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Kansas Natural Resource Coalition

Bringing Voice and Environmental Decision-making to Local Government

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Bulletin

National Park Service Completes its Feasibility Study; Recommends National Historical Trail Designation For 2 Trails Across 21 Kansas Counties

In May 2019, the Santa Fe office of the National Park Service (NPS) issued a Finding of No Significant Impact (FONSI) for the *Chisholm and Great Western National Historical Trails Feasibility Study/Environmental Assessment (FS/EA)*.¹ In winter, 2019 draft legislation was prepared by Kansas Senator Jerry Moran that if passed, would designate the 1,378-mile Chisholm and the 1,350-mile Great Western Trails as a single-managed unit under the National Trails System Act.²

The proposed 1,350-mile Great Western Trail cuts across a four-state region, including **Clark, Ford, Hodgeman, Finney, Lane, Gove, Sheridan and Rawlins** Counties in western Kansas.

While the Moran legislation does contain safeguards for local landholders, limits on federal eminent domain powers, and positive protections from buffer zones and boundaries, counties, landholders and local citizenry should understand that the designation process imposes administrative requirements on the Secretary of the Interior and other agencies that includes an inventory of historic trails, sites and items, as well as preparation of a Comprehensive Management Plan (CMP):

“If Congress designates the trails, a comprehensive plan would be prepared covering administration of the trails. The planning process would involve federally recognized American Indian tribes; federal, state, and local agencies; landowners; and site managers. NEPA analysis and other regulatory compliance requirements for the comprehensive plan will be completed as appropriate. The plan would outline resource protection and interpretation of the trails. The plan also would identify high potential trail segments and historic sites. Cooperative agreements would outline strategies for partners to accomplish national historic trail goals.”³

Together the inventory and CMP process take years to complete, and can result in documentation of historical items or sites on private and public lands. The inventory and CMP process can also bring external pressure for protection of artifacts or sites, affect county land use plans, or even create a nexus that impacts economic development or other federal funding programs into local governments.

KNRC is planning a **Briefing Session in Wichita on Friday Morning, April 17, 2020** for member and non-member counties along the Chisholm and Great Western trail routes. A detailed agenda will be forwarded to county clerks and commissioners in mid-March.

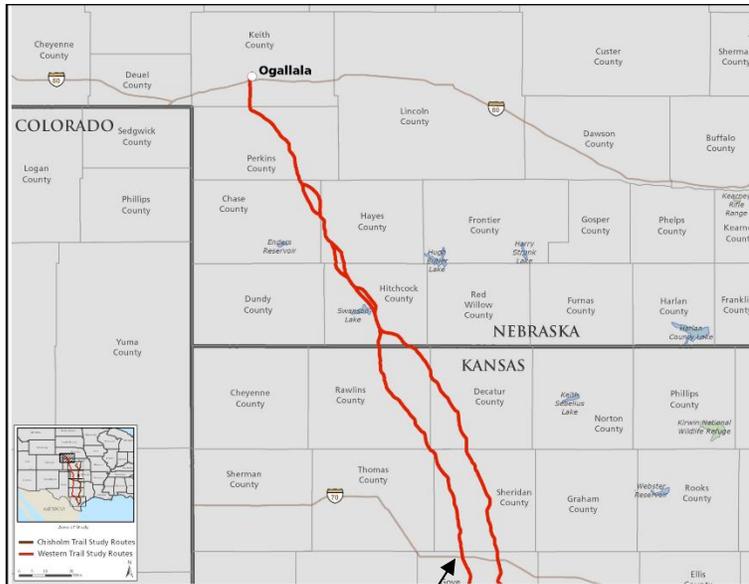
KNRC is also convening an issues subcommittee comprised of county commissioners from the eight (8) county region along the Great Western Trail. The product of that subcommittee is anticipated to be an administrative and legislative position paper with detailed county maps for use by member County Commissioners and the public.

¹ Draft Chisholm and Great Western National Historic Trail Feasibility Study/Environmental Assessment. National Park Service. May, 2019.

² National Trails System Act. 16 USC 1244(a).

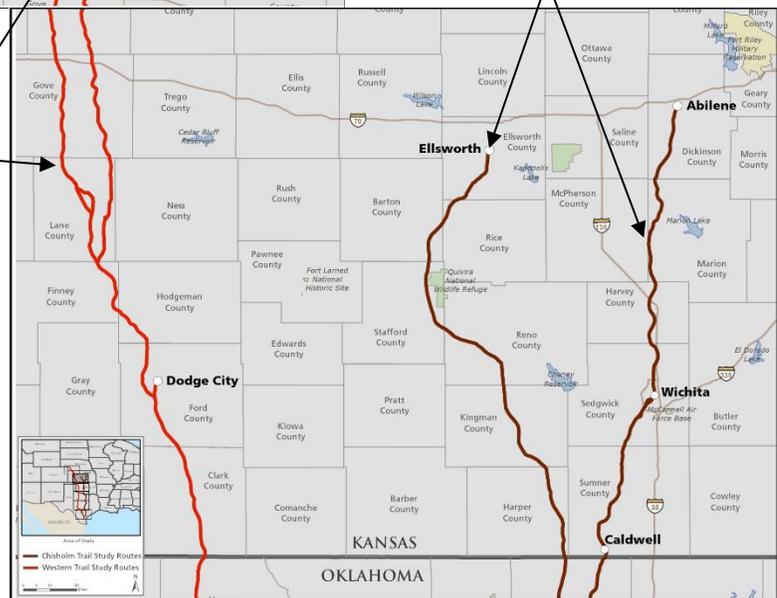
³ Finding of No Significant Impact. Chisholm and Western Historic Trails Feasibility Study/Environmental Assessment. September 09, 2016. pps 2

Proposed Historic Trail Designations Under the National Trails System Act Kansas



Great Western Trail

Chisholm Trail



SUPREME COURT

Justices look for a path to a pipeline in today's arguments

Niina H. Farah and Pamela King, E&E News reporters • Published: Monday, February 24, 2020



The Supreme Court heard arguments today in a case over whether the Forest Service can permit a pipeline that crosses the Appalachian Trail. Francis Chung/E&E News

Supreme Court justices questioned whether a lower court decision over the Atlantic Coast pipeline crossing the Appalachian Trail would create an "impermeable barrier" to natural gas pipelines on the East Coast, and the wisdom of upholding that ruling.

The Supreme Court heard arguments today in *Atlantic Coast Pipeline LLC v. Cowpasture River Preservation Association*, a case over whether the Forest Service should have authorized a natural gas project to burrow a pipeline through federal land beneath the Appalachian Trail, which is overseen by the National Park Service.

Justices zeroed in on how broadly the ruling could be applied beyond the iconic trail, and some appeared certain that upholding a 2018 ruling by the 4th U.S. Circuit Court of Appeals would have ripple effects in other national park land.

"Your position has significant consequences to it, enormous consequences," said Justice Brett Kavanaugh.

The justice directed that comment to Michael Kellogg, attorney for the Cowpasture River Preservation Association and other environmental groups in the case. Kellogg maintained that the pipeline crossing should be governed by the National Park Service.

Kellogg said the project did not bar natural gas pipeline development because Congress had exempted private and state-owned lands. As evidence, he pointed to 55 natural gas pipelines already crossing the trail.

Meanwhile, pipeline developers Dominion Energy Inc. and Duke Energy Corp., along with the federal government, asked for the justices to overturn the 4th Circuit's decision rejecting the Forest Service's authority to allow the pipeline to cross the trail, 600 feet underground.

The pipeline would cross beneath part of the trail that is within the George Washington National Forest.

In briefs to the high court, both supporters and critics of the stalled 600-mile, \$8 billion pipeline project suggested decades of agency decisionmaking supported their positions.

Pipeline supporters described the 4th Circuit's decision about the Appalachian Trail as creating a "huge barrier" to natural gas development along the East Coast.



Chief Justice John Roberts keyed in on that argument.

"It really does erect an impermeable barrier" to the pipeline, Roberts said.

"That is absolutely incorrect," Kellogg replied.

Some justices asked why Congress had not been more explicit in its language if it had intended for the National Park Service to have authority over the land.

"It worries me," said Justice Stephen Breyer.

He continued later: "Something with that consequence, perhaps Congress would have made more clear."

[+] The route of the Atlantic Coast pipeline is shown in light blue. Map courtesy of Oil Change International with alterations by E&E News

"Do you have more than just a gotcha argument?" Justice Samuel Alito asked Kellogg.

"Yes, we have an exception in the Mineral Leasing Act for lands in the park system," Kellogg replied.

Justices Alito and Breyer also questioned whether the court could rule on a narrower scope and instead make a distinction between a surface trail and areas that could be seen from the trail and subsurface land.

"It's not my job to resist winning this case on narrower grounds," said Paul Clement, the attorney representing the pipeline, drawing a burst of laughter from the courtroom.

Justices Ruth Bader Ginsburg and Elena Kagan appeared less convinced and strongly questioned the distinction between what counted as land versus trail under the statute.

Pipeline supporters argued the project's challengers had conflated "land" administered by NPS under the National Trails System Act with land that is "traversed" by the Appalachian Trail and under the governance of the Forest Service ([Energywire](#), Feb. 24)

"It's a difficult distinction to wrap one's head around. Are you saying the trail is distinct from the land? I don't know quite how to say it, but no one makes this distinction in real life," Kagan said.

She described the federal government's briefs as "strange to read."

Ginsburg also questioned whether the case was moot given the other ongoing litigation on the pipeline.

The pipeline has also yet to secure numerous permits needed to proceed with the project.

Clearview Energy Partners suggested in its analysis of the case that a majority of justices, including all conservative justices and Breyer, seemed ready to interpret the Mineral Leasing Act and the National Trails System Act to "allow the Forest Service to rely on its jurisdiction under the MLA to site ACP 600 feet below the Appalachian Trail."

"That said, we are not sure exactly how the Court might articulate that stance," Clearview wrote.

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