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The Highlands Voice

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Whoa, hold your horses

FERC, Dominion Seek to Rush Pipeline Review

By John McFerrin

The Federal Energy Regulatory Commission (FERC) and Dominion Resources have proposed an accelerated schedule for approval of the proposed Atlantic Coast Pipeline. The Forest Service has pushed back against that proposal, suggesting a more thorough review.

Dominion's proposed 600-mile Atlantic Coast Pipeline would cross 21 miles of the George Washington and Monongahela National Forests. In order to build the pipeline, Dominion must have approval from the Federal Energy Regulatory Commission (FERC). It must also have the approval of the U.S. Forest Service.

The Forest Service approval would come in the form of a Special Use permit that would allow the construction of the pipeline on the National Forests.

To approve the pipeline, the Forest Service would also have to revise the Land and Resource Land and Resource Management Plans for both the Monongahela National Forest and the George Washington National Forest. Every ten to fifteen years, each National Forest does a Land and Resource Management Plan, setting out how the Forest Service plans to manage the Forest. The Monongahela National Forest did its Plan in 2006; the George Washington National Forests did its Plan in 2014. Neither Plan

anticipated a big pipeline running through the Forest. Because of this, it would be illegal to allow a pipeline to cross the Forests unless those plans are changed.

As a matter of law, neither a change in the Land and Resource Management Plan nor issuance of a special use permit can come about before the Forest Service has all the relevant information and follows its procedures.

So far, the Forest Service has not shown any hostility to the proposed pipeline. Neither has it shown any great fondness. Instead, it has consistently shown its commitment to a careful and thorough analysis of the pipeline, requiring the applicant to provide complete and high quality information and making decisions based on its own timelines.

Now FERC and Dominion Resources want to change all that. FERC has proposed that it go ahead and make its decision on the pipeline, allow construction to begin, and then let the Forest Service make decisions on changing the Forest Plans and issuing special use permits.

This puts the Forest Service in an impossible position. To make decisions on the special use permit or amending the Land

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Ramblin' the Ridges

By Cynthia D. Ellis

Places in Our Hearts

Most times we do not save mountains all on our own. We have help. But in many past instances, we did take the lead and offered a major portion of the work required to protect quite a few special places in the Highlands of West Virginia.

There's a long list: Cranberry, Dolly Sods, Blackwater, Otter Creek, Canaan Valley, the "Mon" Forest, Spruce Knob, Seneca Rocks, Laurel Fork, Spice Run, Roaring Plains, and Big Draft. We---you and I---and all of us of the West Virginia Highlands Conservancy, nurtured them and wanted to secure their future.

One special place targeted in the early 1970's was Otter Creek.

This wilderness area in Tucker County, rimmed by Shavers Mountain and McGowan Mountain, is comprised of 20,698 acres. It features tumbling waterfalls and 45 miles of challenging trails. Early on, our volunteers hiked and explored the area, and shared their findings with government agencies and individuals and with anyone concerned.

More specifically, Vic Schmidt and others prepared an Otter Creek brochure [based on the work Helen McGinnis had done in, "A Dolly Sods Guide".] His booklet was a trail guide for Otter Creek with maps and had

a bonus of recommendations regarding the protection of this place. At a WVHC Mid-Winter Workshop, it was noted that---

"Most of the Board's attention was devoted to Otter Creek. The main program for Saturday afternoon was concerned with the Conservancy's wilderness proposal for this area...vs. that of the Forest Service..."

*

We pressed for the "multiple use concept" rather than the heavy emphasis on timbering which was prevalent then. And we brought folks to Otter Creek for first-hand views of this forest gem. In 1969, WVHC president Tom King wrote, in *The Highlands Voice*---

"I was almost overwhelmed by the wilderness beauty of the Otter Creek valley, it is an area to which I will return

many times in the coming years. Our hike, which was led by Sayre Rodman, attracted one-hundred-nineteen people including our Secretary of State, John D. Rockefeller, IV, and his wife...I hope that every member will lend his hand to help save the "Valley of Opportunity."

In a subsequent column, King outlined the challenges of achieving wilderness status for Otter Creek. He cited the Forest Service stance that 2/3 of the area should be devoted to timbering and the intention of Island Creek Coal Company to core drill 5 sites in the valley. King said, "Remember the coal belongs

"Judge Maxwell ordered lawyers... to get together to agree on a method of sampling that didn't require roads. Pack horses and helicopters were two alternatives...Island Creek announced that horses were the choice... [drill rigs] were taken apart and loaded onto a specially designed litter-shaped platform suspended between two draft horses...A team can carry 800 pounds...it takes nine trips to transport an entire rig...The ground is frequently rocky and the horses are constantly losing shoes..."

And then, the *Charleston Gazette* featured an article, "Otter Creek Prospecting Put on Shelf." The story ends with timbering and roads deflected, and the coal company deciding that mining was not feasible.

We won. Bob Burrell was president and *The Voice* included his remark, "It is a rare day when the West Virginia Highlands Conservancy can claim an almost complete victory."

I had intended to write about those other places listed too. But, this Otter Creek episode captured me from the first instance of hearing of it. [Also, I did really have an experience there, struggling to keep up with a Brooks Bird

Club group on one of Dr. Jay Buckelew's aptly nicknamed "Death Marches.]"

And truly, whether you read of them here or not, in the end, all those places are still at the heart of the work we continue to try to do.

See more on Otter Creek <http://www.wvencyclopedia.org/articles/1782>]

This continues a set of columns focusing on our group's 50th anniversary. My writing of past events has been greatly helped by the work of David P. Elkinton, and his book, *Fighting for the Highlands: The First Forty Years of the West Virginia Highlands Conservancy.*



Helen McGinnis on one of the horses used to transport the drilling rig.

to Island Creek, but the surface belongs to you! You have as much right to the preservation of your property as they do to theirs." He pointed out that there were moves in Congress to promote wilderness bills, particularly by WV Congressman Ken Hechler.

Next, we held public meetings.

Then we went to court. We sought, and obtained a temporary injunction against the core drilling. The Forest Service appealed; the appeal was denied. So, the case went back to court and, in 1971, Island Creek Coal won limited permission to drill. "Limited!" We proposed and gained the requirement that all travel in to the drill sites be accomplished not via any newly constructed roads, but by pack horses! Helen McGinnis wrote---

FERC, the Forests, and the Pipeline (Continued from p. 1)

and Resource Management Plan, the Forest Service must review the impacts of the project according to the requirements of the National Environmental Policy Act and its own procedures. Before the Forest Service can do this, there must be an Environmental Impact Statement.

For the Atlantic Coast Pipeline, the Federal Energy Regulatory Commission is in charge of preparing an Environmental Impact Statement. The Forest Service would then use the information gathered in preparing the Environmental Impact Statement to make its decision on amending the Land and Resource Management Plans and deciding on the Special Use permits.

On December 30, 2016 FERC published an incomplete and inaccurate Draft EIS that fails to address many of the concerns that the Forest Service and the public have expressed. In the Draft, FERC allows Dominion to defer submitting critical information until after a Certificate from FERC is issued or construction is underway. The Forest Service won't have the information needed to make its decisions.

The Forest Service has expressed its opposition to this way of doing things. On December 13, 2016, it wrote to FERC describing its own procedural requirements for reviewing the ACP application, including a timeline that is longer than FERC's schedule for project permitting. The Forest Service said that, prior to making decisions on the project, all requested and needed data and plans must have been submitted and disclosed to the public.

Some of these data and plans are yet to come from Dominion itself. For

example, the Forest Service has asked for information on slope stabilization that Dominion hasn't provided. It needs that information to determine if the pipeline can be safely built. Should the pipeline be built, the Forest Service would develop plans to avoid or minimize damage to National Forest lands. Dominion has not provided the information necessary to do that.

It is critical that the Forest Service stay committed to the process and professional standards it upholds as stewards of our public lands. The Forest Service must take the time that it needs and the law provides to meet these standards.

The West Virginia Highlands Conservancy has been critical of the proposed pipeline in the past. We especially opposed rushing the Forest Service, asking that it be allowed to follow its own legally required timetable in making decisions. We oppose forcing it to make a decision before it has the information it needs. We oppose placing it in position of having to make a decision on a pipeline which is already partially built, a result of FERC's timetable and insistence on allowing construction before the Forest Service makes a decision.

Dominion has requested expedited review of the project. While it is understandable that it wants to go ahead as soon as possible, that is no reason to allow the pipeline to be approved before the Forest Service has finished evaluating it.

The West Virginia Highlands Conservancy has written a letter to the Forest Service, expressing our support for the U. S. Forest Service's commitment to its requirements for a careful, thorough review of the pipeline application.

If you wish to send a statement of support, you may send it to Forest Service Chief, Thomas Tidwell, ttidwell@fs.fed.us, and Regional Foresters, Kathleen Atkinson, katkinson@fs.fed.us, Tony Tooke, ttooke@fs.fed.us, and Clyde Thompson cnthompson@fs.fed.us. Copies should also be submitted to FERC (to be included in the administrative record). Submissions can be made through <http://www.ferc.gov/>. The docket number is CP15-554. Click on Documents and Filings and use the eComment feature. Or send by mail to: Nathaniel J. Davis, Sr., Deputy Secretary, FERC, 888 First Street NE, Room 1A, Washington, DC 20426.



Celebrating 50 Years

Mark your calendar!

Canaan Valley State Park

September 15-17, 2017

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The purposes of the Conservancy shall be to promote, encourage, and work for the conservation—including both preservation and wise use—and appreciation of the natural resources of West Virginia and the Nation, and especially of the Highlands Region of West Virginia, for the cultural, social, educational, physical, health, spiritual, and economic benefit of present and future generations of West Virginians and Americans.

Trail Truthing for the Hiking Guide

By Hugh Rogers

Beginning in 1988, Allen de Hart co-authored four editions of the Monongahela National Forest Hiking Guide for the West Virginia Highlands Conservancy. His death last fall, at the age of 90 (see the *Voice*, December 2016), came as he was working on the 9th edition. We had already lost co-author Bruce Sundquist, who had begun his labor of love on the Hiking Guide way back in 1972.

To continue the project, we have Allen's notes, his communications with National Forest staff, lists of trails newly opened, re-opened, or abandoned, and some information from hikers on changes to be made to old descriptions. There are more than 800 miles of trails. As Allen wrote, "The trail system ... is dynamic." We want the new edition to be as accurate as possible. You can help!

In January, during what we used to call "unseasonably mild weather," I double-checked a couple of trails in Tucker County. Double-checked, I say, because we had scouting reports from early 2015 that found one had "major blockage," and the other was "impassable." I knew the Forest Service was very gradually clearing many trails that had been hit by a 2012 derecho and/or Superstorm Sandy, and I wanted to see if these two were now in better shape.

The following reports mix description with experience, as I hope readers of the *Voice* will do: *Go out on any trail you know or are curious about, and compare what you find with the 8th edition of the Guide. Changes in the route? Missing information? Please send your reports to hugh.rogers@gmail.com.*

Losh Trail (TR155)

The Losh (Run) Trail should draw hikers from both Horseshoe Recreation Area, with its large campground, and YMCA Camp Horseshoe. The trail begins on a nature trail (not shown on the Guide's map) connecting the two. Look for the trail sign below the gate at the recreation area, before the first camp site. The nature trail has tree identification markers and a footbridge over Horseshoe Run. The junction has a sign for Losh Trail. (A distracting "false trail" is no longer evident.) The first section has some short reroutes around fallen trees.

The stream crossing at point G on the map can be difficult when the water is up, due to downed trees. On the west bank, the

trail diverges from the apparent streamside route. Look uphill for paint blazes and arrows. After a climb, the trail heads south, until it curves around the point of a ridge, then makes an abrupt switchback. It heads north and steeply up.

Beyond a saddle, the trail curves around a knob to head east. This is the area our scout found virtually impassable. It is somewhat hard to follow for all the downed trees; but you can pick your way along the hillside, keeping blazes in sight—no jungle-gym climbing required. As you emerge into open woods, you'll be greeted by a crowd of blue plastic blazes. The trail heads north again, at first below and eventually up on the ridgeline.

The "stately stand of white pine" has been reduced. Near the end of the trail, hikers have cut through a narrow screen of saplings to avoid a tangle of briers. There you enter a field, apparently maintained as a wildlife opening. There is a signpost, but no signs. Beyond the pines is another field. Dorman Trail (TR153) continues north from this point.

Clover Trail (TR124)

From Elkins, you can get to the trail without going to Parsons. On US 219, 1 mi N of the Montrose post office, turn left on Clover Run Road. At the stop sign .2 mi W, turn right; the paved Clover Run Road continues to the county line at the top of a ridge, where it becomes Valley Fork Road, CO 23. It's 4.3 miles from US 219 to the junction with CO 21 at a stop sign. Turn right and go 1.5 mi. In a curve just past the bridge over Clover Run is a wide pull-off.

The trail isn't signed. It begins across a stream, in a depression left by an old woods road that shortly narrows to an obvious trail. It gradually ascends to a fence line, the forest boundary, where it switches back toward the stream. The first blaze is uphill from the turn. The trail emerges from a series of switchbacks onto a long southerly course high above the stream. Before it widens on an old RR grade, there are places where its hold on the hillside is precarious.

The Guide mentions how logging trains would climb the ridge by driving forward and backward from switchback to switchback. The grades are stacked on a nearly vertical hillside. Near the final blaze on this grade, a track heads back north and up on the right. There is a hard-to-notice (I

did not) blaze high above it. This is the spot where our scout reported "a major blockage." It's still there.

Instead of the newer route described in the Guide, I followed signs of old maintenance and current use on the original trail. The RR grade passed through two cuts as it bent SW around a point and headed NNW. At a small trib, it turned sharply S again. Another switchback at a larger trib turned SE. There was enough room to duck under fallen trees.

An intersection with an old woods road was blocked but the road was accessible by a well-used shortcut. The next stretch, heading SE again, had a bad patch, not too long, then another and a discouraging dip. The tangle of bent and fallen, mostly younger trees, blocked my view: would the trail resume its climb? Fortunately, (a) most of the downers were dead enough to break; (b) many of the bent could be pushed aside; and (c) the briers were few. A lot could be done here with a bow saw, and even without tools, every passage will open it more.

Another switchback, from E to NW, led to FR 937 at a former log landing. The old route did not use as much of this road. Just before the road turns NE and descends, on the right an obvious trail leads uphill to the junction with Pheasant Mt. Trail (TR120), which is not signed, but blazed in both directions.

So, Clover Trail is still usable, although its condition must be downgraded. We will re-check the blocked junction and the rest of the re-route described in the 8th edition. But my preference would be to upgrade the route I followed, using less of FR 937 and more of the scenic old RR grade.

Send Us a Post Card, Drop Us a Line, Stating Point Of View

Please email any poems, letters, commentaries, etc. to the VOICE editor at johnmcferrin@aol.com or by real, honest to goodness, mentioned in the United States Constitution mail to WV Highlands Conservancy, PO Box 306, Charleston, WV 25321.

Celebrating 50 Years!

The West Virginia Highlands Conservancy was officially founded in 1967 but the people and Groups that came together to form the organization actually began to meet in 1965 while the first issue of The Highlands Voice appeared in 1969. For many years we were THE environmental organization in the state and tackled issues as diverse in topics as in geography. Some of its major roles were defined early in its existence. Protecting Rivers, Coal Mining, the Monongahela National Forest and

other public lands, Highways, Wilderness and Canaan Valley all have deep roots that permeate our history. We will be highlighting some of these issues, the places, and the people involved, in upcoming issues of The Highlands Voice. We'll also be visiting some of these places throughout the year to see the successes, or sometimes failures, of our work. We'll get together to celebrate and reminisce with each other at the Canaan Valley Resort State Park, September 15-17, 2017.

From the Archives

All issues of our newsletter, The Highlands Voice, beginning with Volume 1, in 1969, are archived on our website at www.wvhighlands.org.

Enjoy the following highlights taken from; **1969 The Highlands Voice, Volume 1, #s 1-6**



The National Timber Supply Act, gives prime importance to timber harvesting in National Forests and subordinates watershed protection, recreation, and wildlife values.

Can the Shaver's Fork be saved? Among the more depressing news this spring concerning the Shaver's Fork was the failure of the State Legislature's Scenic Rivers Bill.

The Wilderness Committee is making plans for Otter Creek June 21-22.

H.R.11943 would establish the Potomac National River, preserving natural, scenic, historic, wildlife and recreational values, including the historic C and O Canal.

August 2-3 Cheat Canyon Trail clearing.

WWVU-TV produced a documentary on clear-cutting on the Gauley Ranger District of the Monongahela National Forest.

Princess Coal Company plans to mine coal in Cranberry Backcountry including dredging the Williams River for roadbuilding material.



The Ad Hoc committee on Dolly Sods held a meeting on August 15 & 16 with chairman Frederick Dorrell, Supervisor of the Monongahela National Forest.

October 11 & 12, don't miss the Highlands Conservancy Fall Review highlighting Wildlands, Wild Rivers, & Legislative Action.

The US Army Corps of Engineers released plans to build another dam on the Gauley River at Swiss, one of 14 planned for the Kanawha River Basin.

Forest Service announces the acquisition of 17 tracts of land totaling 2,778 acres for the Spruce Knob-Seneca Rocks Recreation Area.

US Army Corps of Engineers' Royal Glen Dam on the South Branch Potomac River would flood the Smoke Hole Canyon.

L.W. Deitz, President, Richwood Chamber of Commerce, encourages us to come to Richwood for our Fall Review, where we will be well-received, and the community will open up its facilities for our use.

Help Us Celebrate!

We are seeking help and input from our members. Please participate in the outings and events we are planning, but also help us make the 50th Celebration extra special.

- Contact us with the names and contact information of people you know who have some connection with the Highlands Conservancy who may not still be engaged. We are creating a list of folks to reach out to, from Agencies, Organizations, and others we've worked with, to invite to join our celebrations.
- Using Google, or the Archives for The Highlands Voice, research an issue that you know about, were involved with, or the success from our efforts you enjoy, and write an article or just share personal memories or experiences.
- Offer to lead an outing to one of the places we've fought to protect over the last 50 years. Share your stories or experiences working with, or even against, us on some issue.
- Clean out your closets for memorabilia, or other items to bring to the Canaan Celebration in September and donate to a silent auction.
- Get out those old photo albums and bring them with you to Canaan for a photo-sharing display.
- Send us your photos of people, places, or events from our long and storied history to include in the Celebration's publications and Web pages.

Contact us at; wvhc50@gmail.com

Court of Appeals Enforces Conductivity Rules

By John McFerrin

The United States Court of Appeals for the Fourth Circuit decided that a West Virginia coal mine violated the state and federal Clean Water Acts by discharging pollution into nearby streams.

The case, originally filed in March 2013, alleged that mine runoff from a Fola Coal operation in Clay and Nicholas Counties, West Virginia, contaminated water in Stillhouse Branch with sulfate and other ionic pollutants that make those waterways toxic to stream life. The citizen groups that brought this case claimed that the mines were violating “narrative” water quality standards established in the Clean Water Act, which prohibit water pollution that causes harm to stream life or has significant adverse impacts on streams. This suit was brought by the West Virginia Highlands Conservancy, the Sierra Club, and the Ohio Valley Environmental Coalition.

Why this is a big deal—Reason One

One indicator that this decision is a big deal is the crowd that it attracted. The American Forest And Paper Association; American Petroleum Institute; National Association Of Clean Water Agencies; National Association Of Home Builders; National Association Of Manufacturers; National Mining Association; Utility Water Act Group, and the West Virginia Department Of Environmental Protection all filed as amici curiae. An amicus curiae is someone who, while not having a direct interest in the outcome of the litigation, has some sort of interest that would be affected and wishes to tell the Court how its interest would be affected. These entities jumped in to argue on behalf of Fola Coal’s position. While this is not the crowd that the Clean Power Plan attracted, the presence of these amici is some measure of the issue’s importance.

The United States Environmental Protection Agency also weighed in. The case began as citizen groups suing a coal company, hoping to enforce the federal and state Clean water Acts. When it reached the Court of Appeals, the EPA jumped in to argue that the groups were correct.

Why this is a big deal—Reason Two

Beyond the crowd it attracted, this is a big deal because it makes clear that what are called “narrative water quality standards” are to be enforced. It also

makes clear that conductivity is a valid measure of the quality of water and that mining companies must avoid doing things that cause an increase in conductivity to the point that it becomes harmful.

This is the first time that a court on this level has made such a ruling. The West Virginia Highlands Conservancy, the Sierra Club, and the Ohio Valley Environmental Coalition have been involved in settlements that recognized that these things are true but this is the first time that the Court of Appeals has actually made a decision saying that they are true.

How the Clean Water Act Works

The original goal (and one still contained in the Act) of the Clean Water Act was the eventual elimination of polluting discharges to the waters of the United States. While this goal remains in the Act, as things have developed over the past thirty years the system has evolved into one of permitting. Companies get permits which allow them to discharge small amounts of pollution. Those permits are supposed to allow only enough pollution that, even after it is added, the stream will still be fishable, swimmable, etc.

The small amounts of pollution that companies were allowed by their permits to discharge are called *effluent limits*. A typical permit will allow a company to allow up to X amount of iron, Y amount of aluminum, etc. in the water leaving the permitted area. Years ago these were the only limits that companies had to take seriously.

Only in the recent past (and urged on by litigation by citizens, including the West Virginia Highlands Conservancy) have regulators done much beyond measuring and limiting polluting discharges into streams. This movement beyond the older, and less effective, way of doing things came from the additional attention that regulators (and those who urge them on) began to pay to what are called *narrative water quality standards*.

Narrative water quality standards are not specific numerical limits as the effluent limits are. Instead, they are descriptions of conditions that are not allowed in state waters. They are such things as smells, colors, sludge deposits, or (as is relevant in this case) any other condition which adversely alters the integrity of the waters

of the State or results in a biological impairment.

What happened here

In this case, Fola had met its numerical effluent limits. Had regulation stopped there and ignored the narrative standards, it would have been home free. But it did not. The Court agreed with the groups who had brought the suit that Fola must also meet the narrative standard.

Fola did not meet the narrative standards because it was causing increased conductivity in the stream. Increased conductivity results in biological impairment of the stream. (See box on the next page) The evidence was that the conductivity was ten times as high as the level at which biological impairment occurs.

End run by West Virginia Legislature blocked

The West Virginia Legislature had previously tried to provide some relief to coal companies in Fola Coal’s situation. It had passed a statute which said that any company which met the effluent limits did not have to meet the narrative water quality standards. Fola Coal sought protection from this statute.

The Court did not buy this argument. Under the federal Clean Water Act, the United States Environmental Protection Agency must approve any change to state law, particularly ones that would weaken the state’s law. The EPA never approved this change because it would weaken West Virginia’s law and cause it to conflict with federal law. As a result, the company could not use that statute as a defense.

What happens next

Figuring out what steps Fola has to take to correct the problem is a technical matter. The District Court, which first considered the case, rejected the plaintiffs’ proposed solution and appointed a Special Master of Engineering to monitor Fola’s method to clean up the water pollution, a method that would be less burdensome than the method the plaintiffs proposed.

Stream “Protection” Rule Imperiled

By John McFerrin

The January, 2017, issue of *The Highlands Voice* reported that the Stream Protection Rule would become final in January, bringing to an end over fifteen years of litigation, anticipation, and commentary. According to the official press release from the Office of Surface Mining, the new rule “updates 33-year old regulations and establishes clear requirements for responsible surface coal mining that will protect 6,000 miles of streams and 52,000 acres of forests over the next two decades, preserving community health and economic opportunities while meeting the nation’s energy needs.”

The same issue of *The Voice* also predicted that, with a new President, new Congress, etc. something would happen. It has. Even though the rule is nominally final, and is in effect at least as of this writing, there are challenges pending that place it in grave peril. Were there such a thing, it would be on the Endangered Rules List.

The *Voice* could claim points for prescient prognostication but this was too easy. With a new President, new Congress, and same old coal industry, there had to be something. Execution: 10; Degree of difficulty: 1.

Congressional action

There is a statute called the Congressional Review Act. It allows Congress to pass a resolution prohibiting a regulation from going into effect. The resolution must be passed by both houses of Congress and signed by the President.

This must be done within sixty days of the effective date of the rule.

Congressman Evan Jenkins (R, WV) has introduced a resolution voiding the Stream Protection Rule. If it is passed in both houses of Congress and is signed by the President, it will void the Rule. It will also prevent the Department of the Interior from promulgating a substantially similar rule in the future.

Now approximately sixty groups from all around the country have joined in a letter asking that Congress reject the resolution and allow the new Stream Protection Rule to stand. Even though the West Virginia Highlands Conservancy has mixed feelings about the Rule (more on that later), it joined in the letter.

Legal action

In addition to the review under the Congressional Review Act, the Stream Protection Rule faces another challenge. Mining company Murray Energy and fourteen states (including West Virginia) have filed actions challenging the Rule. They claim what they always claim: that the Rule is a dramatic executive branch overreach that interferes with other federal laws and ignores states’ roles as primary coal regulators. They also claim that it would be difficult or impossible to comply with and would dramatically curtail or eliminate longwall mining.

A coalition of fourteen community organizations, including the West Virginia Highlands Conservancy, has asked that

they be allowed to intervene in two of these actions. They defend the Rule, contending, as OSMRE has, that the rules simply modernize outdated standards for protecting water and other natural resources from coal mining.

Most of the groups involved, including the West Virginia Highlands Conservancy, had spent the years while the rule was being considered demanding even stricter standards. Scientific research has linked coal mining operations to downstream human health effects, particularly mountaintop-removal mining.

WVHC position

The West Virginia Highlands Conservancy has always been ambivalent about the new Rule because it takes the wrong approach. WVHC has always contended that the way to protect streams from mining was to keep the mining away from the streams. This was the approach taken by the earlier rules, passed in 1983. Although never fully enforced, this rule effectively banned coal mining within one hundred feet of streams.

The new Rule assumes that it is possible to mine in and through streams if the company takes proper precautions and proper steps after mining to restore the stream. Even though WVHC considers the assumption that streams can be destroyed and then recreated to be unwarranted, it still supports the new Rule because it improves current law in other areas.

What is conductivity?

Conductivity is a measure of the ability of water to pass an electrical current. Totally pure water is a poor conductor of electricity. Generally speaking, the more inorganic dissolved solids such as chloride, nitrate, sulfate, and phosphate anions (ions that carry a negative charge) or sodium, magnesium, calcium, iron, and aluminum cations (ions that carry a positive charge) that are present in the water, the more easily the water can conduct electric current. Thus, if we measure the conductivity and it is high, it tells us that there are a lot of these and other substances dissolved in the water. While it does not identify individual substances, the conductivity reading gives an overall reading of the concentrations of substances in the water.

Conductivity is useful as a general measure of stream water quality. Each stream tends to have a relatively constant range of conductivity that, once established, can be used as a baseline for comparison with regular conductivity measurements. Significant changes in conductivity could then be an indicator that a discharge or some other source of pollution has entered a stream.

Research has shown that high conductivity can make a stream inhospitable to aquatic life, making the stream biologically impaired.

Preview of Coming (Un)Attractions

Just as surely as we can expect Robins in the spring or a Presidential tweet at midnight, the West Virginia Legislature will consider a change to the water quality standards. We may as well be ready.

The question is how clean we keep state waters. Under current law, different streams can be classified as suitable for different uses. It can be classified as Category A which means that, once it is treated, it is good enough to drink. It could be given a lesser classification, meaning it does not have to be quite as clean.

Right now the regulations put almost all West Virginia water in Category A. This does not mean that all West Virginia waters are actually drinkable right now but we are working toward that goal.

If some waters were reclassified, then any industrial user operating near those waters would not have to meet such a high standard and could discharge more pollution into the stream. The possibility of getting to do this routinely tempts someone to ask the Legislature to change the water quality standards. So far the efforts have been unsuccessful but that does not keep someone from trying.

This is particularly important for rural people. The argument usually is that we should save the Category A designation for streams where there is a public water intake. For rural people who rely upon streams or wells, every stream is a water supply.

To be ready for the inevitable, our friends at the West Virginia Rivers Coalition have prepared a fact sheet explaining all this. Here is what they say:

Protect Human Health, Preserve “Category A” The Water Quality Standard to protect current and future drinking water use

BACKGROUND

Water Quality Standards are the legal basis for controlling the amount of pollution entering our waters. They are designed to protect and maintain water quality so that we can safely use it for drinking, recreation, and other uses. Those uses are protected through categorical determination.

Category A is the human health use category that is applied to waters, which, after conventional treatment, are used for human consumption. It protects our waters so that they can be safely used as current and future drinking water sources. Its criteria protect us from pollutants that are most harmful to human health.

Since 1967, West Virginia’s Water Quality Standards has applied an equivalent Category A protection to all waters, with just a few exceptions. In the early 1980’s the Category A designation for the stretch of the Kanawha River from Belle downstream was removed, and the Kanawha was no longer classified to be suitable for drinking water use. In 2015 the legislature restored Category A protections for the Kanawha River. This provides an option for WV American Water to place a secondary intake on the Kanawha.

Certain industry groups oppose the state’s long-standing policy to protect most waters for current and future drinking water use. They propose to not only reject making the Kanawha available for drinking water use, but also to limit Category A protections for all streams to 500 yards above existing drinking water intakes. This is the most drastic weakening of statewide drinking water protections since WV established its Water Quality Standards in the 1960’s.

IMPLICATIONS OF REMOVING CATEGORY A PROTECTIONS

- Pollution will increase in nearly all of our rivers and streams, with pollutants that are most harmful to human health increasing the most.
- Potential future use of waters as drinking water sources is ignored. Our options for finding water suitable for future drinking use will be severely limited.
- Data is not available on the costs that may be cut for a few industries, but more polluted water poses increased costs and concerns for other businesses and citizens who live in or might locate to West Virginia.

Category A protects us from dangerous toxins and cancer-causing chemicals.

Vulnerable populations like pregnant women and babies are most at risk for harm.

Examples of impacts of exposure to Category A toxins include:

- Dioxin – known to cause neurological defects and malformations of human embryos.
- Lead – is transferred across the placenta and increases risk of abortion, premature birth, birth defects and delayed mental and physical growth.
- Arsenic – also crosses the placenta and may result in spontaneous abortion or stillbirth.
- Benzene – has been found in umbilical cord blood and linked to spontaneous abortion and stillbirth as well.

Join Now !!!

Name _____

Address _____

City _____ State _____ Zip _____

Phone _____ Email _____

Membership categories (circle one)		Individual	Family	Org.
Senior		\$15		
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Introductory		\$15		
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Mountaineer		\$500	\$750	\$1000

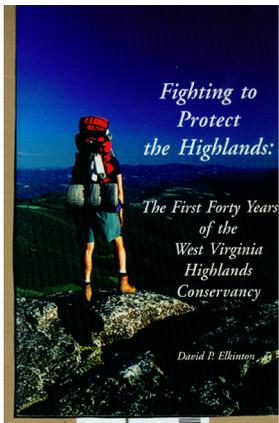
Mail to West Virginia Highlands Conservancy, P. O. Box 306, Charleston, WV 25321

West Virginia Highlands Conservancy
Working to Keep West Virginia Wild and Wonderful

You may also join on-line at www.wvhighlands.org

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518 pages, 6x9, color cover, published by Pocahontas Press

To order your copy for \$15.95, plus \$3.00 shipping, visit the Conservancy's website, wvhighlands.org, where payment is accepted by credit card and PayPal. Or write: WVHC, PO Box 306, Charleston, WV 25321. Proceeds support the Conservancy's ongoing environmental projects.

SUCH A DEAL!
Book Premium With Membership

Although *Fighting to Protect the Highlands, the First 40 Years of the West Virginia Highlands Conservancy* normally sells for \$15.95 plus \$3.00 postage. We are offering it as a premium to new members. New members receive it free with membership.

Existing members may have one for \$10.00. Anyone who adds \$10 to the membership dues listed on the How to Join membership or on the renewal form will receive the history book. Just note on the membership form that you wish to take advantage of this offer.

Tell a Friend!

If you have a friend you would like to invite to join the West Virginia Highlands Conservancy just fill out this form and send it to West Virginia Highlands Conservancy, Box 306, Charleston, WV 25321.

Person you wish to refer: _____

Address: _____

Email _____

Your name: _____

Filling out the form, etc. is, of course, the old school way of doing things. If you prefer, just email the information to Beth Little at blittle@citynet.net.

The way it works: Anyone you refer gets *The Highlands Voice* for six months. At the end of the six months, they get a letter asking if they want to join. If they join, we're happy. If not, then maybe next time.

Leave a Legacy of hope for the future

Remember the Highlands Conservancy in your will. Plan now to provide a wild and wonderful future for your children and future generations. Bequests keep our organization strong and will allow your voice to continue to be heard. Your thoughtful planning now will allow us to continue our work to protect wilderness, wildlife, clean air and water and our way of life.

Visualizing the Atlantic Coast Pipeline (ACP)

On December 30th of 2016, the Federal Energy Regulatory Commission (FERC) issued the Draft Environmental Impact Statement (EIS) for the proposed Atlantic Coast Pipeline and Supply Header projects. The EIS with appendices runs to some 2,375 pages and is definitely not a quick or easy read. For those who are willing to wade through all or part of the documents and wish to submit comments, FERC will continue to accept these through April 6, 2017. An electronic version of the complete EIS with appendices is available from the FERC website but some may find that website difficult to navigate and it may be easier to Google "acp eis" and let Google do the navigation for you.

In West Virginia the ACP will involve construction of just under 84 miles of new 42-inch diameter natural gas pipeline that will operate at 1,440 psi pressure and will transport 1.44 billion cubic feet of natural gas per day from the Marcellus shale gas fields of northwest West Virginia, southeast Ohio, and southwest Pennsylvania to customers in Virginia and North Carolina. No industrial or residential customers will be served by this system in West Virginia.

The route map segments in the EIS are often not very helpful in determining how the pipeline right-of-way relates to the actual landscape. While based on standard USGS 7.5 minute quadrangle maps, these maps cover only about three miles of pipeline at a time. Since the pipeline, by design, often runs along ridge lines and through rather remote territory, identifying labels such as stream names and road numbers are often absent from the maps, and the maps themselves only cover a mile or a little more on either side of the pipeline corridor. New support-road construction for this project is extensive and is sometimes incompletely shown on the narrow map segments. Taken together, these shortcomings make it difficult to understand the pipeline corridor in context.

The pipeline right-of-way itself will be 125-150 feet wide during the construction phase but will be reduced to 75 feet wide following completion. Exceptions to this will be that the construction right-of-way is reduced to 75 feet width in wetlands, and the permanent right-of-way is reduced to 53.5 feet width on National Forest lands. The pipeline company is permitted to negotiate wider rights-of-way with individual landowners if it is deemed necessary.

This pipeline of course raises a number of potential environmental concerns. Perhaps foremost among these are slope stability, stream sedimentation, and several concerns associated with limestone (karst) terrains including the possibility of serious groundwater contamination. Nowhere along the West Virginia portion of the ACP are these problems more likely to be encountered than in southern Randolph and northern Pocahontas counties. It is in these landscapes that steep slopes underlain by potentially unstable shales, cave-riddled limestones, and high quality streams commonly intersect.

While the public's attention is largely focused on the pipeline corridor itself, it should be kept in mind that the ACP will require the construction or improvement of many miles of access roads during the construction phase. In southern Randolph and northern Pocahontas counties, many of these unpaved roads will traverse steep slopes on rocks such as the Mauch Chunk group that are prone to slides and erosion.

In order to allow people to understand the ACP in the context of a real landscape, it seemed that it might be useful to employ a device called a field trip road log. These have often been used by local geologists to lead visiting geologists to features of geological interest via a self-guiding set of written directions.

What follows here is such a road log. The route(s) are designed to be driven by car from a set beginning point and then take the reader, turn by turn, through the field trip using mileage points as recorded by the car's odometer. The road log covers features encountered over mile 59 through mile 76.5 of the ACP. It does not of course follow the actual pipeline right-of-way, but rather describes points where the pipeline crosses or passes close to, a road.

Road log Starting point: Randolph-Pocahontas County line on US 219 approx. 3.7 miles south of the village on Mingo and 3.0 miles north of the village of Linwood (intersection of WV 66 with US 219). Please note that odometers vary somewhat from car to car and so the mileages given here should be viewed as approximations.

<u>Mile</u>	<u>Feature</u>
0.0	Set car odometer to 0.0 and proceed southward on US 219.
0.2	Village of Mace
0.5	Turn right onto Dry Branch Road (CR 219-2) (sign to Elk Springs Resort)
1.0	Keep to the right at the intersection with John Deere Rd. (on left)
2.1	ACP crosses Dry Branch Road at approx. right angles at this point, just to the right of the prominent limestone spring against the valley wall on the right. The valley floor is on the Greenbrier limestone here and water sinking in this valley has been dye-traced to both a spring two miles to the south at Inwood in the Big Spring Fork valley, and also to Elk Springs ten miles south in the Elk River valley.
4.3	Keep left at this intersection. Old Dry Branch Road (CR 219-16) on right. On the return trip we will follow this road up the Douglas Fork valley.
5.1	Low water bridge. Do not attempt to cross this if water is crossing the road here.
5.6	Low water bridge. Do not attempt to cross this if water is crossing the road here.
6.0	Road joins the Elk River at Slaty Fork Catch and Release Area sign.
6.7	Gated road to right runs up the valley of Falling Spring Run. This stream drains an area of about 2.5 square miles on the southwest flank of Elk Mountain and sinks entirely into the limestone at a large sinkhole toward the lower end of its valley. The water from this sinking stream is known to follow the underground course

of the Elk River and return to the surface at Elk Springs which supplies water to a large private fish hatchery at Elk Springs Resort. A major access road to the pipeline in this area will follow the entire length of Falling Spring Run which drops 600 feet in elevation over a stretch of less than two miles. This heavily traveled, steep unpaved road, much of it on potentially unstable shales, will almost certainly shed significant sediment into the Elk Springs hatchery's water supply. Young trout and trout eggs may be harmed by even small amounts of sediment.

11.0 Elk Springs Resort. The main Elk Spring (aka Cowger Mill Spring) is to the left of the road just before you reach the resort.

11.2 Stop sign. Turn right on Valley Fork Road.

11.7 Surveyor flagging on both sides of road indicates crossing point for the ACP at pipeline mile 60.8. Just out of sight on the left (north) side of the Valley Fork road, the ACP descends a nearly 32% slope, dropping 1,200 feet in less than three-quarters of a mile. Over nearly all of this distance, the pipeline will be traversing rocks of the Mississippian age Mauch Chunk formation, an assemblage of sandstones and shales that are well known for their tendency to produce unstable slopes when disturbed by construction activities. Because of the need for pipe welders to work in the trench on steep slopes, trench widths are increased to 30 feet to accommodate this. This increases the amount of disturbance and thus increases the probability of slope failures.

0.0 Where possible at this point, turn around and return to Elk Spring Resort. Reset your odometer to zero at Elks Springs Resort and retrace your route back up the Elk River Road.

4.4 Falling Springs Run road on left.

5.0 Slaty Fork Catch and Release Area sign on right

5.4 Low water bridge.

5.9 Low water bridge.

6.9 Turn left onto Old Dry Branch Road and continue up the Douglas Fork Valley.

8.6 Randolph-Pocahontas County line. The ACP crosses the road here at pipeline mile 66.6. Pipeline is again on limestone and this is another dry, underdrained valley. Dye tracing shows that water that sinks in this valley returns to the surface at Elk Springs.

9.5 Stop sign. Turn right onto Mingo Flats Road South (unmarked).

10.3 Stop sign at US 219. Turn right (south) and proceed approximately 4.5 miles to the village of Linwood at the intersection of US 219 and WV 66.

10.6 The ACP crosses US 219 about 0.3 mile west of Linwood ("south" on US 219). A large stone sign on the left that says "Waco Oil and Gas" pretty much marks the crossing point. This is the valley of the Big Spring Fork of the Elk River and it is entirely floored by limestone over most of its length. There

are at least 70 known caves in this valley and in drier weather, Big Spring Fork itself flows underground for lengthy stretches. To the south of US 219 at this point, the pipeline climbs onto Tallow Knob, gaining close to 1,000 feet elevation in a little more than half a mile. Virtually all of this approximately 35% slope is underlain by the slide-prone sandstones and shales of the Mauch Chunk group of rocks.

0.0 Turn around when you can and return to the intersection of US 219 and WV 66. Re-zero your odometer at this point and turn right onto the Snowshoe Road (WV 66).

5.0 Road to Snowshoe ski area to your left. Keep straight on WV 66.

9.7 Turn right onto Edray Road. This road is narrow and has many turns. Please exercise caution.

12.9 Village of Stony Bottom.

15.8 Turn right on Linwood Road.

16.4 You are now in the valley of Clover Creek. This broad, oval-shaped valley is an interesting geological feature itself, being a large long-abandoned meander loop of the Greenbrier River. At this point the ACP descends the hillside across the valley on your left and then crosses to your side of the valley and then turns left to closely parallel the road that you just drove in on. Upstream of this point, Clover Creek runs through Cloverlick Cove, a limestone valley that contains roughly sixty known caves.

From about three and a half pipeline miles upstream (west) of this point, the ACP descends from the summit of Buzzard Ridge at 4,100 feet elevation to the valley of Clover Creek at 2,800 feet elevation. It then immediately climbs to 4,000 feet elevation again as it crosses the northern end of Cloverlick Mountain. It then drops to about 2,300 feet elevation here. Almost all of the pipeline route over this stretch (from ACP mile 72 to mile 75.5) is on the slide-prone rocks of the Mauch Chunk group. For the most part, the pipeline stays above the Greenbrier limestone over this distance, but drainage from the pipeline right-of-way will eventually reach the cave-studded limestone on the valley floor. There are at least eleven endemic invertebrate species known from the caves of Cloverlick Cove.

Turn around where you can and return to the hard road. The pipeline right-of-way follows just to the right of the road. Keep to the right all the way into the village of Clover Lick. The ACP crosses the Greenbrier River at pipeline mile 76.5 about 1,000 feet upstream of the bridge at Clover Lick.

END OF TOUR. From Clover Lick you may retrace your path back to US 219 at Linwood or continue westward on the Edray Road and return to US 219 at Edray, just north of Marlinton.

Note: This self-guided tour was prepared by Jim VanGundy, WVHC Board member. If there is enough interest, he would be pleased to lead an outing following this route and tour.

Arboretum Dodges Bullet

By John McFerrin

A threat to the Core Arboretum in Morgantown has been avoided.

The Morgantown Monongahela Metropolitan Planning Organization had been considering a proposal that would include building a bridge over the Monongahela River. The proposed bridge would have gone over or through the West Virginia University Core Arboretum.

Now the Morgantown Monongahela Metropolitan Planning Organization has selected its preferred alternative. Instead of the option that goes over or through the Arboretum, the preferred alternative is something else.

Traffic in Morgantown is difficult during the best of times and insane on days when there is a game. There are also several places around town where the roads need to be repaired or updated. To address these problems, the Morgantown Monongahela Metropolitan Planning Organization commissioned a study of transportation needs and possible solutions.

The study proposed several options for addressing different parts of the transportation problems over the next twenty eight years. It divides proposed projects into four tiers. The first tier is made up of projects that are of high priority and could be funded with existing revenues. Tiers two through four are projects that the study says would be valuable but cannot be funded. The bridge that threatens the Arboretum was a tier one project. To see the whole study go to <http://i79accessstudywv.com>.

The public part of the decision making has been going on since 2015. The West Virginia Highlands Conservancy commented in opposition to the Arboretum bridge option during both public comment periods. At least three hundred people as well as West Virginia University made comments opposing the option that would cross the Arboretum.

Even though it looks likely that the Arboretum has, in fact, dodged the bullet, the threat is still possible. The recently released plan choosing an option that does not cross the Arboretum is only a draft. The final report will come out later this spring. The Morgantown Monongahela Metropolitan Planning Organization will be accepting comments on the draft until February 15, 2017. Send comments to Mr. Bill Austin; Morgantown Monongalia Metropolitan Planning Organization; 243 High Street; Room 110; Morgantown, WV 26505 or Amy.staud@hdrinc.com.

The Arboretum is 91 acres, stretching from one of the main roads in Morgantown, down a steep hill, and ending at the Monongahela River. It is old growth forest; in most of it there has been minimal disturbance of any kind. It is also a prime birding spot. 187 species of birds have been spotted there.



One of the 187 species spotted at the Core Arboretum.

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We Need New Siting Rules for Exempt Wholesale Generators

The West Virginia Environmental Council (WVEC) government affairs committee re-aligned the WVEC lobbying priorities to be pursued in the 2017 legislature, which begins February 8. The re-aligned priorities make upcoming efforts more consistent with the energies and the strengths of the lobby team.

The West Virginia Highlands Conservancy has proposed legislation for Exempt Wholesale Generator facilities (EWGs) Siting Rules Review and Revision, which was accepted by WVEC as a Tier 1, 2017 legislative priority. Exempt Wholesale Generators are facilities that produce and sell wholesale electricity but do not sell directly to consumers. In West Virginia, these are mostly industrial scale wind farms. For information on how they work, see the story in the December, 2015, issue of *The Highlands Voice*. <http://wvhighlands.org/highlands-voice-mag/>.

Requiring the Public Service Commission of West Virginia (PSC) to review the current EWG siting application rules and PSC procedures, approved eleven plus years ago, continues to fulfill the PSC Mission and the provisions of its Vision Statement for the benefit of all West Virginians.

Eleven years of experience has highlighted issues that must be addressed by the PSC in revised application rules for the siting of EWGs in West Virginia. Our proposed revisions rest upon several assumptions, each of which reflects the public interest and the cause of justice:

- (1) The PSC possesses relevant expertise in the regulation of electric utilities and the facilities traditionally operated by those utilities. Its regulation of exempt wholesale generators under federal should focus upon those same aspects, and it should not be placed in the precarious position of foretelling or divining the findings and conclusions of agencies charged with the protection of water resources, wildlife, and the like.
- (2) Notwithstanding the existence of certain public notice requirements set forth in connection with various other regulatory processes, an exempt wholesale generator should not be permitted to proceed behind the scenes in obtaining regulatory approvals, and in no event should it be permitted to obtain such approvals and permits after the conclusion of the evidentiary hearing in a siting certificate case before the PSC.
- (3) Intervenors in cases before the PSC, particularly EWG siting certificate cases, should not carry the burden of proof in any aspect of the case. It should always be the burden of the energy developer, and not that of private citizens, to prove the absence of impacts or the adequate mitigation of such impacts. We are aware that intervenors have spent hundreds of thousands of dollars in cases before the PSC and were basically ignored.
- (4) Proceedings before the Commission under West Virginia Code § 24-2-11c should be accompanied by a policy encouraging greater disclosure of information about an applicant and

its proposed project, rather than less disclosure.

- (5) Impacts from an electric generating facility should be imposed within reasonable geographic proximity to where the majority of the benefits are incurred. West Virginia citizens should not absorb further externalities of expanded electric generation when the state already generates twice as much electrical energy as its residents consume, and there is no indication that this gap in generation and native consumption will narrow at any time in the foreseeable future.

We can conceive of alternate ways of modifying the siting certificate statute, particularly to impose additional affirmative duties upon the PSC to consult directly with other federal and state governmental agencies, which the PSC presently is not required to do, nor does it do. In practice, the result may be actually to reduce the burdens on the PSC in such cases. We are providing a list of federal and West Virginia state agencies that must be consulted in reviewing an application. The list is self instructive.

In the interest of providing for less deference to entities not legitimately invested in our state and its future and in the interest of granting greater weight to the rights of the citizens of West Virginia, we are hoping that that our proposed legislation providing a mandatory PSC review of the current rules is introduced during this legislative session.

Want to Be a Stream Monitor?

Trout Unlimited is working with the West Virginia Rivers Coalition to train volunteers to monitor streams that have the potential to be impacted by shale gas-related development and other non-point sources of water pollution. Cindy Ellis and Frank Young have been participating in this program in streams close Charleston and vicinity and give it two thumbs up. Now there will be another training session in Davis for anyone else who is interested.

The training will be on March 4, 2017, from 10 a.m. until 4 p.m. at the National Youth Science Center in Davis. To register, contact the Mid-Atlantic Angler Science Coordinator, Jake Lemon at 814-779-3965 or jlemon@tu.org by Wednesday March 1, 2017. Directions to the training session and an agenda will be provided the week of the training.

The workshop has two goals. First, you will learn about the potential impacts to fish and wildlife resources in the shale gas region of West Virginia and Virginia. Second, you will learn to monitor the water quality in these areas.

Trout Unlimited and the West Virginia Rivers Coalition will work with these trained volunteers to conduct water quality monitoring in priority watersheds that have been identified by West Virginia Rivers Coalition and Trout Unlimited's science team as critical for protecting ecologically significant lands and waters.

Another intended (or unintended) consequence) of the training is fun.

On Climate Change and the Arc of History

By John McFerrin

February is the month of predictions, the month that opens with Groundhog Day when we all at least pretend to listen to the weather forecast of a rodent. It is as good a time as any to look at a previous prediction or, more precisely, an analysis of a trend noted by then-President Hugh Rogers in January, 2008.

In his column of that month, Hugh observed:

Whether or not the president changes his policies to accord with his words in the year he has left in office, the words themselves mark a consensus that makes action inevitable. On this issue, it would seem, we have reached the final stage in the process that the philosopher Arthur Schopenhauer defined: "All truth passes through three stages: First, it is ridiculed; Second, it is violently opposed; and Third, it is accepted as self-evident."

The President he was talking about was George W. Bush. The issue was global warming.

Hugh's observation came toward the end of a remarkable change. The idea that global temperatures were changing and that humans were contributing to the change went from being a relatively obscure theory that scientists talked about to a widely accepted idea, one that most people knew about and one that most people accepted as true.

The transformation is all the more remarkable given that much of it came during the administrations of two Bushes. Upton Sinclair observed, "It is difficult to get

a man to understand something, when his salary depends on his not understanding it." The Bushes were oil men. By the time they reached the White House they were past the point where their salaries literally came from the oil business. At the same time, that is who they were. They were culturally, if not financially, predisposed to resist the idea that human activity--such as burning the product of the family business--could be harming the planet.

Their culture may have denied the idea of human influenced climate change but they embraced the idea anyway. When he was first running for President, the senior Bush declared: "Those who think we are powerless to do anything about the greenhouse effect are forgetting about the White House effect. As president, I intend to do something about it." After he was President he said, "We all know that human activities are changing the atmosphere in unexpected and unprecedented ways." The junior Bush said of global climate change "I take the issue seriously." As things turned out, Mr. Bush's actions did not exactly follow his words but at least the words were still there.

Following George W. Bush we had a president who did take the issue seriously, both in words and deeds. It appeared that Hugh had read the trend correctly. We had reached a "consensus that makes action inevitable."

Then we had an election. Now we have a President who thinks that climate change is a hoax. He has taken the hopeful arc of history and wrenched

it into a giant horseshow. At least on the Presidential level, we have been smacked all the way back to the first stage of a truth's acceptance.

Now we are left hoping that Mr. Trump will quickly pass through the other stages of an idea's acceptance. We are left hoping that only Mr. Trump and those whose salary depends upon their not understanding the threat of climate change will seek to turn backward while others forge ahead. We are left to hope that states of the United States, other countries, and other individuals will continue to work to deal with this problem.



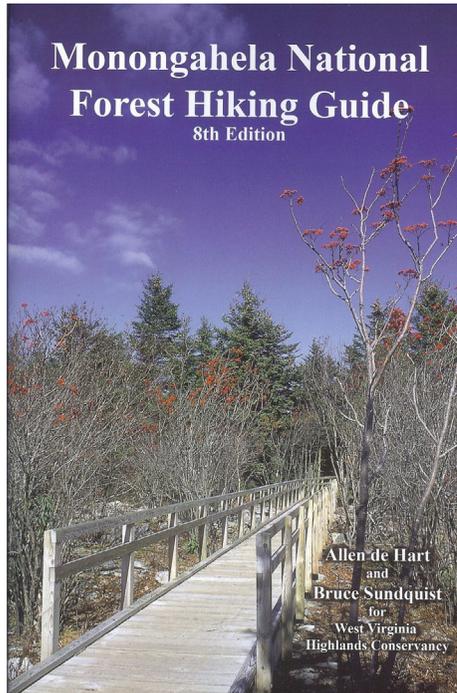
***Bombus affinis* – Rusty patched bumble bee**

On 22 September 2016, the United States Fish and Wildlife Service proposed a rule to list the Rusty Patched Bumble Bee as federally endangered.

There have been no observations in West Virginia since 2000. There have, however, been historical sightings in West Virginia. There are no records of sightings in extreme northern or extreme southern West Virginia. The recorded sightings have been in a band that stretches across the middle of the state from Jefferson to Wayne Counties (roughly the second Congressional District with a few counties added top and bottom).

Now the West Virginia Department of Natural Resources would like to find out if it still exists in West Virginia. So be on the lookout. If you spot one, please contact Craig.W.Stihler Craig.W.Stihler@wv.gov. Get a picture if you can.





The Monongahela National Forest Hiking Guide

By Allen de Hart and Bruce Sundquist

Describes 180 U.S. Forest Service trails (847 miles total) in one of the best (and most popular) areas for hiking, back-packing and ski-touring in this part of the country (1436 sq. miles of national forest in West Virginia's highlands). 6x9" soft cover, 368 pages, 86 pages of maps, 57 photos, full-color cover, Ed.8 (2006)

Send \$15.95 plus \$3.00 shipping to:
West Virginia Highlands Conservancy
 P.O. Box 306
 Charleston, WV 25321
 OR
 Order from our website at
www.wvhighlands.org

8TH Edition Now Available on CD

WV Highlands Conservancy proudly offers an Electronic (CD) version of its famous Monongahela National Forest Hiking Guide (8th Edition), with many added features.

This new CD edition includes the text pages as they appear in the printed version by Allen deHart and Bruce Sundquist in an interactive pdf format. It also includes the following mapping features, developed by WVHC volunteer Jim Solley, and not available anywhere else:

- All pages and maps in the new Interactive CD version of the Mon hiking guide can easily be printed and carried along with you on your hike
- All new, full color topographic maps have been created and are included on this CD. They include all points referenced in the text.
- Special Features not found in the printed version of the Hiking Guide: Interactive pdf format allows you to click on a map reference in the text, and that map centered on that reference comes up.
- Trail mileages between waypoints have been added to the maps.
- ALL NEW Printable, full color, 24K scale topographic maps of many of the popular hiking areas, including Cranberry, Dolly Sods, Otter Creek and many more

Price: \$20.00 from the same address.

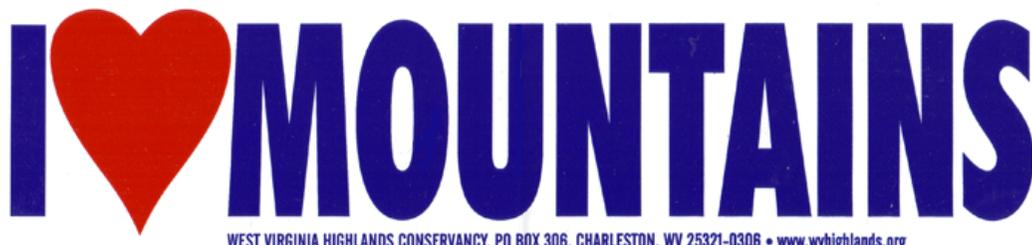
VOICE AVAILABLE ELECTRONICALLY

The Highlands Voice is now available for electronic delivery. You may, of course, continue to receive the paper copy. Unless you request otherwise, you will continue to receive it in paper form. If, however, you would prefer to receive it electronically instead of the paper copy please contact Beth Little at blittle@citynet.net. With electronic delivery, you will receive a link to a pdf of the Voice several days before the paper copy would have arrived. The electronic Voice is in color rather than in black and white as the paper version is.

BUMPER STICKERS

To get free *I ♥ Mountains* bumper sticker(s), send a SASE to Julian Martin, 1525 Hampton Road, Charleston, WV 25314. Slip a dollar donation (or more) in with the SASE and get 2 bumper stickers. Businesses or organizations wishing to provide bumper stickers to their customers/members may have them free. (Of course if they can afford a donation that will be gratefully accepted.)

Also available are the new green-on-white oval *Friends of the Mountains* stickers. Let Julian know which (or both) you want.



New secretary fires WVDEP environmental advocate

By Ken Ward Jr.

West Virginia Department of Environmental Protection Secretary Austin Caperton on Friday fired Wendy Radcliff, the leader of the DEP's Office of Environmental Advocate.

The move immediately drew strong criticism from West Virginia citizen groups and environmental organizations that were already wary of how Caperton, a longtime coal industry consultant, would run the agency charged with regulating mining, gas drilling and other industries.

"I'm really almost speechless," said Cindy Rank, the longtime mining chairwoman for the West Virginia Highlands Conservancy. "If they wanted to alienate the citizens and the environmental community, this is the way to do it."

Angie Rosser, executive director of the West Virginia Rivers Coalition, said it is shocking that Caperton made the move prior to a newly scheduled meeting the week after next with representatives of her organization, the Highlands Conservancy, the West Virginia League of Women Voters and the West Virginia Environmental Council.

"This is troublesome news," Rosser said. "Wendy Radcliff has been the direct line for citizen concerns to help make sure the agency is accountable to the public. It's concerning this decision seemingly was made without input from the people who the environmental advocate is designed to serve."

Caperton, who is just finishing his second week on the job for Gov. Jim Justice, also fired Kelley Gillenwater, the DEP's communications director.

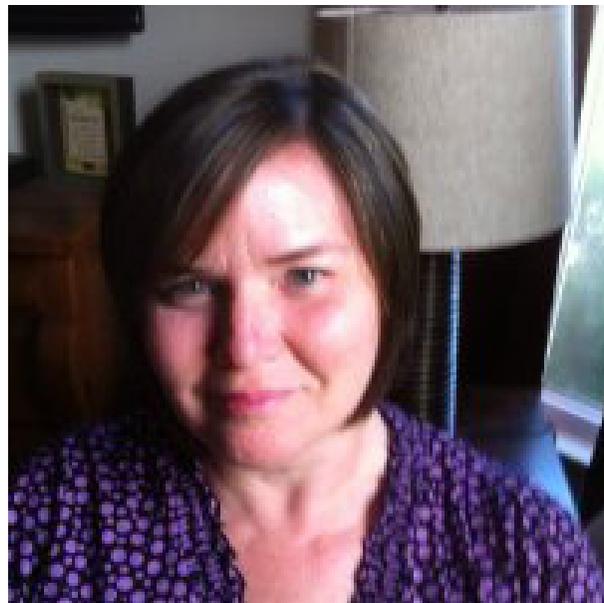
Gillenwater and Radcliff declined to comment Friday, but their firing was confirmed by numerous DEP sources who asked not to be identified.

Radcliff, an attorney, has filled the environmental advocate post for more than six years during two stints at the agency. Gillenwater had been communications director for nearly three years and, while emphasizing the DEP's position on various issues, also had developed a reputation for pushing to make agency officials more responsive to news media requests.

The Justice administration offered no complete explanation for the shakeup at the DEP, and it was not clear what — if any — other changes Caperton planned to make among the top leadership at the

agency.

Caperton did not return phone calls and, on orders from the Governor's Office, has rejected interview requests from the Gazette-Mail. Caperton, an engineer and an attorney, previously worked for A.T. Massey Coal and for his family's company, Slab Fork Coal. He's worked as an energy industry consultant since 1989, but a list of



his clients has not been made public.

Jake Glance, an assistant to Gillenwater in the DEP public information office, provided a one-sentence statement via email, but did not return phone calls or answer emailed questions about the statement.

"We are restructuring to make our operation more efficient by consolidating roles," the statement from Glance said.

Under state law, the DEP is required to have an environmental advocate and a public information officer. There was not a clear answer on Friday about whether Caperton plans to fill either post or combine their functions, or what his timeline is for either option.

And, the DEP's rules for the environmental advocate office specifically state that the advocate "may not in any official capacity organize public campaigns" either to oppose or support "positions taken" by the DEP "on environmental matters," a prohibition that would seem to create a roadblock to combining the advocate and communications director roles.

Friday also was the deadline for Caperton's internal request that each of the more than 800 DEP employees submit to him "at least one cost-saving idea for the agency." In a memo to DEP employees,

Caperton had said Justice "has directed that we do everything in our power to eliminate waste and find savings." Caperton asked that the ideas be provided through an online survey or provided to Gillenwater.

An exact breakdown of the environmental advocate office budget was not available, because its spending is combined within the total for the DEP's executive offices. But in addition to Radcliff, the office had two other employees and shared a secretary with a separate DEP Office of Small Business Ombudsman, whose stated role at the agency is to "safeguard small business's rights and help them when they have problems with regulatory agencies."

The DEP environmental advocate office was created by the Legislature in 1994, at the behest of then-state Sen. David Grubb, D-Kanawha. Grubb had threatened to hold up passage of a 1,400-page, industry-backed bill to consolidate the state's various environmental agencies unless language was added to create a position aimed at helping everyday citizens navigate the DEP's complex regulatory system.

Early on, the office faced repeated but unsuccessful efforts by some Republican lawmakers to eliminate it. And various industry trade groups tried during a public comment period on the rules governing the advocate office to narrowly define the position's role at DEP.

The West Virginia Manufacturers Association, for example, opposed giving the office additional staff and argued against the idea that citizens needed help getting more of voice in state environmental policymaking.

Radcliff, though, served as environmental advocate under five different top DEP leaders — including two whose backgrounds were in the coal industry — and in both Democratic and Republican administrations. She began in mid-1994 under then-DEP Director David C. Callaghan during the Democratic administration of Gov. Gaston Caperton, who is Austin Caperton's cousin.

Among other projects, Radcliff helped DEP officials organize a Citizens' Strip Mine Tour in 1997 that

(More on the next page)

West Virginia Native Plants and Seeds

The West Virginia Highlands Conservancy organizes volunteers to collect seeds from our native plant species in West Virginia. We contract with commercial growers to grow seedlings, and process seed, for use in ecosystem restoration projects. When we have a surplus of plants or seeds, we make them available to the public. All proceeds support red spruce ecosystem restoration efforts in West Virginia.

Red Spruce, *Picea rubens*

Spring 2017

2 ft tall - 3 yr old Red Spruce Trees

- Tree bands - 4" square, 10" deep.
- Limited quantities

Red Spruce Tree bands, \$7.00 ea. 4/\$25.00

Spring 2018

2-year Red Spruce plugs

- 10-15 inches tall seedlings.
- Plugs - 2" in diameter and 6" deep.

Spring 2018 Red Spruce Plugs,
100 - \$220.00; 1,000 - \$1,100.00

Winterberry Holly

Ilex verticillata,

2-3 ft. tall - Tree band containers

- Tree bands - 4" square, 10" deep.
- Limited quantities

Winterberry Tree bands, \$7.00 ea. 4/\$25.00

All plants FOB Morgantown, WV

West Virginia Wildflower Seeds

Common Milkweed, *Asclepias syriaca*

Packet (100+ seeds)	\$5.00
10 grams	\$20.00
25 grams	\$35.00
50 grams	\$65.00
100 grams	\$100.00

Yellow Coneflower, *Ratibida pinnata*

Packet (1000+ seeds)	\$5.00
5 grams	\$10.00
10 grams	\$15.00
25 grams	\$30.00
50 grams	\$50.00

Downy Sunflower, *Helianthus mollis*

Packet (300+ seeds)	\$5.00
5 grams	\$10.00
10 grams	\$15.00
25 grams	\$30.00
50 grams	\$50.00

Bee Balm, *Monarda didyma*

Packet (500+ seeds)	\$5.00
1 gram	\$10.00
5 grams	\$30.00

Wild Bergamot, *Monarda fistulosa*

Packet (500+ seeds)	\$5.00
1 gram	\$10.00

Basil Balm, *Monarda clinopodia*

Packet (500+ seeds)	\$5.00
1 gram	\$10.00

All seed prices include postage.

Send check to:

West Virginia Highlands Conservancy
PO Box 306
Charleston, WV 25321

For more information contact;
Dave Saville, Program Coordinator
david.saville12@gmail.com

Off with her head! (Continued from previous page)

provided one of the first close-up glimpses of the impact of mountaintop removal on residents in some coalfield communities. During the administration of Republican Cecil Underwood, Radcliff lasted for about 18 months, before resigning in June 1998, citing differences in philosophy and other career opportunities.

Longtime Kanawha Valley chemical plant safety activist Pam Nixon took over as environmental advocate later in 1998. Nixon retired at the end of 2013 and then-DEP Secretary Randy Huffman convinced Radcliff to come back in June 2014.

Huffman, who left earlier this month for a full-time position with the West Virginia Air National Guard, made Radcliff part of the DEP's senior staff, which provided access to regular meetings of the agency's division directors. Among other things, Radcliff

organized a program that helped find and better train emerging leaders within the agency's ranks.

"I really got to know Wendy well over past few years when she agreed to come back to [the] DEP and serve as our state's environmental advocate," Huffman said Friday. "Her enthusiasm and passion for West Virginia is contagious. I appreciate how she understands the nexus between environmental protection and economic growth and how faithfully she supports the role of [the] DEP in that mix. She is selfless in all she does and she makes everyone around her better. I consider her a friend of mine and a friend of West Virginia."

Bill Price, senior organizer for the Sierra Club in West Virginia, said he is troubled by Radcliff's dismissal.

"Wendy Radcliff is a person that people trusted when they felt unheard," Price said. "Is this a sign of how the people of West Virginia will be shut out by the Justice administration?"

"For many who have well water woes or who are worried about another coal slurry spill, have questions about an oil and gas or coal permit or have any number of questions about how to interact with [the] DEP, Wendy's the first point of contact," said Vivian Stockman, vice director of the Ohio Valley Environmental Coalition. "She's friendly, helpful and competent. She does the agency proud, so her dismissal is confounding."

Note: This article previously appeared in *The Charleston Gazette*.

Board Highlights

The January 22, 2017, meeting was the usual mix of business and hearing about issues.

In the President's report, President Ellis mentioned a few items of interest. We agreed to Board Meeting dates for 2018 of January 21, April 22, July 21, and October 21.

Jim VanGundy is still working on getting us a new Board member from the caving group. He has had some communication and is making progress but we are not quite there yet.

Bob Marshall presented the treasurer's report and the budget for 2017. There was nothing out of the ordinary about the expenses or the revenue. We continue to exceed expectations in financial support from our members. The Board is always heartened by this ongoing indication that the members approve of what we are doing.

Bob then presented the budget for 2017. It, too, was unremarkable. Mostly it continues our projected revenue and expenses as we had done in the past. The only unusual item was an additional expense for the 50th Anniversary celebration. We are anticipating a dedicated gift which will pay a significant portion of the cost. Jim VanGundy moved that we approve the budget.

Frank reported on progress and remaining issues with the 9th edition of the Hiking Guide. We are still a long way from being ready to print the 9th edition but we are moving forward. At the last meeting we only had a hard copy version of the text; since then we have digitized the text. Hugh has begun editing some parts of it. We have gotten some suggestions for improvements from members which we are incorporating. We still don't have pictures selected, etc. and there is more editing and layout to do but we are moving forward. If we run out of books before we get the 9th edition finished we will do a limited reprint of the 8th edition.

In matters of membership, Beth Little distributed reports comparing membership numbers over the past several years. While we do not have as many members as we have had in some past years, we have more than we had in either of the previous two years.

In matters of outreach, Cindy Rank reported that the committee had been working on celebration of the fiftieth anniversary of the West Virginia Highlands Conservancy in 2017. The celebration will be September 15 through 17, 2017, at Canaan Valley. Of course, everyone is invited. At the same time, we wanted to make sure we invited everyone who had been especially active in the past. The Committee had prepared and circulated a list of people and organizations whom we should extend special invitations to. We talked about that list and brainstormed additions. We also tossed around names of possible speakers.

Cindy Rank also reported that we are going to contract with Dave Saville to coordinate it.

Finally in outreach, we had on display a handsome new banner. It is about two feet wide and five feet high with our name, what we do, and a lovely picture. We can use it to call attention to ourselves at tabling events, mark our spot, etc. We liked it so much that we are going to order another one.

In matters legislative, Frank reported on the decisions on the West Virginia Environmental Council concerning activity at the West Virginia Legislature. This included a list of issues of importance that the WVEC lobby team will pursue. These included water quality standards, energy efficiency, disclosure of campaign funding, siting rules for electricity generators, and land ownership issues. This

year the Environmental Council has a whole new lobby team.

Marilyn thought we should be better informed on legislative matters at the national level. She will attempt to arrange meetings between WVHC members and our Congressional representatives. She is also going to make contacts with national groups who are advocating on issues of interest to us and see what we might be able to do to support their efforts.

On matters of public lands, we discussed the proposed Atlantic Coast Pipeline and its route through the highlands, particularly the Monongahela National Forest. We would like to sponsor some outings in March along the route. Jim and Jackie will work on a self-guided tour. It would make information about the pipeline available and keyed to particular spots along the proposed route so that people could go there and see. We also hope to have leaders for some outings along the proposed route.

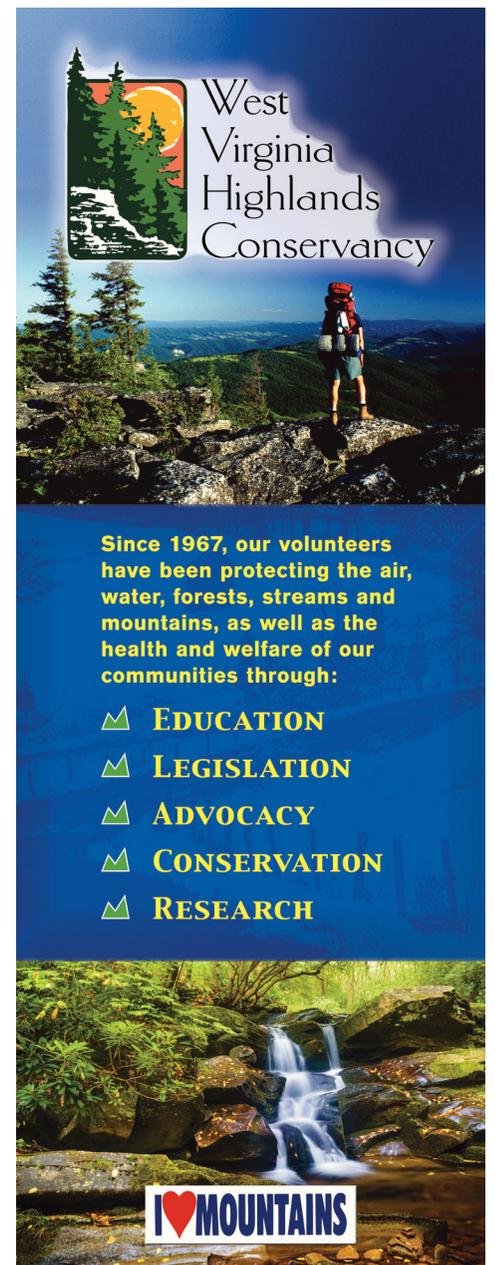
The Forest Service has recently written a letter to the Federal Energy Regulatory Commission (FERC) objecting to its proposed timetable for a decision on the Atlantic Coast Pipeline. FERC wants to go ahead and make a decision before the Forest Service has decided on the special use permit that would be required to cross the National Forest. The Forest Service says FERC should slow down and wait for it to decide first. We are going to write a letter supporting the Forest Service in its position.

In matters of extractive industries, Cindy Rank suggested reading *The Highlands Voice* as the best way to keep up with what we are up to. She mentioned the Fola Coal litigation and the Stream Protection Rule as two recent items of interest.

Cindy Ellis had attended a multi-day meeting on gas and gas pipelines. There is much enthusiasm for getting things done. Much of the discussion centered on eminent domain.

For lunch we had wraps (two choices available), broccoli salad, cookies, and brownies, all catered by Ms. Groovy's Catering and served by the proprietor, Ms. Groovy herself, Jeni Burns.

The door prize was a mug, cream colored with a picture of a dragonfly. On the bottom was the signature of the potter herself, our own Jackie Burns. John won.



Our new banner

Battling for Public Lands

By Matt Kearns and David Lillard

People who care about public lands know the last few years have been challenging. Advocates have fought off several Congressional attempts to change or kill the Land and Water Conservation Fund, changes in how federal lands are managed, attempts to streamline industrial development — even sell them off or give them to the states. The current political climate makes it clear that this Congressional anti-public lands fervor will become even more intense.

Against this backdrop, President Obama left office without a proclamation for Birthplace of Rivers National Monument. The monument campaign continues with a longer-term horizon. The reality is that advocates for Birthplace of Rivers and the The Monongahela National Forest and federal public lands will need to focus resources on holding onto public lands and their protections.

Consider the first few weeks of the new Congress. On the first day of the session the House of Representatives passed a budget rule that says public lands have no monetary value. Historically, whenever federal lands are sold, an accounting of what taxpayers were giving up was required. The new rule, which passed with the support of all three West Virginia Representatives, says, in effect, public lands are worthless.

Loss of federal ownership could be detrimental to all public land users. Federal lands are managed with mandatory public input and “multiple use” provisions that value clean water and recreation alongside timber and minerals. States often have different priorities.

Western sportsmen have found themselves shut out of state lands following profit minded sell-offs. Because the West Virginia state legislature is prohibited from passing a deficit, selling or developing state land could become a quick fix for our financial woes. And mineral rights have been sold beneath some of our Wildlife Management Areas.

Our federal public lands have already been bought and paid for by the taxpayer. Look no further than our mountains and rivers for examples. The Monongahela National Forest was created from owners willing to sell logged-out property so the government could rehabilitate the land. The Land and Water Conservation Fund has supported over \$182 million in purchases, including access along the Gauley and New Rivers and wetlands in Canaan Valley. As the result of foresighted actions like these, every American is now a shareholder in over 620 million acres of public land.

In Week 3 of the new Congressional session, Senator Shelley Moore Capito co-sponsored a bill to take away presidential authority under the Antiquities Act to proclaim national monuments, a conservation tool used by nearly every president over the last 100 years. The bill states that only Congress can establish national monuments, and that they can do so only with the approval of the state legislature and local governments where the proposed monument is located.

Remember, national monuments are created only on existing federal land. Senator Capito’s bill would have Congress abdicate its responsibility for the land that belongs to all Americans. The bill takes authority away not only from the president, but from the Congress as well.

These broadside hits show why we need to have permanent protections for the incredible ecosystem and recreational resources

for Birthplace of Rivers, the headwaters of famed Mountain State rivers.

Public lands are at the heart of that economy. Congress commissioned a study to understand the value of outdoor recreation, currently estimated at \$646 billion. In The Monongahela National Forest supports 1.3 million visitors that spend approximately \$82 million dollars annually. The New River Gorge National River provides another \$53 million to the local economy. There is likely even more tangible value in the “ecosystem services” offered by public lands — much of West Virginia’s drinking water originates in the headwaters of the Monongahela National Forest.

The return on our investment in public lands goes far beyond dollars and cents. A rafting trip with friends, a hike with a pet, a day spent hunting and fishing with our children - how can you quantify the value of those experiences and the feelings that linger long after? Or the connectedness and sense of place that public lands offer? The “Mon” serves as a common denominator among hunters, birders, boaters, fishers, campers, RV towers, bikers, hikers, and climbers. We may enjoy the land in different ways, but every Mountaineer takes pride in our public lands, the most “Wild and Wonderful” part about living in West Virginia.

The Birthplace of Rivers coalition continue to advance the monument initiative. With the understanding that the playing field has shifted. In the meantime the coalition partners will rally their members to for action alerts, letter writing and calls to Congressional offices to raise our voices in protection of our public lands.

The coalition include West Virginia Wilderness Coalition, Sierra Club WV, the Highlands Conservancy, West Virginia Rivers, Trout Unlimited WV, Friends of the Monument in Pocahontas County, and others. We will all need to work together to keep public land in public hands.

In the long run, this also will help us protect special places like Birthplace of Rivers.

Visit <https://wvhighlands.org> to stay informed and at the ready!

Getting Ready for the Legislature

The West Virginia Legislature begins in earnest on February 8. Last month and this month *The Highlands Voice* has had stories on issues that may arise. Last month we had stories on nuisance law and methane leaks. This month we had stories on siting for exempt wholesale generators of electricity (mostly wind turbines) (p. 13), and water quality standards (p. 8).

Should you want to keep up with (or even influence) what is going on at the Legislature, going to http://www.wvlegislature.gov/Educational/INFOPACKET_2017.pdf is a good place to start. It has lists of Senators and Delegates, their offices, their phone numbers, members of committees, etc. It has a map of the Capitol.

Once bills start getting introduced, you can go to www.wvlegislature.gov. It has information on the status of bills, who voted which way, etc.

HIGHLANDS CONSERVANCY BOUTIQUE



- ▶ The baby shirts are certified organic cotton and are offered in one infant and several toddler sizes and an infant onesie. Slogan is "I ♥ Mountains Save One for Me!" Onesie [18 mo.]---\$25, Infant tee [18 mo.]---\$20, Toddler tee, 2T,3T,4T, 5/6---\$20
- ▶ Soft pima cotton adult polo shirts are a handsome earthtone light brown and feature the spruce tree logo. Sizes S-XL [Shirts run large for stated size.] \$ 25.00, 2XL \$26.50

To order by mail [WV residents add 6 % sales tax] make check payable to West Virginia Highlands Conservancy and send to West Virginia Highlands Conservancy, Online Store, PO Box 306, Charleston, WV 25321-0306

The same items are also available at our on-line store: www.wvhighlands.org

T- SHIRTS

White, heavy cotton T-shirts with the **I ♥ Mountains** slogan on the front. The lettering is blue and the heart is red. "West Virginia Highlands Conservancy" in smaller blue letters is included below the slogan. Short sleeve in sizes: S, M, L, XL, and XXL. Long sleeve in sizes S, M, L, and XL. **Short sleeve** model is \$18 by mail; **long sleeve** is \$22. West Virginia residents add 6% sales tax. Send sizes wanted and check payable to West Virginia Highlands Conservancy
ATTEN: Online Store, WVHC, P.O. Box 306, Charleston, WV 25321-0306.



HATS FOR SALE

We have West Virginia Highlands Conservancy baseball style caps for sale as well as I ♥ Mountains caps.

The WVHC cap is beige with green woven into the twill and the pre-curved visor is light green. The front of the cap has West Virginia Highlands Conservancy logo and the words West Virginia Highlands Conservancy on the front and I (heart) Mountains on the back. It is soft twill, unstructured, low profile, sewn eyelets, cloth strap with tri-glide buckle closure.

The I ♥ Mountains The colors are stone, black and red.. The front of the cap has ♥ MOUNTAINS. The heart is red. The red and black hats are soft twill, unstructured, low profile, sewn eyelets, cloth strap with tri-glide buckle closure. The stone has a stiff front crown with a velcro strap on the back. All hats have West Virginia Highlands Conservancy printed on the back. Cost is \$20 by mail. West Virginia residents add 6% tax. Make check payable to West Virginia Highlands Conservancy and send to West Virginia Highlands Conservancy, Atten: Online Store, P.O. Box 306, Charleston, WV 25321-0306