



The Highlands Voice

Since 1967, The Monthly Publication of the West Virginia Highlands Conservancy

Volume 50 No. 10 October, 2017

Anniversary Celebration a Rousing Success!

By John McFerrin

The Fiftieth Anniversary celebration of the West Virginia Highlands Conservancy was that splendid combination of fun and opportunities to learn stuff. We had a paddling trip, a couple of hikes, a trip to the Allegheny Front Migration Observatory (the longest continually operating bird banding station in the United States), a tree planting, and a couple of guided bird walks.

We had panel discussions on Canaan Valley, the Monongahela National Forest, pipelines, mining litigation, and one that touched on both home solar electricity and on climate change (including the banjo, visual aids, and controlled lunacy of Tom Rodd).

There was poetry and fiddling. For pure beauty we had the photography of Kent Mason; for pure fun we had one night of vintage psychedelic surf rock with hints of island reggae and another night of square dancing. Current President Cindy Ellis had a speech on thank yous to everybody who made the West Virginia Highlands Conservancy's success possible with a smooth segue into a round

of Joe Rieffenberger stories, a genre that is broad, deep and consistently entertaining.

Finally, we had a keynote address by former Congressman Alan Mollohan. He was instrumental in the establishment of the Canaan Valley National Wildlife Refuge and was a sponsor of the Wild Monongahela Act which designated nearly 40,000 acres of Wilderness on the Monongahela National Forest. He talked about

his affection for Canaan Valley and provided some insights into how the Wild Monongahela Act was developed, how it made its way through Congress, and what was important in getting it passed.

This was only the formal part of the weekend. In and among the organized hikes, paddling, panels, and presentations there was ample time for reconnecting with old friends, making new friends, telling war stories,

and all such that goes on at reunions and celebrations.

There were about one hundred and thirty people at the celebration, all of whom went away well satisfied, inspired, and talking about the next celebration, whether that be in ten years or fifty.



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Ramblin' the Ridges

By Cynthia D. Ellis

Golden Glow

Our 50th Anniversary celebration was a success!

I was up in the pre-dawn of the day after; racing to type what I remember of a great weekend for the West Virginia Highlands Conservancy. Hang on for a free-flowing account!

Only a few scattered showers appeared as we unpacked and set up on Friday at the big stone lodge in Canaan Valley State Park. Display tables were assembled and soon we saw colorful booths by diverse group including the Tucker Community Foundation, Friends of the 500th, Friends of Blackwater, OVEC, WV Rivers Coalition and Heart of the Highlands trails. We slapped on nametags and chatted with friends old and new, and tucked into yummy hors d'oeuvres plus.

The planning committee deserves a heartfelt thank you. The team of Cindy Rank, Dave Saville, Jackie Burns, and Marilyn Shoenfeld assembled a weekend jammed with activities for body and brain. They got us started at the registration table, assisted ably by Beth Little and Jim Stout.

David Ellis helped me scout out a bird walk trail, one recommended by Jackie.

Back at the lodge, I heard about enviro lawyer Mike Becher's Costa Rica trip. And babies were there! Keena Mullins, with OVEC, brought her family, including 3-month old Denver and his sisters. Raina Rippel brought her kiddos, and Ben Luckett and wife brought little Leo, age 1.

Founder Rupert Cutler and I discovered a mutual interest in living history and worked on ways to get Mary Ingles back to Virginia...re-enactor style, that is.

That evening our first panels had us learning lots. One tidbit was that Canaan

refuge superintendent Ron Hollis battles Spirea, when he and Dave Elkinton, Chip Chase, and Ed Michael addressed the refuge issue. The Mon Forest folks, included Rupert and Dave S., with Clyde Thompson, resplendent in a cranberry shirt and black "braces," and Mary Wimmer, evidently ageless, and bubbly as ever.

We thought about Frank Slider, who volunteered to lead us on a Stars and Salamanders tour, but subsequently found himself in Florida helping restore electricity to victims of Hurricane Irma.

Some of us had to miss the rock n' reggae music; we just couldn't do it all!

Saturday began early for a small group, with an amble down to the sewer pond and along an old orchard for the 7 o'clock bird walk. We heard Rose-breasted Grosbeak and got good looks at a Common Yellowthroat.

The trip folks were happily assembling early too; just after breakfast groups lit out for paddling on the Blackwater River and headed for Dolly Sods to the Allegheny Front Migration Observatory to see the bird banding operation. Editor John came back especially impressed with the chance to see songbirds in the hand as data was carefully recorded and the little flyers then sent on their way south.

Those of us who had opted to stay behind were spellbound by the presentation of poetry and song by WV poet laureate Marc Harshman and poet/fiddler Doug Van Gundy. The words and music started out darkly ["they are stealing our future one minute at a time"] but appropriate for a struggling environment, then became light and tumbling, into optimism and cheer.

Next we turned to updates on those

dark challenges, as we heard from activists and lawyers about gas and mining...but with a silver lining as we heard from the WV Land Trust.

Ascrumptious dinner was followed by a moment to thank everyone in Highlands for all their assorted helps, and to acknowledge some special thanks in memory of Joe and Mary Moore Rieffenberger. Their estate left us a very generous bequest recently and we sincerely look forward to applying it in a way that will honor their own service.

Kent Mason wowed us with photos.

Then the Margarets--- Janes and Palmer--- and Angie Rosser, Mike Becher and Ken Ward Jr. gave us a thoughtful panel on aspects of litigation. Ken said these are dark times. It is true that he, and we, have much to be serious about. But, I did see that rare sight...I saw Ken Ward Jr. smile.

And then the fiddle music spun out again and the square dancing commenced.

The Silent Auction action was hot and the bidding flourished.

The Sunday bird walk, led by LeJay Graffious, found a Merlin!

Tree planting and more field trips lured some of us.

Then we wound up with a future look by John Christensen, Evan Hansen, and Tom Rodd. Tom tossed us tennis ball molecule models and pop bottle climate demos and he strummed a banjo to give zest to his pitch for climate activism.

Bag lunches were grabbed again as folks grouped up for Perry Bryant's hike and the adventure through the Sinks of Gandy. The foliage was gorgeous and the sun shone.

Whew! It was Golden indeed! We glowed.



It was not all activities, going here and there, learning stuff. Cindy Rank and Paul Rank take their ease on the porch.

Headwater Streams in Peril

The West Virginia Highlands Conservancy has joined with four other West Virginia Groups (including our member groups, the Shavers Fork Coalition and the West Virginia Rivers Coalition) in a letter urging the United States Environmental Protection Agency to leave in place the current rule defining the “waters of the United States.” This rule, which is often called the Clean Water Rule, determines what protections small and headwater streams would receive under the Clean Water Act.

Background

The federal Clean Water Act prohibits the pollution of water or, more precisely, the “waters of the United States.” There has been an ongoing controversy over what that phrase means. Everybody agrees that big rivers (and even little rivers) are protected. The controversy is over small streams. For decades there was confusion, litigation, and debate over what waters were protected. Questions arise over whether the water in tiny headwater streams that are important to the whole water system is protected.

Finally, in 2015, the U.S. Environmental Protection Agency and the Army Corps of Engineers issued a rule which clarified that tens of millions of acres of smaller waterways across the United States were, in fact, “waters of the United States” and, thus, eligible for protection under the Clean Water Act.

The term has even acquired its own jargon. When the Environmental Protection Agency or the United States Army Corps of Engineers talks about “jurisdictional” waters, they are talking about waters which are “waters of the United States.” Being waters of the United States, they are within the jurisdiction of the agencies, making them legally bound to protect them.

In February, 2017, after several unsuccessful Congressional attempts to alter the rule, President Trump issued an Executive Order, entitled “Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the ‘Waters of the United States’ Rule.”

The executive Order started the EPA and the Corps on a two step process. First, it will take us back to the definition of “waters of the United States” that was in effect before the 2015 rule. Next, it would make a new definition. If this happens, it will end protection for the tiny headwater streams that are so common (and so important) in West Virginia.

What the Groups Say

In their letter, the West Virginia groups made these points:

As West Virginia organizations who seek protection of our state’s water resources, we believe that clean local streams and rivers are the foundation for strong communities, a vibrant economy, and a healthy population. We write in strong opposition to the Environmental Protection Agency’s (EPA) and Army Corps of Engineers’ (Corps) proposal to repeal the 2015 Clean Water Rule – a popular, much-needed, and carefully-developed action taken to protect the nation’s waters from pollution and destruction. We also oppose your plan to weaken decades-old safeguards via a subsequent rulemaking action. These rollbacks, which President Trump initiated by signing Executive Order 13,778 on February 28, 2017, recklessly target waterways upon which we all rely.

We are particularly concerned with protections for headwater streams, including intermittent and rain dependent streams. West Virginia is the headwaters for two of America’s

great rivers, the Ohio and the Potomac. Together these rivers provide drinking water, as well as water for business and recreation, to millions of Americans. Because these headwaters are the originating source water for so many states and their people, there is a federal role to protecting these headwaters. We expect the federal government to faithfully abide by and enforce the Clean Water Act in order to “restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.” Repealing the Clean Water Rule could put many of these communities at further risk.

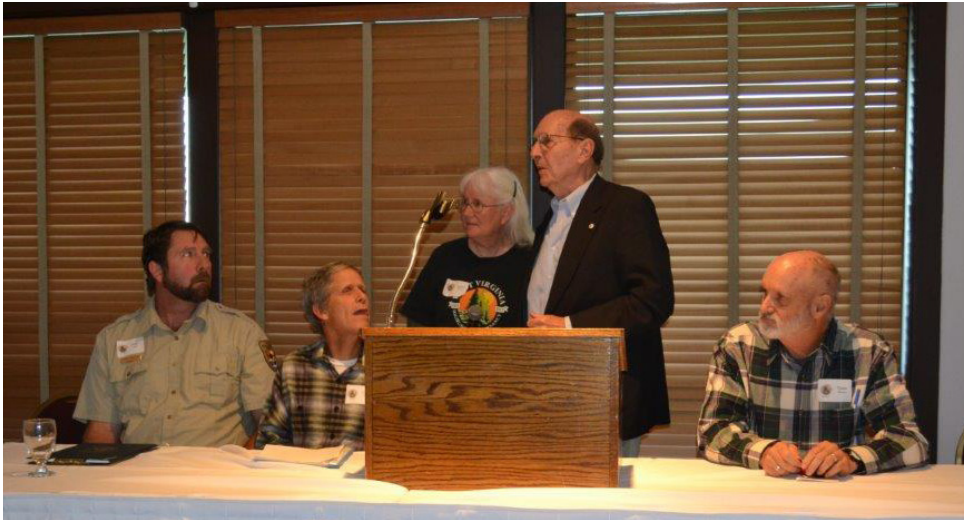
Over half of West Virginia’s 1.8 million residents rely on public water systems for their drinking water that originates in part in intermittent, ephemeral or headwater streams. These are the very types of streams which have been the subject of unnecessary litigation and uncertainty, arising from Supreme Court decisions and subsequent agency guidance that had previously caused confusion in implementing the Clean Water Act in West Virginia. The regulatory confusion hampered the ability of West Virginia to uphold Clean Water Act protections with regard to administering the disposition of mining waste into headwater streams, water withdrawals in the natural gas industry, and waste management in concentrated animal feeding operations. A lengthy, deliberate, and inclusive process led to the 2015 Clean Water Rule, a rule protective of vital waterways and based in sound law and sound science.

The letter ends with a request that the 2015 Rule be left in place.

Thank You!

We wish to thank all who generously donated items to the Silent Auction at our 50th celebration. Thanks for prints, pottery, books, snowshoes, and much more! We gained about \$900, thanks to you!!! [And one attendee was especially pleased to purchase these vintage mugs, made by “Conrad Crafters”---that is Chuck Conrad, a signer of the WVHC articles of incorporation and long-time administrator of Brooks Bird Club.]





L to R: Canaan Valley Wildlife Refuge Supervisor Ron Hollis, Whitegrass local business owner Chip Chase, WVHC board member Jackie Burns, wildlife biologist Ed Michael and WVHC historian and former WVHC President Dave Elkinton recount the history of WVHC activism in Canaan Valley.



MNF Supervisor Clyde Thompson says that pressure to increase harvesting of trees in the MNF comes from the wood products industry and from sportsmen groups.



Former Congressman Alan Mollohan telling us that WV Highlands Conservancy is the conscience of industrial development in the highlands of West Virginia

L to R: Water Quality Defender Margaret Janes, Appalachee lawyer Mike Becher, WV Rivers Coalition Director Angie Rosser, and Charleston Gazette reporter Ken Ward discuss how various tasks go into defending the public interest in environmental sanity.





Marc Harshman (left) and Doug Van Gundy



Tom Rodd



Paddling the Blackwater River

Want to Buy a REC? Maybe you prefer a SREC?**Some Things to Consider When Supporting Renewable Energy**

By Wayne Spiggle

One of the perks of serving on the WVHC board of directors is that from time to time we use email to exchange observations, opinions and information not on the agenda but contributive to discussion at board meetings. Recently, we talked about Renewable Energy Certificates (RECs) and the conversation prompted our inimitable editor of this newspaper to ask me to write this article.

RECs are a creation of the federal government to support certain non-carbon electricity generation. There are REC programs for wind, solar electric, biomass, low-impact hydropower (no dams), biomass, fuel cells using renewable fuels and geothermal. <<http://www.wri.org/publication/bottom-line-renewable-energy-certificates>>

RECs and SRECs

Renewable Energy Certificates (RECs), also known as Green tags, Renewable Energy Credits, Renewable Electricity Certificates, or Tradable Renewable Certificates (TRCs), are non-tangible energy commodities in the United States that represent proof that 1 megawatt-hour (MWh) of electricity was generated from an eligible renewable energy source and was fed into the grid. Solar renewable energy certificates (SRECs) are RECs that are specifically generated by solar energy.

<[https://en.wikipedia.org/wiki/Renewable_Energy_Certificate_\(United_States\)](https://en.wikipedia.org/wiki/Renewable_Energy_Certificate_(United_States))>

How to Buy RECs and SRECs

For the home or apartment dweller, it's easy, according to the web pages of clean energy companies. Most function as brokers you pay to manage your electricity bill in a fashion to personally subsidize the green energy industry. You pay the broker what you owe your utility company plus a surcharge that covers their overhead and the purchase of green energy certificates in your name. The number of RECs you purchase will cover whatever percentage of your electricity use you choose. The certificate is then retired. <<https://www.arcadiapower.com/how-it-works/>>

The renewable electricity you purchase through RECs does not actually enter your home. The physics of the grid makes it impossible for it to send designated electrons to your home or apartment that are any different from what is being sent to your neighbor. While you are not directly using electricity from renewable sources, you are supporting those sources.

So, what are you and your neighbor burning? Coal-fired electric power plants accounted for **94%** of West Virginia's net electricity generation in 2016, natural gas contributed **1.6%**, and renewable energy resources—primarily hydroelectric

power and wind energy contributed about 3.8%. <<https://www.eia.gov/state/print.php?sid=WV>>

The Bottom Line

If you choose to promote renewable energy companies by purchasing RECs and SRECs it is an honorable thing to do, concluded our board's discussion. If you want to use more renewable electricity than your neighbor, consider a solar electric installation on your property or even a small wind turbine. These installations can be connected to the grid and in some cases excess electricity can be sold to the grid.

Unintended Consequences

The environmental community is currently committed to the assumption that switching to renewable energy is essential if humans are to survive global warming. But are wind and solar the answer? The Brookings Institute thinks not. Several very informative articles are available through the institute and are recommended reading. <https://www.brookings.edu/.../why-the-best-path-to-a-low-carbon-future-is-not-wind-...>, <https://www.brookings.edu/wp-content/.../intersections_20170726_victorclack.pdf>, <https://www.brookings.edu/blog/.../the-fantasy-of-quick-and-easy-renewable-energy/>>

A Little Adventure in Birding

By John McFerrin

The photograph which illustrated the story in the September *Voice* about the Brooks Bird Club and its 85th anniversary is of a Sutton's Warbler. In searching for a picture, I came across a story about a group of West Virginia birders who adopted as their mission a sighting of the Sutton's Warbler.

It seems that the elusive bird was only known to be found, in West Virginia at least, around Harper's Ferry. A group of birders, named the Sutton's Seekers, made annual field trips to that area in hopes of seeing one. In addition, the Brooks Bird Club does an annual "foray", (their equivalent of summer camp) to different parts of the state.

During the 1975 foray in Raleigh County, the group heard the call of a Sutton's Warbler. They knew it was a Sutton's Warbler because its song repeated. The song is very similar to that of the Northern Parula. Since the Northern Parula's song does not repeat, they knew they were dealing with a Sutton's Warbler. They called in more expert birders (as if anyone who knew this song detail was not expert enough) for a positive identification. They then netted the bird, stared at it, photographed it, and released it.

The whole story, with more detail, is in *American Birds*, Volume 29, Number 4 (1975). Should you not have your issue handy, you can read it at <https://sora.unm.edu/node/2587>. There is no known record of the encounter from the bird's perspective, although it may have appeared in the Alien Abductions section of the bird equivalent of *The National Enquirer*.



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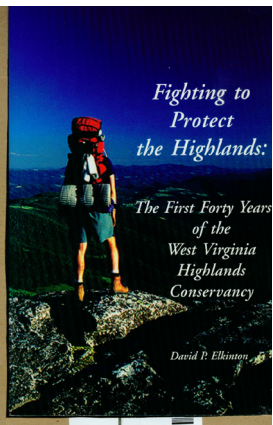
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West Virginia Highlands Conservancy
Working to Keep West Virginia Wild and Wonderful

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

GET A GREAT HISTORY BOOK

For the first time, a comprehensive history of West Virginia's most influential activist environmental organization. Author Dave Elkinton, the Conservancy's third president, and a twenty-year board member, not only traces the major issues that have occupied the Conservancy's energy, but profiles more than twenty of its volunteer leaders.



From the cover by photographer Jonathan Jessup to the 48-page index, this book will appeal both to Conservancy members and friends and to anyone interested in the story of how West Virginia's mountains have been protected against the forces of over-development, mismanagement by government, and even greed.

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.

Judge to Appoint Special Master to Speed Up Coal Mine Cleanups

By Ken Ward Jr.

A federal judge says he plans to appoint a “special master” in an effort to speed up the process of cleaning up water pollution violations related to a Fola Coal mountaintop removal operation along the Clay-Nicholas County line.

U.S. District Judge Robert Chambers issued a ruling Wednesday afternoon that said he was planning to appoint James Kyles of the firm AECOM Technical Services to assist the court, citing the “complexity of the matters in this case” and saying that the move would help him to find a “suitable remedy.”

Attorneys for the Ohio Valley Environmental Coalition, the West Virginia Highlands Conservancy, the West Virginia Rivers Coalition, and the Sierra Club had asked Chambers to appoint the special master. The groups are represented in the case by lawyers from Appalachian Mountain Advocates.

Chambers is mulling his options for what he should order Fola Coal to do following a ruling he made in May that pollution from a Fola operation had impaired aquatic life in Shanty Branch and Elick Hollow to the point that the streams violate key state and federal water quality protections. Courts are permitted under federal rules to appoint knowledgeable special masters to assist them with especially time-consuming or complicated matters.

The May ruling was the latest in a series of decisions Chambers has made in citizen suits that focused on electrical conductivity, which scientists say is a key

indicator of stream health and the presence of other pollutants, such as chlorides, sulfides and dissolved solids. Research has linked these pollutants increasingly to coal-mining activities, and found that high levels of conductivity are associated with damage to aquatic life.

Chambers ruled that environmental groups had proven that Fola had violated its water pollution permits by discharging into Shanty Branch and Elick Hollow high levels of toxic pollution, as measured by conductivity, which have caused or materially contributed to “a significant adverse impact to the chemical and biological components of the streams’ aquatic ecosystem, in violation of the narrative water quality standards incorporated into those permits.” But, the judge ruled only on whether those violations had occurred and said he would set a schedule for proceedings to determine what relief the court would order.

In Wednesday’s order, Chambers noted that the coal company opposed appointment of a special master and instead proposed a year-long period of additional stream monitoring and collecting of data, with a second trial to be held in March 2019 to decide on a remedy for the pollution.

Chambers, though, noted that he already had appointed the same special master in two other conductivity pollution cases involving Fola mines in the same area, and that even with that assistance, the cases continue to drag on without any specific pollution remedy. The judge said he waited too long in those other cases to appoint a special master.

In one case, the judge noted, he waited 10 months between finding the company liable for violations of permits and appointing Kyles as a special master. During that period, the parties conducted additional discovery and deposed more experts. The court held a second, two-day trial with “countless exhibits and extensive testimony.”

“Despite all of that time and effort, the record lacked sufficient information to determine an appropriate specific remedy,” the judge wrote.

In a second case, the judge said he waited 11 months between the liability finding and the appointment of Kyles. Again, the parties conducted more discovery and deposed more experts, and the court held a second trial. Again, the parties recognized the need to appoint a special master, the judge said.

Chambers said his experience with those cases “demonstrates to this court that a special master should be appointed at an earlier stage in the proceedings.”

“Furthermore, a prompt determination of a remedy is important given the continuing impact that the pollution has on the ecosystem of the affected waters,” the judge wrote. “The longer the remedial process takes, the longer the ecosystems of these Appalachian streams are adversely impacted.”

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

Congratulations!

For the last few months we have been having a contest, designed to gather information for the upcoming 9th edition of The Monongahela National Forest Hiking Guide. To enter, one had to hike a trail and then submit a report of trail descriptions, conditions, etc. for inclusion in the new edition.

As part of our 50th Anniversary Celebration, we drew a winner from all the entries. And the winners are Becky and Tom Berlin. They will receive a gift card from REI. We also drew five additional names from among the entries; they will receive the runner-up prize: 50th Anniversary Celebration T-shirts.

Thanks to all who entered.

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.

Banding Birds

One of the outings at the 50th Anniversary Celebration was a trip to the Allegheny Front Migratory Observatory at Dolly Sods, the oldest continuous bird banding station in North America. Our host was WVHC Board member LeJay Graffious. He showed us how they capture birds without their getting tangled in the net. We got to see how they put on the bands, how they measure the birds, and how they can tell if they are older birds or birds that just hatched this year. We watched LeJay learn whether a bird had accumulated fat for the long trip south (blow on its belly; the feathers stand up and move aside until the fat deposits are visible).

Way fun, way interesting!



Letting one go! Photo by Rupe Cutler

The Allegheny Front Migratory Observatory has been in continuous operation since 1958. They have a collapsible building which they put up every August. At the end of the season (early October) they take the shed down and store it off site. During the season volunteers staff the station, with many scheduling vacations so that they can come to help.

A total of 266,759 birds (as of 2016) have been banded since Ralph K. Bell founded AFMO and banded his first bird in 1958. As of 2016, one hundred twenty five total species have been banded since 1958.

Each banded bird gets a unique number. There is a database of banded birds and their numbers; anyone who captures a banded bird can use the database to determine where it has been captured before.

The vast majority of the birds which have been banded at the AFMO have disappeared, never to be captured or heard from again. Of the ones who have been recaptured, birds once banded at the AFMO have been found all over North America.



Guide (and WVHC Anniversary T-Shirt model) LeJay Graffious displays an Ovenbird. As its life flashed before its eyes, he let several people listen to its heartbeat before gently releasing it unharmed. It did not waste any time getting out of there. Photo by Rupe Cutler.



LeJay Graffious displays a female (left) and male Black-throated Blue Warbler. The Black-throated Blue Warbler was the most banded species at the station in 2016. These two are helping their species' effort to hang onto its crown. Photo by Rupe Cutler

Red Creek Rising
By Donna Weems

Once small, now muscular and strong
Collins Run spills over wooded banks
Rushing past rocks and soil, dank
Loudly laughing as it hurries along

Dry gulley now an active streambed
Clear water seeps through grass and moss
From under logs and cracks in rocks
The whole mountainside is its watershed

Rolling rocks and bending trees
The valley echoes the full voice roar
Red Creek’s rising upon its shores
Winter’s thaw has set Red Creek free

The West Virginia Highlands Conservancy is a non-profit corporation which has been recognized as a tax exempt organization by the Internal Revenue Service. Its bylaws describe its purpose:

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.

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The Highlands Voice is always printed on recycled paper. Our printer uses 100% post consumer recycled paper when available.

The West Virginia Highlands Conservancy web page is www.wvhighlands.org.

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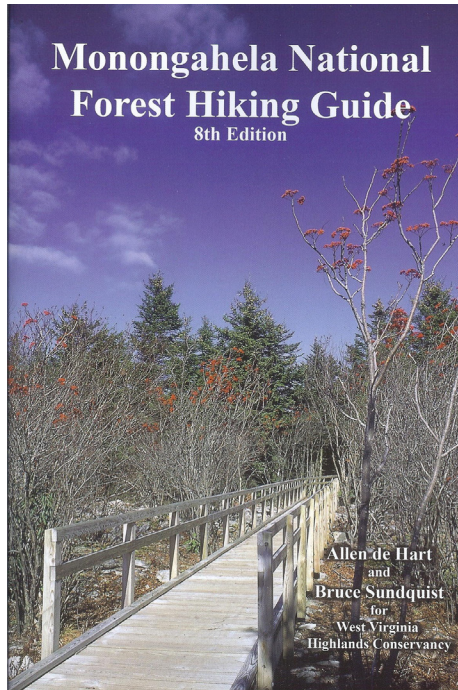
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By Allen de Hart and Bruce Sundquist

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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.

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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.



Pipelines, Streams, and Wetlands: Will They Be Allowed to Cross?

By John McFerrin

If, as their developers hope, the Mountain Valley Pipeline or the Atlantic Coast Pipeline are constructed, they will have to cross hundreds streams and wetlands as they make their way through West Virginia, Virginia, and North Carolina. Those states are thick with streams and wetlands; crossing them is inevitable.

Stream and wetlands crossings bring the pipelines within the jurisdiction of the federal Clean Water Act which requires a permit for the crossings. Such permits are issued by the United States Army Corps of Engineers.

There are two types of permits. One is called a "general permit." It is for actions that are similar and will have minor effects upon the waters of the United States. It usually takes the form of a nationwide permit that authorizes a category of activities throughout the nation and is valid only if the conditions applicable to the permit are met.

To operate under this general permit, a company only has to inform the Corps of Engineers that it intends to operate under the general permit. The Corps then determines whether the proposed operation qualifies to be covered by the general permit. If the Corps decides that it does, then Corps scrutiny is largely over.

The second is an individual permit which requires site specific data on what actions are proposed. The Corps of Engineers would then review that data and determine whether or not the pipeline, as proposed, could be constructed without damage to the waters of the United States.

The developers of both the Mountain Valley Pipeline and the Atlantic Coast Pipeline sought to have their projects approved under the general permit that applies to utilities, including pipelines.

The Corps of Engineers has not yet decided what it will do. All indications are that it will eventually allow both pipelines to proceed under the General Permit instead of getting individual permits for each crossing. This decision may depend upon what states do in their review.

Regardless of what the Corps of Engineers does, states still have a role to play, a role that could prevent the pipelines from being built. Even with the approval of the United States Army Corps of Engineers, the projects still have to have the approval

of the states where the projects would be located. The states' duty is to examine both the crossings themselves and the water quality impacts outside the crossings. Before the pipelines could go forward, those states had to certify that the projects would not degrade the waters of that state or cause a violation of state water quality standards. These certifications are commonly referred to as 401 Certifications after Section 401 of the federal Clean Water Act which contains the requirement.

Because the pipelines cross three states, three state regulatory agencies are involved. None of the three states has made a final certification. Each state has proceedings going on.

West Virginia

Initially, West Virginia plunged ahead with its certification of the Mountain Valley Pipeline. In March, 2017, it issued its Certification that the Mountain Valley Pipeline would not damage West Virginia streams and wetlands. As proposed, the pipeline would cross 631 streams and 424 wetlands. For most, if not all, of these crossings the contractors would divert the streams to dry up the stream bed and bury the pipe across the dry bed. The West Virginia Department of Environmental Protection (DEP) had studied these crossings and determined that they would not damage West Virginia waters.

In response to that Certification, several groups asked for an administrative appeal, within the Department of Environmental Protection. They were summarily denied.

In September, 2017, however, the West Virginia Department of Environmental Protection abruptly reversed itself. In a two sentence letter, it announced that it was withdrawing its Certification. It did not say why, just noting that it wanted to "reevaluate the complete application."

The Department did not say why it changed its mind. It may have had a Road to Damascus moment, looked at what data it had again, or slept on its decision for a few nights.

A more plausible explanation is that it saw the handwriting on the wall. When the Department issued the Certification and would not allow any appeal, several groups filed petitioned the United States Court of

Appeals for the Fourth Circuit, challenging the Certification decision. Faced with the possibility of defending the indefensible, the Department may have decided that it would revisit its Certification decision now rather than wait for the Court to tell it that it had to.

The petitioners to the Fourth Circuit had what they believed were some compelling arguments. One focused on the Department of Environmental Protection's approach to karst topography. Karst terrain is usually characterized by rocky ground, caves, sinkholes, underground rivers, and the absence of surface streams and lakes. Because of its characteristics, it requires special consideration in approval of a pipeline across it. The DEP had said in its Certification that the Mountain Valley Pipeline did not have to submit a construction plan now but could wait until it was ready to begin construction. As a result of this, neither the DEP nor any member of the public has ever seen the construction plan. This approach is inconsistent with the legal approach of having all plans submitted and available for public comment before the Certification decision. The petitioners also argued that the karst terrain was so unstable that it the pipeline should not cross it under any conditions.

The petitioners also argued that West Virginia had failed to perform an antidegradation review. It is state policy to refuse to allow activities which would degrade its waters. There is a process for reviewing a proposed activity and determining if it will degrade the state's waters. In reviewing the request for Certification, West Virginia did not follow this process.

If the handwriting on the wall explanation is true, West Virginia DEP also found these arguments compelling. In announcing that it was going to revisit its Certification decision, West Virginia said that it needed to do an antidegradation review. It is currently reviewing the request for Certification once again.

So far as the Atlantic Coast Pipeline is concerned, the West Virginia Department of Environmental Protection (DEP) is currently reviewing the request for

(More on the next page)

Pipelines, Streams, and Wetlands (Continued from previous page)

Certification. It held public hearings on July 31 and August 1, 2017, and is presumably considering the request.

Virginia

On both the Atlantic Coast Pipeline and the Mountain Valley Pipeline, Virginia's approach has been confused. It first announced that it would be conducting individual examinations of the crossings anticipated by the projects. Then it reversed course and said that it would rely upon the Corps of Engineers and whatever review it did in determining if the pipelines could proceed under the General Permit for all stream and wetland crossings.

Many sharply disagreed. The Southern Environmental Law Center, Shenandoah Valley Network, Virginia Conservation Network and more than 75 other environmental, conservation, and public advocacy groups that represent tens of thousands of Virginians signed on to a letter urging Virginia to require individual 401 Certification review for wetland and stream crossings in the paths of the Mountain Valley and Atlantic Coast pipelines.

Having passed off review (such as it is) of wetland and stream crossings to Corps of Engineers, Virginia has decided to limit its 401 Certification Review to aspects of the project not covered by other regulatory programs. It is not reviewing stream crossings at all since they will be covered by the Corps of Engineers permit. It is also not reviewing erosion and sediment control or stormwater management plans because they will be covered by other state programs.

It has issued a draft Certification and held holding public hearings on these draft

Certifications. The last public hearing was August 22, 2017.

There are ongoing problems with the hearings and the overall review of the requests for Certifications. The Virginia Department of Environmental Quality has not been entirely open with relevant information and has indicated an inclination to proceed with Certification whether it has all the relevant information or not.

The Dominion Pipeline Monitoring Coalition (West Virginia Highlands Conservancy is a member) assembled a panel of thirteen experts to evaluate the requests for Certification. Those scientists and engineers submitted reports to the Virginia Department of Environmental Quality (DEQ) on August 22, 2017, finding that DEQ has failed in its duty to properly analyze and protect against the water quality damages the Mountain Valley Pipeline and Atlantic Coast Pipeline would cause to Virginia's waters. In the reports, one issued for each of the pipelines, the authors wrote that they had reviewed the information Department of Environmental Quality (DEQ) relied upon in its draft Water Quality Certifications (WQCs) and made their own independent assessments. The experts' conclusion in each case:

DEQ's draft WQC, which asserts that there is a "reasonable assurance" that Water Quality Standards (WQS) will be met with the conditions contained in that draft, cannot be supported by the evidence in the record and pertinent scientific authorities and knowledge. Such a

finding in the Department's recommendation to the State Water Control Board (SWCB) would be professionally incompetent and would fail to meet minimum standards of scientific proof.

In considering its decision on Certification, Virginia may be able to learn from West Virginia's experience. The Certifications that Virginia is considering making contain flaws that are similar to those in West Virginia.

North Carolina

The Mountain Valley Pipeline does not reach North Carolina; for North Carolina, there is nothing to certify on it.

The Atlantic Coast Pipeline does pass through North Carolina, crossing over 320 streams and hundreds of acres of wetlands. North Carolina had been considering a Certification and was approaching a deadline for making a decision when it abruptly stopped the process. In a four page letter to the developers, it asked for a lot of more specific information. It had the tone of an agency that might have been drifting along, ready to issue a Certification based upon whatever the developers sent in, but has now decided to roll up its sleeves and do a serious review. The developers now have 30 days to reply to the request; North Carolina will either approve or deny the request for Certification 60 days after that.

The North Carolina Division of Water Resources had received over 9,000 comments. Eighty-five per cent of the comments requested that the Division deny the Certification.



Old buds Chip Chase (L) and Dave Elkinton reconnect at the Celebration

The Straight Scoop on Shale Drilling

A PROJECT OF THE LEAGUE OF WOMEN VOTERS OF PENNSYLVANIA CITIZEN EDUCATION FUND

2017 Shale & Public Health Conference

The fifth annual Shale & Public Health Conference will be held **Monday, November 13, 2017** from 9 a.m. to 5 p.m. (registration/ sign-in at 8:30) The conference is presented by the League of Women Voters of Pennsylvania and hosted by the University of Pittsburgh Graduate School of Public Health at the University of Pittsburgh’s University Club.

Conference itself is free - \$14 for buffet lunch

Featuring new research and practical applications:

New health registry research results
The latest Geisinger studies from Johns Hopkins’ Brian Schwartz MD and Tara McAlexander MPH
Citizen Science: Air Monitoring
Researching the health impacts of an ethane cracker and petrochemical development
Dr. Walter Tsou MD MPH, past president of the American Public Health Association and former Health Commissioner of Philadelphia.

and more...

If you are coming from out-of-town, a block of discounted hotel rooms is available at the Wyndham Pittsburgh University Center, (412) 682-6200, Code 1126841SH.

Register Now

[More Information and Registration](#) Or call 1-800-61-SHALE

Editor’s note: WVHC Board member Wayne Spiggle went to this conference last year. He gives it two thumbs up.

West Virginia Near the Bottom in Energy Efficiency

The American Council for an Energy Efficient Economy is out with its 2017 State Energy Efficiency Scoreboard and, for West Virginia, there is good news and bad news. The good news is that we didn’t finish last. Unlike in most economic rankings, where we count of Mississippi to keep us out of last place, we can say “thank goodness for Kansas, South Dakota, Wyoming, and North Dakota.” They finished below us, vaulting us to 47th place on the rankings of the fifty states and the District of Columbia.

The bad news is that we are getting worse. This is three steps below where we finished last year.

The surrounding states all did better than West Virginia did: Kentucky (28th place, up two spots from last year); Ohio (31st place, down two spots from last year); Pennsylvania (19th place, unchanged from last year); Maryland (10th place, down one from last year); Virginia (29th place, up four from last year and tied with Oklahoma for the most improved ranking).

The scorecard assesses state policies and programs that improve energy efficiencies in homes, businesses, industries, and transportation systems. It examines the six policy areas in which states typically pursue energy efficiency:

- Utility and public benefits programs and policies
- Transportation policies
- Building energy codes and compliance
- Combined heat and power policies
- State government led initiatives around energy efficiencies
- Appliance and equipment standards



Photo by Christina Carr

Double Anniversary Hike

Several groups combined to host a hike in Kanawha State Forest on Saturday, September 30. The Kanawha Trail Club [celebrating 75 years], the West Virginia Highlands Conservancy [celebrating 50 years], and the Mary Ingles Trail Blazers offered a 7-mile trek from the Trace Creek trailhead down to the Dunlop Hollow parking area.

Hikers met at 9 a.m. and were driven by a shuttle bus to their starting point. A glorious mild autumn day allowed for a great outing and attendees had the bonus of an appearance by Ostenaco, a pre-colonial Indian of our area in the person of living history specialist Doug Wood. To wind up, Barb Koster supplied home-made pepperoni rolls, cookies, and more before folks exchanged good-byes and thanks for a fitting celebration event.



Photo by Christina Carr



Photo by Christina Carr

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