



**SCHOOL OF LAW**  
TEXAS A&M UNIVERSITY

# Texas A&M Journal of Property Law

---

Volume 7  
Number 3 *Oil & Gas Survey*

Article 12

---

5-12-2021

## Virginia

Daniel B. Kostrub  
danielk@lga-law.com

Follow this and additional works at: <https://scholarship.law.tamu.edu/journal-of-property-law>



Part of the [Oil, Gas, and Mineral Law Commons](#), and the [Property Law and Real Estate Commons](#)

---

### Recommended Citation

Daniel B. Kostrub, *Virginia*, 7 Tex. A&M J. Prop. L. 454 (2021).

Available at: <https://doi.org/10.37419/JPL.V7.I3.12>

This Student Article is brought to you for free and open access by Texas A&M Law Scholarship. It has been accepted for inclusion in Texas A&M Journal of Property Law by an authorized editor of Texas A&M Law Scholarship. For more information, please contact [aretteen@law.tamu.edu](mailto:aretteen@law.tamu.edu).



## VIRGINIA

*Daniel B. Kostrub*<sup>†</sup>

### I. INTRODUCTION

This Article addresses developments in Virginia oil and gas law for the period from September 1, 2019, to September 1, 2020. During this period, the Supreme Court of the United States heard the Atlantic Coast Pipeline case, providing a significant ruling that allowed the pipeline to cross underneath the Appalachian trail. Additionally, Judge Chadwick S. Dotson of the Circuit Court of Wise County and the City of Norton issued an opinion regarding the mining of uranium in the Commonwealth.

### II. ATLANTIC COAST PIPELINE, LLC v. COWPASTURE RIVER PRESERVATION ASSOCIATION, ET AL.

The Supreme Court of the United States granted certiorari on consolidated cases to decide “whether the United States Forest Service had authority under the Mineral Leasing Act, 30 U.S.C. § 181, to grant

---

DOI: <https://doi.org/10.37419/JPL.V7.I3.12>

<sup>†</sup>Daniel B. Kostrub is a Partner with Lenington, Gratton, & Associates LLP.

rights-of-way through lands within national forests traversed by the Appalachian Trail.”<sup>1</sup>

As a recapitulation of the 2019 Virginia update, *Cowpasture River Preservation Association* asked the Fourth Circuit to consider whether the United States Forest Service had “complied with the National Forest Management Act, the National Environmental Policy Act, and the Mineral Leasing Act in issuing a Special Use Permit and Record of Decision that authorized Atlantic Coast Pipeline, LLC, the project developer, to construct the Atlantic Coast Pipeline through parts of the George Washington and Monongahela National Forests and granted a right of way across the Appalachian National Scenic Trail.”<sup>2</sup> The court found that the “Forest Service abdicated its responsibility to preserve national forest resources.”<sup>3</sup> After the appeal, the Supreme Court granted writs of certiorari for review.<sup>4</sup>

In delivering the opinion of the Court, Justice Thomas discussed the relevant history of the cases leading up to the review by the Supreme Court and stated “[t]hese cases involve the interaction of multiple federal laws.” He then summarized the statutory and regulatory background, discussing the Weeks Act, the National Trails System Act, and the Mineral Leasing Act. In reversing the judgment of the court of appeals and remanding the cases for further proceedings consistent with its opinion, the Supreme Court held that “the Department of the Interior’s decision to assign responsibility over the Appalachian Trail to the National Park Service did not transform the land over which the Trail passes into land within the National Park System. Accordingly, the Forest Service had the authority to issue the permit here.”<sup>5</sup>

---

1. U.S. Forest Serv. v. Cowpasture River Pres. Ass’n, 140 S. Ct. 1837, 1841 (2020).

2. *Cowpasture River Pres. Ass’n v. Forest Serv.*, 911 F.3d 150, 154–55 (4th Cir. 2018).

3. *Id.* at 183.

4. U.S. Forest Serv. v. Cowpasture River Pres. Ass’n, 140 S.Ct. 36, 36 (2019) (mem.).

5. *Id.* at 1850.