "grant easements and rights-of-way" over the Trail, *id.* § 1248(a)[25]; acquire "lands" for the Trail, *id.* § 1249(a)(1); and "acquire whole tracts" of

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[23] The Department of Interior Manual confirms delegation to the Park Service of NTSA authority "and *administration* of assigned components of the systems." 245 DM 1 (emphasis added), http://bit.ly/245DM1.

[24] For the same reason, the Park Service is the appropriate "agency head" over the Trail. 30 U.S.C. § 185(b)(1).

[25] Atlantic suggests the decision below would allow the Forest Service to "grant pipeline rights-of-way across National Park System lands" if they are crossed by a Forest Service-administered trail. Pet. 30. That is incorrect and in any event has nothing to do with the decision below. The NTSA empowers trail administrators to issue rights-of-way across national trails (but not land outside the trail corridor). 16 U.S.C. § 1248(a). Thus, a pipeline right-of-way over a national trail within a national park would be useless, because the rest of the park would be beyond the scope of the MLA.

land that are "outside the area of trail acquisition," *id.* § 1246(f)(2).

The administrator also regulates federal land in the Appalachian Trail corridor, regardless of agency ownership. For example, the administrator determines which "uses along the trail" will be permitted, *id.* § 1246(c); regulates "the use, protection, management, development, and administration of trails," *id.* § 1246(i); authorizes side trails "within park, forest, and other recreation areas," *id.* § 1245; closes "Federal lands where trails are designated" to motor vehicle use, *id.* § 1246(c); and "provide[s] for the development and maintenance of such trails within federally administered areas," *id.* § 1246(h)(1).

As petitioners note, Congress directs trail administrators to exercise some of these authorities in "consultation" with or after the "'concurrence of'" other agencies "'administering lands through which the trail passes.'" USFS Pet. 17 (quoting 16 U.S.C. § 1246(i)) (brackets omitted); Atl. Pet. 7 (same). Where a trail is surrounded by other federal land, Congress required consultation with agencies administering "lands through," as opposed to on, "which [the] trail passes." *Id.* But direction to exercise statutory authority collaboratively does not negate the authority; it confirms it. *See*, *e.g.*, *United States v. Transocean Deepwater Drilling, Inc.*, 767 F.3d 485, 495 (5th Cir. 2014) (requirement to coordinate investigation with another agency confirmed authority to investigate); *Bayou Lawn & Landscape Servs. v. Secretary of Labor*, 713 F.3d 1080, 1084 (11th Cir. 2013) ("DHS was given overall responsibility . . . . DOL was designated a consultant. It cannot bootstrap that supporting role into a co-equal one."); *Nash Cty. Bd. of Educ. v. Biltmore Co.*, 640 F.2d 484, 496 (4th

Cir. 1981) (Attorney General's authority is not limited by requirement to consult "agencies which might be tangentially affected").

Atlantic suggests Congress diminished the Park Service's role as administrator in 1983 when it confirmed that the NTSA does not transfer "'among Federal agencies any *management* responsibilities'" for trail segments. Pet. 18 (quoting 16 U.S.C. § 1246(a)(1)(A)) (emphasis added). To the contrary, the Act carefully distinguishes between administration of an entire trail and day-to-day management of trail segments. The Act assigns different roles to agencies that administer land surrounding a trail ("administering lands through which the trail route passes," 16 U.S.C. § 1246(d)(1)),[26] agencies that manage trail segments ("management responsibilities," *id.* § 1246(a)(1)),[27] and trail administrators who also manage trail segments ("administering and managing the trail," *id.* § 1246(a)(1)(A)). The Act authorizes the trail administrator to transfer "*management"* responsibilities for a trail segment to another agency, but not congressionally assigned *administration* duties. *Id.* § 1246(a)(1)(B) (emphasis added). The Forest Service retains its "management" responsibilities for trail segments in national forests, but the Park Service administers the Appalachian Trail, making it an "area of land" in the National Park System. 54 U.S.C. §§ 100102(6), 100501.

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[26] *See also* 16 U.S.C. §§ 1244(d) (establishing trail advisory council), 1246(i) (identifying agencies to consult regarding regulations).

[27] *See also id.* §§ 1246(a)(1)(A) (no presumption of transfer of "management responsibilities"), 1246(a)(1)(B) (authorizing administrator to transfer "management" of trail segment).

Petitioners object that the 1911 Weeks Act and a 1918 Presidential proclamation entrusted the George Washington National Forest "permanently" to the administration of the Forest Service, not the Park Service. USFS Pet. 2-3; Atl. Pet. 17-18. But those statements did not limit Congress's authority to change the law when it created the Park Service in 1916, passed the NTSA in 1968, and amended the Park Service Organic Act in 1970.

Petitioners also assert that the 1968 Wild and Scenic Rivers Act proves Congress is explicit when federal lands "'become a part of the national park system.'" USFS Pet. 23 (quoting 16 U.S.C. § 1281(c)); Atl. Pet. 7 (same). Congress was no less explicit in 1970 when it amended the Organic Act to incorporate "any area of land and water . . . administered" by the Park Service into one Park System. § 2(a), 84 Stat. 826, codified as amended at 54 U.S.C. § 100501.[28] The Park Service understands that the Appalachian Trail, like the National Wild and Scenic Rivers System it administers, is a nationally significant resource included in the National Park System. Its guidance explains:

> [A] component of the National Wild and Scenic Rivers System that is administered by the Park Service is automatically a part of the national park system. Although there is no analogous provision in the [NTSA], several national trails managed by the Service have been included in the

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[28] Similarly, other statutory examples, including the Blue Ridge Parkway, cited by the Forest Service to suggest that Congress explicitly incorporates each individual unit into the National Park System, predate the 1970 General Authorities Act. USFS Pet. 3.

> national park system. These national rivers *and trails . . . are part of the national park system . . . .*

Management Policies § 1.2 (emphasis added).

The 1983 amendment to the NTSA leaves the Forest Service with management responsibility for the Appalachian Trail in the national forest. But, for purposes of gas pipelines, it is irrelevant whether the "management" authority of the Park Service or the Forest Service governs, because gas pipeline rights-of-way are governed by the MLA in either case. That statute supersedes all other right-of-way authorities. 30 U.S.C. § 185(q). After 1983, the entire Trail is still administered by the Park Service and is therefore a unit of the National Park System excluded from the MLA.

CONCLUSION

The petitions for a writ of certiorari should be denied.

Respectfully submitted,

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