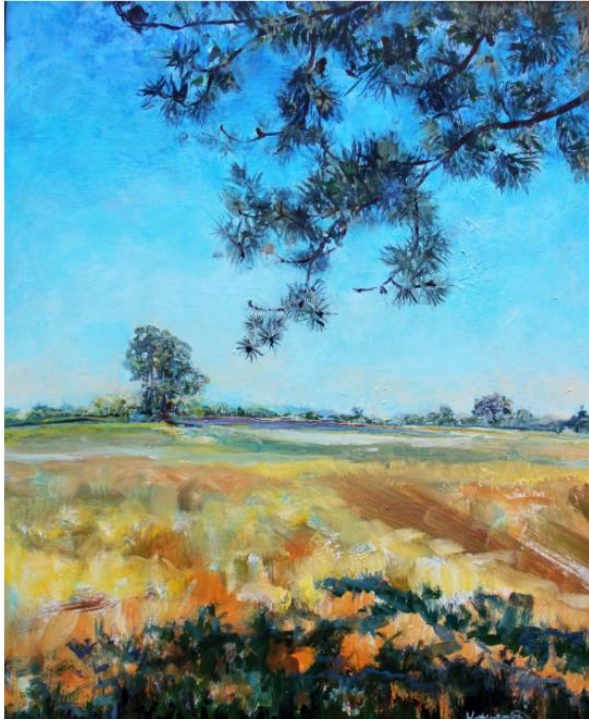


The Lone Yellow Pine That Helped Stop a Giant



On July 9, 2020, the Atlantic Coast Pipeline (ACP) dropped its 2 ½-year legal conquest to condemn land and cut down miles of trees in Halifax, Nash and Wilson Counties, including a lone pine on the Winstead Farm in Nash County. The dismissal of the five lawsuits by ACP comes in the wake of the announcement on July 5th that ACP's partners, Dominion Energy and Duke Energy were pulling the plug on the project to build a 600-mile pipeline to transport natural gas from fracked shale fields in Pennsylvania, through West Virginia, Virginia, and across North Carolina from Northampton County to Robeson County. In its own way, that lone pine in Nash County helped to stop the project that seemed inevitable, especially after the US Supreme Court ruling on June 15th allowed the pipeline to cross the Appalachian Trail.

The lone yellow pine stands watch over the Winstead Farm in Nash County. Protected by Marvin Winstead's mother decades before, the tree in 2018 became the bull's eye target for the Atlantic Coast Pipeline (ACP) as it sought to cut a more than 130-foot-wide path diagonally across planted fields and forest of the farm, taking 12 of the 70 acres that had been farmed by the Winstead family for almost 100 years and three generations.

To construct the project, ACP had to acquire by purchase or by condemnation more than 2,000 parcels of privately owned land, including 1,000 homes and farms in North Carolina. ACP told landowners along the 600-mile path that if they did not agree to ACP's contract terms for purchase of the easement, ACP would simply take the land by condemnation for less money than was on the table. Many landowners believed that the taking of their property was inevitable and simply conceded to the pipeline's demands.

Other landowners refused to bow to the threats. They could not offer their sacred lands for a project that would destroy miles of trees and wetlands and would support the build out of an infrastructure dedicated to fossil fuel extraction and further speeding climate change.

After receiving authorization from the Federal Energy Regulatory Commission (FERC) to move forward with construction, in January of 2018, ACP filed 29 federal condemnation lawsuits against North Carolina landowners seeking to take the easements they wanted and requesting to begin cutting down trees. One of those lawsuits took dead aim at the Winstead tree.

Winstead sought help from the Blue Ridge Environmental Defense league to help shoulder the costs and effort that he knew it would take to try to stop the taking of his family land. Winstead was not looking for help to get the most money for his land. He wanted to do everything he

could to stop the pipeline crossing his land. Catherine Cralle Jones of the Law Office of F. Bryan Brice, Jr. agreed to represent him.

With 21 days after receiving a legal summons notifying him that ACP had made good on its threat to condemn his land, Winstead's date to answer was March 19, 2018. However, ACP had requested that federal court Judge Terrance Boyle of the Eastern District grant an expedited hearing to determine their right to take the easement and give them immediate access to begin cutting down trees. Even before Winstead would have a chance to file a formal answer challenging the condemnation, ACP was asking the court for permission to take its 12-acre easement and begin cutting trees before the landowners could respond.

On March 9, 2018, 10 days before Winstead's answer was due, in the cavernous federal courtroom in Raleigh, Cralle-Jones was the only landowner representative present. On the other side were at least 14 attorneys, witnesses, and boxes full of all the paperwork necessary for the giant ACP to seize property from its 29 targeted landowners that day. Many of the lawsuits sought claim to "heired" properties, where title had passed through generations without a will or deed, leaving numerous heirs of original owners with legal interest in the property unable to organize a defense to the condemnation.

Pleading for Winstead and reminding the court that there were other landowners without notice or voice at this hearing, Cralle-Jones stood alone and pleaded that the hearing be continued until after Winstead had a chance to answer and until other landowners were given notice of the hearing. Judge Boyle allowed ACP to put on all its evidence that day but agreed to continue the hearing until the next week to allow landowners an opportunity to be heard.

When the hearing reconvened in Elizabeth City on March 14, 2018, the small historic courtroom was filled with a few more landowners, advocates, press reporters and the ACP legal team. Chuck Lollar, an eminent domain and property rights lawyer based in Virginia, represented another landowner, Enfield Fire Chief Ronnie Locke. Together Cralle-Jones and Lollar were able to cross-examine ACP's witnesses and allow Winstead and Locke to testify about their dealings with ACP and proposed impacts to their land.

Winstead told the court that his first contact with ACP was in 2014 when un-licensed, out-of-state surveyors entered his property without permission. ACP gave him an offer for his land in 2016 and then later Winstead was told that the pipeline would not cross his property. Winstead first learned from the press that ACP filed a lawsuit to take his land and only weeks later received official notice of the suit. Winstead further told the court about the impact the pipeline would have on his home and farm and that the lone 100 plus-year old pine would be the first casualty if the court granted ACP's request. Only days later the court denied ACP's request for the Winstead and Locke properties, setting the wheels in motion for the next 2 ½ years of litigation.

ACP got what it wanted for all other properties that day and continued to file more condemnation suits against other NC landowners throughout 2018. Lawsuits were soon filed to take the Solomon Family Farm and the Otto Williams Farm in Halifax County. Both farms are Century Farms, with continuous operation and ownership by these black families dating back to land

acquired at the end of the Civil War. In addition, a suit was filed to take portions of the Bunn-Bissette Farm in Wilson County. These families also hired attorney Cralle-Jones to represent them.

The tree did not stand alone to face the giant. Other landowners, environmental advocates, and community groups across West Virginia, Virginia and North Carolina also worked to stop the ACP. Communities organized, spoke out, and formed teams to monitor and help one another understand on-going and potential construction impacts. The Blue Ridge Environmental Defense League, The Allegheny Blue-Ridge Alliance, the Sierra Club, Appalachian Voice, Clean Water for N.C., and other groups helped to educate and empower landowners and residents. The Southern Environmental Law Center and other attorneys on behalf of landowners, river keepers and environmental groups, filed legal challenges to the FERC permit itself, and against the weak permits that ACP was able to obtain from federal agencies under the Trump administration. These legal efforts led to permits being vacated, an eventual stop work order from FERC, and a voluntary cessation of construction since December of 2018. Nevertheless, ACP continued to push forward to compel landowners to give up their land rights by force of law.

With legal hurdles preventing construction and expert deadlines looming, and with legal costs rising for client landowners in 2018, Cralle-Jones asked the Court to temporarily stop the condemnation cases until the other legal issues were resolved and ACP could prove that these lands were necessary for construction. Understanding the burden of litigation on landowners, Judge Boyle granted a temporary stay until ACP responded to the requested stay. The giant ACP strongly objected to the stay and argued that it would be irreparably harmed if it were not allowed to proceed immediately with condemnation of these landowner properties. After a hearing and briefing, in November of 2018 the court granted the landowner's request and entered a 90-day stay, not only for the requesting landowners, but for all 12 of the pending condemnation cases. In granting the stay, the court noted the harm that would result to Winstead from continuing the proceeding, "including **the felling of an historic tree** and the costs of disputing plaintiff's expert evaluation."

After further hearing and an additional briefing in July 2019, the court extended the stay for an additional 60 days through September 2019. Although these landowners requested an extension of the stay while the route determination would be subject to Supreme Court review, the court denied the extended stay request and in late October ordered that discovery and expert deadlines move forward in all of the cases.

In March 2020, as the COVID-19 pandemic spread, ACP continued to press landowners into mediation and pressed them to allow an out-of-state appraiser to come onto their property and into their homes to prepare its expert reports on the value of their land. When stay-at-home orders were issued in North Carolina, Virginia, and Maryland (where the appraiser was from), landowners stood firm and denied ACP their request to access their land.

In mid-April, a federal judge in Montana reviewing the Keystone XL Pipeline, struck down the Nationwide 12 Permit, issued by the U.S. Corps of Engineers, and relied on by Keystone to cross

wetlands and streams from Canada to Texas. The order covered not only the Keystone Pipeline but all pipeline construction that relied on a Nationwide 12 Permit, including the ACP.

With nothing left to lose, Cralle-Jones decided that, in the word's of Lin-Manuel Miranda's Hamilton, "I am not throwing away my shot" and tried to stop ACP from taking her clients' property. Cralle-Jones pointed to COVID, plunging oil prices, and the invalidation of the Nationwide 12 Permit as the basis for the new motion. ACP again strongly opposed the request for a stay, as it pointed to the U.S. Supreme Court decision clearing its route through the Appalachian Trail and invited the Court to turn a blind eye to the burden of litigation on landowners. Willing to hear the landowners' last shot, the Court set a hearing for Friday, July 10, 2020.

At 3 pm, on Sunday, July 5, 2020, Dominion Energy and Duke Energy suddenly announced to the world, including its condemnation attorneys, that it was canceling the ACP. The companies noted that the estimated project costs, \$4.5 billion at permitting, had grown to \$8 billion, with a 3 ½-year delay and uncertainty remaining. Landowners, communities, and environmental groups began celebrating the unprecedented victory after a six-year-long battle.

In an effort to avoid the July 10 hearing before landowners and Judge Boyle, on July 9th ACP dismissed the five condemnation cases where request for stay was pending, asked that the cases be closed, and the hearing be removed from the calendar. Judge Boyle ordered the parties, nonetheless, to appear at the next day.

In a grand reversal of the March 2018 hearing, on July 10th, the attorney for ACP stood almost alone, as Judge Boyle noted that his must be "an awkward representation" in which one week his client is making an all-out push to take easements by condemnation and then suddenly pulling the plug. Cralle-Jones stood with support from environmental advocates who donned protective masks to request that the Court retain jurisdiction to consider ancillary matters, including any request for recovery of fees and expenses born out of the now abandoned condemnation lawsuits.

Landowners were not able to attend the Friday hearing due to travel restrictions and health concerns. However, as a result of their resistance and the abandonment of the ACP, Celena and Robert Bissette will continue to enjoy the wetlands and woodlands on the edge of their Wilson County farm that would have been destroyed under the Nationwide 12 Permit, now under national challenge.

By raising their voices in opposition and refusing to negotiate, Valerie Williams and son, Travis Privott, can enjoy and continue to develop the spiritual sanctuary and retreat, farming operation, and eco-tourism opportunities on the Otto Williams Farm, with their family's Halifax County legacy still intact.

By refusing to back down, Mrs. Normandy Blackman, on behalf of the Solomon Heirs, secured their legacy in the fields and woodlands of the Solomon Farm in Halifax County so that the descendants of freed slave, Artelia Scott Solomon, can now build homes and raise proud Americans.

If you ask Blackman, who was born on the farm just after the WWII invasion by the same name, and named by her father, one of 20,000 black men to serve from NC during WWI, she will tell you that this case was just the latest battle in a long line of assaults on the farm. In the early 1920s, a neighbor tried to take part of the farm by force. Blackman's grandmother, Artelia, sought out the help of a young attorney in Enfield, Robert Hunt Parker, who agreed to help Artelia secure the farm for her family. According to the family's story, Parker had sided with a black family against the claims of a white neighbor and found it difficult to continue local practice in Enfield so he headed for Raleigh, where he ably represented Halifax County in the NC House of Representatives. He served as a superior court judge, became the first person to unseat a sitting Supreme Court Justice at the polls, and ultimately became the Chief Justice of the NC Supreme Court. Just as her grandmother Artelia thanked Judge Parker so many years ago, Normandy Blackman would thank Judge Boyle for continuing to ensure justice for all landowners.

Because of Marvin Winstead's refusal to sell out his farm in exchange for dirty energy, and Judge Boyle's willingness to consider the plight of landowners like him, the lone pine continues to stand watch over the Nash County Winstead farm.

*Catherine Cralle Jones, July 12, 2020
The Law Office of F. Bryan Brice, Jr.*

In 2019, the Law Office of F. Bryan Brice, Jr. successfully resolved claims against Duke Energy brought by 33 property owners along the Dan River in Rockingham County for damages they suffered from one of the worst environmental disasters in North Carolina history, the 2014 Dan River Coal Ash spill. The firm's central focus is environmental law at local, North Carolina state, and federal levels. We represent individuals, families, businesses, and municipalities, serving as advocates and guides through the often confusing and difficult landscape of environmental law. For more information, go to: www.attybryanbrice.com