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Cowpastures in the Supreme Court: Implications for the Federal Lands

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In *U.S. Forest Service v. Cowpasture River Preservation Association*, the United States Supreme Court upheld the U.S. Forest Service's grant of a natural gas pipeline right-of-way beneath the Appalachian National Scenic Trail within a national forest in Virginia. In its most recent federal public lands decision, the Court relied on general property law principles and application of the implicated statutory language. The Court's decision addressed the National Trails System Act with implications for the administration and agency jurisdiction of National Trails System segments traversing federal land areas nationwide.

The Court rejected the respondent conservation groups' and Fourth Circuit's reasoning that the lands traversed by the Trail became part of the National Park System and were therefore excepted from the definition of "Federal lands" under the Mineral Leasing Act (MLA). That Act authorizes the Forest Service to grant a natural gas pipeline right-of-way over "Federal lands" for which it has jurisdiction.

Overall, *Cowpasture* upholds the Supreme Court's approach from 110 years ago that "it is not for the courts to say how" the nation's public lands "shall be administered. That is for Congress to determine." Thus, the Supreme Court upheld the primacy of Congress' allocation of agency jurisdiction on the public lands, the application of general property law principles to federal lands rights-of-way, and the use of the overlay management approach found in several federal lands statutes and likely to continue in future legislative and administrative applications for public land decision-making.

Please click [here](#) to download the full article: *Cowpastures* in the Supreme Court: Implications for the Federal Lands.

About the Author:

Murray Feldman is a partner with Holland & Hart LLP in Boise, representing clients in Endangered Species Act, NEPA, and other environmental litigation and administrative matters. He also represents parents under the 1980 Hague Convention on International Child Abduction. He was counsel of record for an amicus supporting certiorari in *Cowpasture*.

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