



The Highlands Voice

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

Volume 52 No. 1 January, 2019

Court Stops Atlantic Coast Pipeline from Crossing National Forests

By John McFerrin

The United States Court of Appeals has stopped the Atlantic Coast Pipeline from crossing the Monongahela National Forest and the George Washington National Forest. The Court concluded that the Forest Service's decisions violate the National Forest Management Act ("NFMA"), and the National Environmental Policy Act ("NEPA").

In addition to stopping the National Forests crossings, the Court concluded that the Forest Service did not have the statutory authority pursuant to the Mineral Leasing Act ("MLA") to grant a pipeline right of way across the Appalachian National Scenic Trail. The Court sent the matter back to the Forest Service to try again.

As proposed, the pipeline would have crossed both the Monongahela National Forest and the George Washington National Forest. In addition, it would have crossed the Appalachian National Scenic Trail.



Coming to a National Forest near you-- NOT (at least for now)

In challenging the decision by the Forest Service to allow crossing of the National Forests, the Petitioners had to meet a high standard. Courts in general approach cases such as this with the assumption that agencies know what they are doing. It is the agencies—not the judges—who are experts on sediment control, slope stability, endangered species, etc. A court would not reverse the decision of the Forest Service simply because the judges might have looked at the evidence and concluded something different on sediment control, etc. The Petitioners had to convince the Court that the decision had been "arbitrary and capricious."

(More on p. 4)

What's inside:

Thoughts from our president	2	Roster of officers	10
Pipeline tidbits	5	Possible funny business In NC	10
Climate conference	6	Get a Hiking Guide	11
A well deserved award	7	Pipeline monitoring	12
Last (almost) again	7	Trouble on the horizon?	13
APB for dangerous invader	8	Land and Water	
How to join	9	Conservation Fund	13
Get a history book	9	Wetlands threatened	14
		Get stuff	16



Thoughts from our President

By Larry Thomas

Proposed Big Run Pump Storage Project in Tucker County, West Virginia

Kent Karriker's article in the December *Highlands Voice*, page 4, provides a great explanation of the application to the Federal Energy Regulatory Commission for a preliminary permit filed by FreedomWorks, LLC (Applicant) proposing to study the feasibility of a proposed Big Run Pump Storage Hydro Project to be located near Parsons in Tucker County, West Virginia.

Announcement of the proposed project caused serious concerns among WVHC board members as well as the United States Department of the Interior, the United States Department of Agriculture, Forest Service, Monongahela National Forest, the State of West Virginia Division of Natural Resources, Wildlife Resources Section and other environmental groups. You can view the documents providing comments and others which have been filed in the Federal Energy Regulatory Commission (FERC) Elibrary (<https://www.ferc.gov/docs-filing/elibrary.asp>). Click "general search," set the date range to "all," and enter docket number P-14889.

The Department of the Interior filed comments on the preliminary permit application, first addressing the applicant's public interest statement and concluding "However, the Applicant's statement that the Project will be constructed without damage to the environment is inaccurate." It then went on to provide comments and recommendations pursuant to the Fish and Wildlife Coordination Act (48 Stat. 401, as amended; 16 U.S.C. 661 *et seq.*).

The United States Department of Agriculture, Forest Service, Monongahela National Forest provided comments by section of the application, addressing the processes and studies required to study the feasibility of the proposed project on the Monongahela National Forest. Later they provided another comment letter that outlined several of the project's inconsistencies with the Forest Plan. They concluded that letter by stating that the Forest Service likely would not grant a Special Use permit for the project. Without that permit, the project cannot be built.

The State of West Virginia Division of Natural Resources, Wildlife Resources Section (WRS) provided comments stating that the Wildlife Resources Section has grave concerns about the proposed project as presented in the preliminary project application and further rejects the belief by the applicant that this project will not result in significant impacts to waters of the US, upland habitat, and both warm water and cold-water fisheries within the surrounding areas. There comments conclude that WRS cannot support such development as proposed in the preliminary project application and requests that FERC deny the permit.

The West Virginia Highlands Conservancy Public Lands Committee reviewed the application, prepared comments to be filed and submitted the comments to the Executive Committee with a recommendation that they be filed with FERC along with a Motion to Intervene in the case. Both were approved and filed. The WVHC comments started with the definitive statement that **"WVHC opposes the proposed project due to unacceptable environmental impacts, and we urge the Federal Energy Regulatory Commission to deny the preliminary permit."** and focused on:

- Impacts to Protected Species
- Impacts to Scenic Resources
- Impacts to Restored Mine Lands
- Impacts to the Big Run Bog National Natural Landmark
- Impacts of the Proposed Power Line

The Charleston Gazette published an article about this proposed project on December 29, 2018. The article outlined various concerns that were raised by WVHC, Friends of Blackwater, and various government agencies. Chief among these concerns are the impacts to the Big Run Bog National Natural Landmark. **In answering the concerns about Big Run Bog, Tim Williamson, CEO of FreedomWorks, is quoted as saying that he doesn't plan to touch Big Run Bog. It is important that WVHC members and the general public understand that this statement is not accurate.** The Big Run Bog National Natural Landmark includes not only the bog itself, but the entire area draining into the bog. The maps submitted in FreedomWorks' application, as well as maps submitted by the Department of Interior in their comments, clearly show that the penstocks and spillways for the upper reservoir would be constructed within the designated area of the Big Run Bog National Natural Landmark, and that the footprint of the penstocks would encroach on the head of the Bog itself. Although the design drawings in the permit application are rudimentary, it appears that the spillways would drain into the bog, which could alter the bog's hydrology.

The Tucker County Commission will hold an open public meeting to discuss the project with FreedomWorks, LLC on January 9, 2019 in the Tucker County Courthouse Court Room. <https://tuckercountycommission.com/big-run-pump-storage-hydropower-project-tucker-county-public-documents/> The format is still being discussed at this time. Several WVHC board members plan to attend. We encourage WVHC members to attend also. At this time we are hearing that anyone who intends to speak at the meeting must register ahead of time. As of press time, the procedure for registering is not clear. We will post the information on the WVHC Facebook when we receive it.

Another Invasive Headed for West Virginia

Since the first spotted lanternfly was identified in Berks County, Pennsylvania in 2014, populations have been established in Delaware, New Jersey, New York and Virginia. With strict quarantines in place, the spread of the bug has been relatively slow. But the probability of the bug reaching West Virginia is a question of "when," not "if" as the potential. It is most likely very foolish to think it won't come to West Virginia.

When the spotted lanternfly reaches West Virginia, trees on our public and private could be among the biggest losers.

(Larry has a lot on his mind; more on p. 3)

More Thoughts from President Larry (Continued from p. 2)

Why the alarm? Simple. It can devastate crops such as grapes, peaches, plums, cherries and hops along with our hardwood forests that will be at particular risk once the spotted lanternfly arrives. Most of the state's deciduous forests are made up of hardwoods, which are popular for making furniture and cabinets.

The West Virginia Department of Agriculture is the lead agency monitoring the movement of spotted lanternflies in West Virginia, but the Forest Service stays abreast of potential threats to our state's forests. Because the pest is an intensive and indiscriminate feeder with at least 70 known hosts, it is believed to pose a real threat to the health of trees, profitability of the state's timber industry, profitability for land owners and severance tax revenue for the state of West Virginia.

There's a significant danger to commerce because the insect is such a good hitchhiker. It hops onto anything. Complicating the situation is that while the timber is harvested in West Virginia, it is then shipped within and without the state. This in-and-out movement of timber could be diminished if the spotted lanternfly arrives and a quarantine is put in place.

Controlling the pest will not be easy, either. The spotted lanternfly is also a leafhopper species, which have thwarted forest managers in the past, and because of its feeding style — which includes piercing the plant to extract nutrients — it is likely to pass diseases freely, like a "dirty needle," between the many trees it feeds on.

Before the spotted lanternfly can get a foothold in West Virginia, the West Virginia Department of Agriculture must educate business owners as well as landowners on how to identify it and its egg masses. Formal classes must be developed emphasizing the importance of stopping the spotted lanternfly, as well as its life cycle and habits, how to find and destroy the creatures, and best practices.

What has been learned so far is the bug is highly attracted to Red Maples — a popular tree in urban landscapes — and the non-native Ailanthus, also known as tree-of-heaven. Tree-of-heaven originates from China, where the spotted lanternfly is also native. The tree was introduced to the U.S. as an ornamental plant in the 1780s and is ubiquitous on many properties, which wasn't a problem until now.

Pennsylvania officials, to help stem the spread of the much-feared spotted lanternfly are encouraging businesses that transport anything in and out of its 13 quarantined counties to get free online training concerning the pest, and a resulting permit for company vehicles.

In Maryland, with the impending arrival of the spotted lanternfly, tree experts are working with landowners to remove 90 percent of the Ailanthus on their land. The remaining 10 percent are left and treated with insecticides, to act as "trap trees," that kill any eventual hosts.

Experts must regularly inspect properties for spotted lanternfly egg masses. The eggs are laid in gray sheets and look like dried mud. The eggs can be laid on any surface, including patio furniture, trailers and wood piles — which makes unintentional transport of the species to new areas even more likely.

With the spotted lanternfly now in states bordering West Virginia, it is even more important to educate the public about the pest.

Be vigilant. The more people looking for the spotted lanternfly and scouting for it, hopefully the spotted lanternfly could be less impactful in West Virginia.

For additional information, see separate article in this issue of the "Highlands Voice".

I want to take this opportunity to wish everyone a very happy, healthy and prosperous 2019!

The Highlands Voice is published monthly by the West Virginia Highlands Conservancy, P. O. Box 306, Charleston, WV 25321. Articles, letters to the editor, graphics, photos, poetry, or other information for publication should be sent to the editor via the internet or by the U.S. Mail by the last Friday of each month. You may submit material for publication either to the address listed above or to the address listed for Highlands Voice Editor elsewhere in this issue. Electronic submissions are preferred.

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.

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.

Court Stops the Pipeline (Continued from p. 1)

So far as the crossings of the Monongahela National Forest and the George Washington National Forest are concerned (the crossing of the Appalachian Trail is another matter), the Forest Service's downfall in this case was the inconsistency in its positions. This project was not approved in a day, or even a week. Plans were submitted, the Forest Service would say there were problems with the plans, that it needed more information, or that it didn't think that the plans would work. Then, in the end, it approved the plans it had been criticizing all along. It is hard not to look arbitrary and capricious when you repeatedly criticize a project and then approve it.

National Forest Management Act

Under the National Forest Management Act, the Forest Service has to make plans on how it is going to manage the National Forests. There is a Plan for each National Forest. Each Forest revises its plan every ten or fifteen years; until the Plan is revised again in another ten or fifteen years, it serves as the blueprint for Forest management.

Neither the Plan for the Monongahela National Forest nor the one for the George Washington National Forest contemplates all the disturbance required to build a big pipeline. In order to accommodate the level of disturbance necessary to construct the Atlantic Coast Pipeline, the Forest Service would have to amend those Plans.

The amendments exempt the Atlantic Coast Pipeline project from four Monongahela National Forest Plan standards and nine George Washington National Forest Plan standards that relate to soil, water, riparian, threatened and endangered species, and recreational and visual resources.

The Forest Service had concluded that the Plan amendments would not have substantial adverse effects upon the Forests. Because of the considerable evidence in the record that there would be such effects, the Court ruled that the amendments to the plan made to accommodate the pipeline were arbitrary and capricious.

In addition to the ruling that the Plan amendments were arbitrary and capricious, the Court also ruled that the pipeline would violate the Plans. Since neither plan contemplates a big pipeline running through the Forest, such a pipeline would require what is called a Special Use Permit. Such a permit would allow the use of Forest land for something other than what the Plan contemplates.

The Plans for both National Forests, however, prohibit allowing these Special Uses if the use can be accommodated on private lands. The Court ruled that the Forest Service had not adequately considered whether the pipeline could be built other than on the National Forest; as a result its approval was arbitrary and capricious.

National Environmental Policy Act

As had been said many times—and is repeated in this decision—the National Environmental Policy Act does not require wise environmental decision making. It just requires that the agencies involved seriously consider (“take a hard look” in the jargon of the genre) at the environmental consequences of a proposed action.

The inter-agency dynamics of this case gave the Court a useful tool for determining whether the Forest Service had taken this required “hard look.” The conclusion: a quick glance, perhaps, but well short of a hard look.

Because the Federal Energy Regulatory Commission has overall responsibility for approving (or not approving) the Atlantic Coast Pipeline, it has the obligation for preparing the Environmental Impact Statement. The Forest Service is a cooperating agency. Its role is to provide information and make comments on the draft of the Environmental Impact Statement.

One tool for determining if the Forest Service took the required hard look at the environmental consequences of the Atlantic Coast Pipeline is how it responded to the Federal Energy Regulatory Commission's treatment of the issues it raised. The Forest Service is supposed to make an independent review of the final Environmental Impact Statement and determine that the Federal Energy Regulatory Commission satisfied its comments and suggestions. This is where the Forest Service went wrong.

During the preparation of the draft Environmental Impact Statement, the Forest Service gave every indication that it intended a hard look. It pointed out several flaws in the plan to build a pipeline across the Forests, including (1) the need to consider alternative routes; (2) analysis of landslide risks; and (3) erosion, and degradation of water quality.

It was in accepting the final Environmental Impact Statement that the Forest Service's performance plummeted from hard look to quick glance. When the final Environmental Impact Statement came out, it had not addressed the problems that the Forest Service raised. Whatever problems the Forest Service had pointed out were still there, still being problems. The Forest Service accepted it anyway and used it as the basis for its decision to allow the Atlantic Coast Pipeline to cross the National Forests.

A good illustration of this is in how the Forest Service approached landslide risks. As proposed, the Atlantic Coast Pipeline would cross some pretty rough country. Potentially difficult situations include steep slopes, presence of headwater streams, geologic formations with high slippage potential, highly erodible soils, and the presence of high-value natural resources downslope of high hazard areas.



(More on the next page)

More about the Court Stopping the Pipeline (Continued from previous page)

During the preparation of the Draft Environmental Impact Statement, the Forest Service expressed serious concerns that the DEIS lacked necessary information to evaluate landslide risks, erosion impacts, and degradation of water quality. It further lacked information about the effectiveness of mitigation techniques to reduce those risks.

So that it could evaluate these risks, the Forest Service had asked for ten site specific stabilization designs. It took the position that these were necessary and that it could use these ten designs where necessary to determine whether the pipeline could avoid the potential risks and impacts. The Forest Service also questioned the quality of the designs that were submitted and the assumptions behind those designs.

The pipeline developers submitted designs for two sites. The final Environmental Impact Statement acknowledges that “slope instability/landslide risk reduction measures have not been completed or have not been adopted.”

The Forest Service did not question this inadequacy of information, or why it never got the information it asked for. Instead, it accepted the Final Environmental Impact Statement and relied upon it in approving the Forest crossings.

The Court concluded that this was not the “hard look” that the National Environmental Policy Act requires.

Mineral Leasing Act—Crossing the Appalachian National Scenic Trail

As proposed, the Atlantic Coast Pipeline would cross the Appalachian National Scenic Trail.

The Appalachian Trail is a National Park. As such, it is not administered by the Forest Service. It is, instead, administered by the National Park Service, a part of the Department of the Interior.

Even though the Appalachian Trail is administered by the Park Service, the Park Service could not grant a right of way to cross it. Only Congress can grant a right of way to cross the Trail. There is no dispute about this, at least so far as it applies to places where the Trail is on private lands.

The developers hoped to avoid this requirement of Congressional action by crossing the Trail while it is within the George Washington National Forest. By crossing within the National Forest, the developers had hoped to be able to get approval from the Forest Service. The Forest Service apparently agreed and approved crossing of the trail.

The Court disagreed. It held that the Forest Service did not have the authority to approve a crossing of the Appalachian Trail. It was not a question of whether the crossing was a wise idea or not. It was a question of whether or not the Forest Service had the authority to approve the crossing and the Court determined that it didn't.

The Rest of the Story?

On the surface, the Forest Service just looks feckless. All during the review, it kept raising all these issues, asking for more data, offering reasons why a big pipeline through the National Forest might not be such a good idea. When it came to the end, however, and its data requests were unanswered, its ideas ignored, it just said, “Oh, OK” and let the project be approved.

Reporting by *Outside* magazine suggests that there may have been things beneath the surface that influenced the Forest Service's judgment. To see what you think of this possibility, see the story at <https://www.outsideonline.com/2378161/forest-service-energy-industrys-new-pal>

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.

More Than One Way to Skin a Pipeline

As discussed in the adjacent story, authorization to cross the Appalachian Trail by the Atlantic Coast Pipeline must come through an act of Congress. Hoping that it would be otherwise, the developers sought approval from the Forest Service. The Court ruled that the Forest Service did not have the authority to grant the approval.

Perhaps in anticipation of this ruling, the developers sought to have approval of the pipeline crossing included in the budget bill that is now before Congress. The *Richmond Times-Dispatch* reported this on December 3, 2018, before the Court decision.

When the *Times-Dispatch* sought confirmation, the developers confirmed the existence of the legislative proposal.

At press time there was no additional information on whether the proposal was still under active consideration, how it fared in the hurly burly of the shutdown, the wall, etc.

To read the whole story, go to https://www.richmond.com/news/plus/congress-considers-changing-law-for-pipeline-crossing-of-appalachian-trail/article_99c33695-eb87-57df-988a-55a0bb9430d9.html

Climate Change Persuasion

By Hugh Rogers

Early Saturday morning, December 1st, at the Law School in Morgantown, Tom Rodd is bouncing around the lobby, greeting, quarterbacking, telling stories. Coffee and Danish are available, but that's not what spins his turbine. His latest project, "National Energy Conference 2018: Climate Change Issues Update," has drawn a noisy crowd. Friends and allies are here for further instruction.

First, we notice a space on the my-name-is stickers. We are to fill in the parts per million of atmospheric carbon dioxide as of our birth year. In case our brains haven't stored this information together with our Social Security numbers, there's a table on the table. Tom and I, pre-Boomers, register 310 ppm; compare today's 408.

Getting an audience to *do* something beyond listening is a typical Tom move. Years ago, I watched him teach an introductory class on environmental law. He put two students in a makeshift ring, and then he tied one's arm behind his back. They got the message. These days, white-bearded Tom has more fun clowning with kids in the middle and elementary grades. They dress up, perform skits, blow bubbles, and learn. They're not self-conscious.

If a title is necessary, Tom wears this: Director, Allegheny Highlands Climate Change Impacts Initiative. His directorship is tucked under Friends of Blackwater, a co-presenter of the conference with Appalachian Stewardship Foundation. It was sponsored by the WVU Law Center for Energy and Sustainable Development.

So: Climate Change Issues Update. For this report, we'll separate the issues from the update. Communication and education are crucial issues here in West Virginia, the state with the largest percentage of climate change deniers.

The update focused on methane emissions, carbon pricing, and solar energy opportunities in the state. We'll cover those another time.

First up was now-famous Rafe Pomerance. Some of us on the Highlands Conservancy board knew him before he starred in a special issue of the *New York Times Magazine* on "the decade we almost stopped climate change." In that decade, 1979-1989, Rafe was a "hyperkinetic" lobbyist for Friends of the Earth. Thirty years later, he's chairman of Arctic 21 and a consultant to groups working to put off the drowning of Florida. He says, "The fate of Greenland is the fate of Miami." (If you haven't read that magazine, you should: www.nytimes.com/interactive/2018/08/01/magazine/climate-change-losing-earth.html.)

Rafe made these two points: we are now living in the Anthropocene, the age in which the most profound changes to the planet are and will be caused by human beings. To avoid extinction, we will have to override our innate neural circuitry that puts "me" first, and make collaboration our go-to instinct.

He reminded us that popular attitudes have been colored by a legacy of disinformation, especially attributable to an Exxon-Mobil campaign and carried forward in popular media.

The most effective approaches going forward will focus on local impacts. For example, once the issue is well understood in Florida as an existential threat, that's it for the Republican deniers. They can't win the presidency without Florida. By the same token, once a plurality in West Virginia fully recognize the harm, for example, the repeated catastrophic floods, they'll support the remedies.

For the present, any legislation must be bipartisan, and emphasize innovation, i.e., a positive approach.

Rafe pointed to the very recent, very stark National Climate Assessment. Trump appointees did not bother to rewrite it—they prefer simple denials of facts—but they did release it on Black Friday, the worst possible news day. That backfired. The *Times* and the *Washington Post* featured it "above the fold" and it got prominent coverage in other media.

The first panelist, Dylan Seltman, who teaches psychology at the University of Maryland, has achieved notoriety on Twitter for using game theory to adjust final grades in some of his courses. A student could choose to improve his grade by two points or six points; however, if more than 10% of the class chose the latter, no one would gain any

extra points. Consistently, 80% or more chose the two-point option. But not 90%. They did not gain their reward.

Seltman referred to a 50-year-old paper well-known to anyone who has taken an environmental law class, Garrett Hardin's "Tragedy of the Commons." Where everyone tries to maximize personal benefit from a common resource, the demand will overwhelm the supply and everyone will suffer. Possible solutions are (a) "behaviorism," i.e., rewards and/or incentives for cooperation; (b) role models who encourage cooperation; and (c) social norms that do the same.

Recently, Seltman has offered his students a third option: if they chose zero extra points, they could offset the "overconsumers" who chose six, thus reducing their number below 10% and allowing the rest to get their bonus. It has worked! A few people can make a difference. We might add, above, a solution (d) for altruism. Can it be scaled up?

Tina Cartwright teaches science education at Marshall University and as a specialist in the Cabell County Schools. She has seen how students' understanding of climate change is affected by their "home climate." I think that was meant to be understood physically, economically, and psychologically.



(More on the next page)

Climate Change (Continued from previous page)

In 2015, the West Virginia Legislature “softened” the national standards for science classes in the 5th, 8th, and 12th grades. Too many mean things were said about coal. Cartwright was reminded of the fight over teaching evolution forty years ago. But in 2016, Next Generation Science Standards were adopted by the state Board of Education. Surveys that had consistently shown both students and teachers minimizing climate impacts of coal and automobiles found a major shift since implementation of the new standards.

Brandi Gaertner, a doctoral candidate at WVU, teaches environmental science at Alderson-Broaddus. She showed us a pickup truck in the sun. 85 degrees outside, 140 degrees in the cab. Short-wave energy gets in, long-wave energy can’t escape. An easily understandable introduction to the greenhouse effect. Then she assigned us worksheets on which we were to interpret certain numbers on another simple illustration, sun, earth, and clouds. We were encouraged to collaborate. By the way, she mentioned her students’ attention span was “less than a goldfish.” They have to do something every five to seven minutes.

Here’s a simple number I didn’t know: the average temperature of our planet is 59 degrees F. Pleasant! Cheers for the greenhouse effect! We don’t want to eliminate it, we just want to curb our excessive enthusiasm.

Amy Hessel teaches geography at WVU. She too wrestles with how to present the data to students who wonder how “we can be so sure” about climate change. Against a background of 2000 years of paleoclimatology, she compared the atmospheric changes to “natural forcing,” i.e., what we would expect without human intervention. Fossil fuel burning left a traceable “chemical fingerprint”. Two graphs, of temperature change and the Dow Jones Industrial Average since 1870, showed an amazing congruence.

It’s not just coal, it’s *all* industry. To stay within 1.5 degrees C net planetary warming will require net zero emissions by 2055. We are burning through our CO2 “budget” at 42 gigatons per year; we have 14 years at this rate. Amy wanted students to leave her class knowing: The level of change required is daunting. Any reduction is good. All solutions are on the table. Challenges promote innovation. There is opportunity in change.

Emily Calandrelli, “the space gal” TV host, has found West Virginia audiences receptive to her talks on scientific literacy as long as she sticks to topics such as vaccination scares and flat-earth societies. When she brings up climate change denial, though, things get tense. People find it difficult to accept facts that don’t align with their worldview. Dylan Selterman had explained that knowledge, by itself, is not persuasive, because of our tendency toward “motivated reasoning”: we use our reason to confirm our beliefs.

So, what to do? Calandrelli had two pieces of advice: first, be nice—insistence will backfire; second, “bait the hook to suit the fish.” You have to base your appeal on your audience’s values. The example heard most frequently, and repeated by our speaker, relied on the typical West Virginian’s support for the military. The Pentagon has recognized climate change as a serious challenge to our national defense. That’s supposed to do it.

So far, of course, it hasn’t worked on our congressional representatives. But as our schools teach science accurately and effectively, and graduates grow up and vote, the issue will probably be resolved as Schopenhauer predicted: “All truth passes through three stages: first, it is ridiculed; second, it is violently opposed; and third, it is accepted as being self-evident.” Acceptance of climate change seems inevitable. The trouble is, we don’t have time to wait.

49th

That’s West Virginia’s ranking in the 2018 State Energy Efficiency Scoreboard published by the American Council for an Energy-Efficient Economy (ACEEE)..

This represents a drop of two positions from 2017. West Virginia scored 5.5 points out of a possible 50, one point less than it scored in 2017.

The rankings are based upon evaluations of state policies on such things as utilities, building energy efficiency standards, combined heat and power, and appliance standards. States are given points based upon the strength of their policies in each of the categories.

To see the details of the ratings, etc. go to aceee.org.

Mary Wimmer Gets an Award

Mary Wimmer was recently honored by the Morgantown Convention and Visitors Bureau with the Star of Industry Award. This award recognizes those who go above and beyond in the tourism industry and doing projects to promote tourism. Mary is a co-founder of Morgantown Area Paddlers. Since its founding in 2015, the group has held 116 free outings.



United States Department of Agriculture

Pest Alert

The Spotted Lanternfly (*Lycorma delicatula*)

May Be Headed for West Virginia

The spotted lanternfly is an invasive pest, primarily known to affect tree of heaven (*Ailanthus altissima*). It has been detected on many host plants, including apples, plums, cherries, peaches, nectarines, apricots, almonds, and pine. It also feeds on oak, walnut, poplar, and grapes. The insect will change hosts as it goes through its developmental stages. Nymphs feed on a wide range of plant species, while adults prefer to feed and lay eggs on tree of heaven (*A. altissima*).

Distribution and Spread

The spotted lanternfly is present in China, India, Japan, South Korea, and Vietnam. The insect was detected in Pennsylvania in September 2014. This was the first detection of spotted lanternfly in the United States. Spotted lanternflies are invasive and can spread rapidly when introduced to new areas. While the insect can walk, jump, or fly short distances, its long-distance spread is facilitated by people who move infested material or items containing egg masses.

Damage

Both nymphs and adults of spotted lanternfly cause damage when they feed, sucking sap from stems and leaves. This can reduce photosynthesis, weaken the plant, and eventually contribute to the plant's death. In addition, feeding can cause the plant to ooze or weep, resulting in a fermented odor, and the insects themselves excrete large amounts of fluid (honeydew). These fluids promote mold growth and attract other insects.

Description

Adult spotted lanternflies are approximately 1 inch long and one-half inch wide, and they have large and visually striking wings. Their forewings are light brown with black spots at the front and a speckled band at the rear. Their hind wings are scarlet with black spots at the front and white and black bars at the rear. Their abdomen is yellow with black bars. Nymphs in their early stages of development appear black with white spots and turn to a red phase before becoming adults. Egg masses are yellowish-brown in color, covered with a gray, waxy coating prior to hatching.

Life Cycle

The spotted lanternfly lays its eggs on smooth host plant surfaces and on non-host material, such as bricks, stones, and dead plants. Eggs hatch in the spring and early summer, and nymphs begin feeding on a wide range of host plants by sucking sap from young stems and leaves. Adults appear in late July and tend to focus their feeding on tree of heaven (*A. altissima*) and grapevine (*Vitis vinifera*). As the adults feed, they excrete sticky, sugar-rich fluid similar to honeydew. The fluid can build up on plants and on the ground underneath infested plants, causing sooty mold to form.

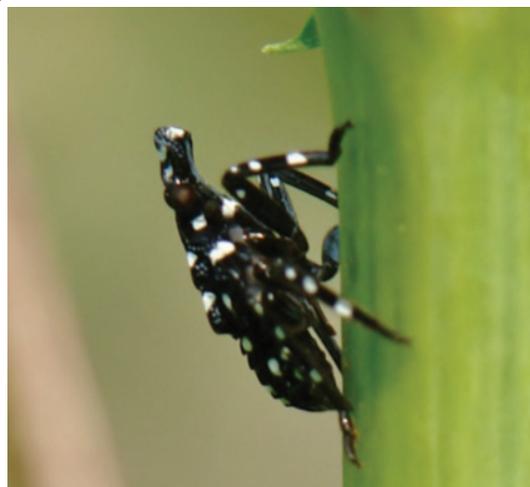
Report Your Findings

If you find an insect that you suspect is the spotted lanternfly, please contact your local Extension office or State Plant Regulatory Official to have the specimen identified properly. To locate an Extension specialist near you, go to the U.S. Department of Agriculture (USDA) Web site at www.nifa.usda.gov/Extension. A directory of State Plant Regulatory Officials is available on the National Plant Board Web site at www.nationalplantboard.org/membership.

For more information or to report infestations, please contact: West Virginia Department of Agriculture Plant Industries Division (304)558-2212 or send information to bugbusters@wvda.us.

For more information or to report infestations, please contact: West Virginia Department of Agriculture Plant Industries Division (304)558-2212 or send information to bugbusters@wvda.us.

Mug Shots:



Nymphs are black with white spots in early stages of development



Nymphs turn red just before becoming adults

Join Now !!!

Name _____

Address _____

City _____ State _____ Zip _____

Phone _____ Email _____

Membership categories (circle one)		Individual	Family	Org.
Senior		\$15		
Student		\$15		
Introductory		\$15		
Other		\$15		
Regular		\$25	\$35	\$50
Associate		\$50	\$75	\$100
Sustaining		\$100	\$150	\$200
Patron		\$250	\$500	\$500
Mountaineer		\$500	\$750	\$1000

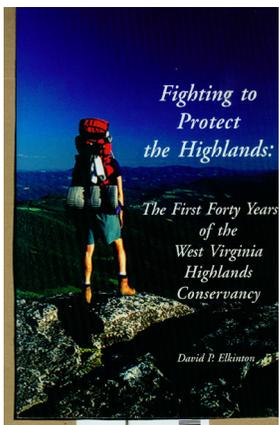
Mail to West Virginia Highlands Conservancy, P. O. Box 306, Charleston, WV 25321

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

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

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.

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.

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.

Another Pipeline Controversy in North Carolina

In North Carolina there is an ongoing uproar over approval of a state water pollution permit for the Atlantic Coast Pipeline, with words such as “pay-for-play” and “slush fund” being tossed about with reckless abandon.

Here’s what happened: for months in 2017 and early 2018, the pipeline developers met and negotiated with Governor Roy Cooper about a voluntary \$57.8 million fund to boost economic development and renewable energy projects in the eight counties along the 160-mile route through eastern North Carolina.

The Governor would lay out the rules for economic development, environmental mitigation, and renewable energy grants from the fund. He has said that intends to appoint a board to oversee the grants although he has not yet done that. The agreement provides that the money would be deposited in a bank of the Governor’s choosing, not the State treasury.

The final announcement that the Memorandum of Agreement setting up this fund had been finalized came just minutes after the announcement that the North Carolina Department of Environmental Quality had approved a crucial water permit for the pipeline.

Many found this coincidence a bit too tidy. The General Assembly has held hearings on the fund and hired a private investigator to delve into whether there was any quid-pro-quo between the fund and the administration’s decision to permit the pipeline.

The Governor says this is all politics; he is a Democrat while the Legislature is led by Republicans.

Investigators, concerned citizens, and the press have spent much of 2018 trying to get all the documents relevant to the negotiations that resulted in the creation of this fund. Finally, in mid-December, the Governor’s office released 19,000 pages of documents. People are now plowing through those documents, hoping to find information which will reveal whether the permit approval, the fund, etc. were all on the up and up.

Form the West Virginia perspective, we are, of course, shocked, shocked that politics and even the possibly of corruption could ever intrude into the permitting process.

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.

Roster of Officers, Board Members and Committee Chairs, and Board of Directors

PRESIDENT: Larry Thomas, P.O. Box 194, Circleville, WV 26804, (304) 567-2602, larryvthomas@aol.com

SENIOR VICE PRESIDENT: Marilyn Shoenfeld, 167 Balsam Way, Davis, WV 26260, (304) 866-3484, marilyn.shoenfeld@gmail.com

VICE PRESIDENT FOR STATE AFFAIRS: Frank Young, 33 Carnian Ford Road, Ripley, WV 25271, (304)372-3945, fyoung@mountain.net

SECRETARY: John McFerrin, 202 Van Tassel Court, Morgantown, WV 26508, (304) 291-8305, johnmcferrin@aol.com

TREASURER: Bob Marshall, 2108 Emma Road, Kenna, WV 25248, (304)545-6817, woodhavenwva@aim.com

PAST PRESIDENT: Cynthia D. Ellis, 3114 Steel Ridge Road, Red House, WV 25168, (304) 586-4135, cdellis@wildblue.net

DIRECTORS-AT-LARGE (Terms expire October 2018)

George E. Beetham Jr., 2819 Mt. Carmel Avenue, Glenside, PA 19038, (267) 252-3748, geobeet@hotmail.com

Jackie Burns jackie.burns@frontier.com. 304 866 4093

Randy Kesling, 116 Farm Meadow Drive, Bridgeport, WV 26330; (304) 622-5982; rkesling@MA.RR.com

Kent Karriker, 344 Harpertown Road, Elkins, WV 26241 (304) 636-8651, bykarriker@suddenlink.net

Patrica Gundrum, Charleston, WV gundrum2@gmail.com

DIRECTORS-AT-LARGE (Terms expire October 2019)

Adam Casseday, 212 Davis and Elkins St, Elkins, WV 26241, 304-636-4944, dr_casseday@yahoo.com

George Hack; 510 HANNA RD; Bel Air, MD 21014; 443 742-0463 george.hack@db.com

LeJay Graffious, P.O. Box 69, Bruceton Mills, WV 26525, lejay@oldhemlock.org

Rick Webb, 481 Ravens Run Road, Monterey, VA 24465, (540) 468-2881, rwebb@virginia.edu

Hugh Rogers, Moon Run, Kerens, WV 26276, (304)636-2662, hugh.rogers@gmail.com

ORGANIZATIONAL DIRECTORS

WEST VIRGINIA CAVE CONSERVANCY: Randy Rumer; 295 Caraway Lane Renick, WV 24966; (304) 497-2657; rrumer@frontiernet.net

PITTSBURGH CLIMBERS: Buff Rodman, 32 Crystal Drive, Oakmont, PA 15139, (412) 828-8983, buffrodman@hotmail.com

BROOKS BIRD CLUB: Cynthia D. Ellis, 3114 Steel Ridge Road, Red House, WV 25168, (304) 586-4135, cdellis@wildblue.net

WEST VIRGINIA RIVERS COALITION: Turner Sharp, Box 4751, Parkersburg, WV 26104 Tsharp@suddenlink.net

MOUNTAINEER CHAATER TROUT UNLIMITED 116 Farm Meadow Drive, Bridgeport, WV 26330; (304) 622-5982; rkesling@MA.RR.com

FRIENDS OF THE LITTLE KANAWHA: Cindy Rank, 4401 Eden Road, Rock Cave , WV 26234, (304) 924-5802, clrank2@gmail.com

TEAM (Taylor Environmental Advocacy Membership): Beth Baldwin, 222 Westwood Ave Bridgeport , WV 26330; elbrn6e21@msn.com

ALLEGHENY HIGHLANDS ALLIANCE: Dr. Wayne C. Spiggle, 3987 Knobley Road, Keyser, WV 26762, 304-726-4868, wspiggle@mac.com

SHAVERS FORK COALITION: Jim Van Gundy, 210 Buffalo Street, Elkins, WV 26241, (304) 636-4736, jjvg01@gmail.com

COMMITTEE CHAIRS

EXTRACTIVE INDUSTRIES COMMITTEE: Cindy Rank, 4401 Eden Road, Rock Cave, WV 26234, (304) 924-5802, clrank2@gmail.com

PUBLIC LANDS MANAGEMENT COMMITTEE: Marilyn Shoenfeld, 167 Balsam Way, Davis, WV 26260, (304) 866-3484, marilyn.shoenfeld@gmail.com

RENEWABLE ENERGY COMMITTEE: Larry Thomas, P.O. Box 194, Circleville, WV 26804, (304) 567-2602, larryvthomas@aol.com

LEGISLATIVE COMMITTEE: Frank Young, 33 Carnian Ford Road, Ripley, WV 25271, (304) 372-3945, fyoung@mountain.net

ENDOWMENT FUND COMMITTEE: Larry Thomas, P.O. Box 194, Circleville, WV 26804, (304) 567-2602, larryvthomas@aol.com

RIVERS COMMITTEE: Vacant

HIGHWAYS COMMITTEE: Hugh Rogers, 531 Moon Run Road, Kerens, WV 26276, (304) 636-2662, hugh.rogers@gmail.com

MISCELLANEOUS OFFICES

WEB PAGE – DIGITAL PUBLISHING: Dan Radmacher, (540) 798-6683, dan.radmacher@writingleft.com

ADMINISTRATIVE OFFICES

MEMBERSHIP SECRETARY: Beth Little, 214 Black Gum Lane, Hillsboro, WV 24946, (304) 653-4277, blittle@citynet.net

HIGHLANDS VOICE EDITOR: John McFerrin, 202 Van Tassel Court, Morgantown, WV 26508, (304) 291-8305, johnmcferrin@aol.com

Mon National Forest Hiking Guide

Celebrating the 50th anniversary of the West Virginia Highlands Conservancy, the new edition of the treasured guide to every trail in the Monongahela National Forest features brand-new topographic maps and Kent Mason's gorgeous photos, all in color.

The Guide has been updated with the cooperation of National Forest District Rangers and Recreation Specialists to reflect changes in the past ten years:

- * newly designated wilderness areas
- * new trails near campgrounds and sites of special significance
- * a new complex of interconnected trails on Cheat Mountain
- * rerouted and discontinued trails
- * ratings for difficulty, scenery, access to water, and much else

The definitive guide to the Mon adds a wealth of information about history, wildlife, and botany; safety, preparation, and weather; horseback and mountain bike riding and cross-country skiing; as well as sources of further information on the Forest and its environs.

The Monongahela National Forest has long been known as a 'Special Place'. The hiking, backpacking, and cross-country skiing opportunities it provides are among the best in the eastern U.S. New wilderness and backcountry trails have been added to the outstanding areas we have appreciated for decades – Otter Creek Wilderness, Dolly Sods Wilderness, Flatrock Plains, Roaring Plains, Blackwater Canyon, Spruce Knob, North Fork Mountain, Shaver's Mountain, Laurel Fork Wilderness, Cranberry Wilderness -- and there are lesser-known gems to be found in between.

Profits from the sale of these guides support a wide variety of worthy environmental projects for the West Virginia Highlands Conservancy.

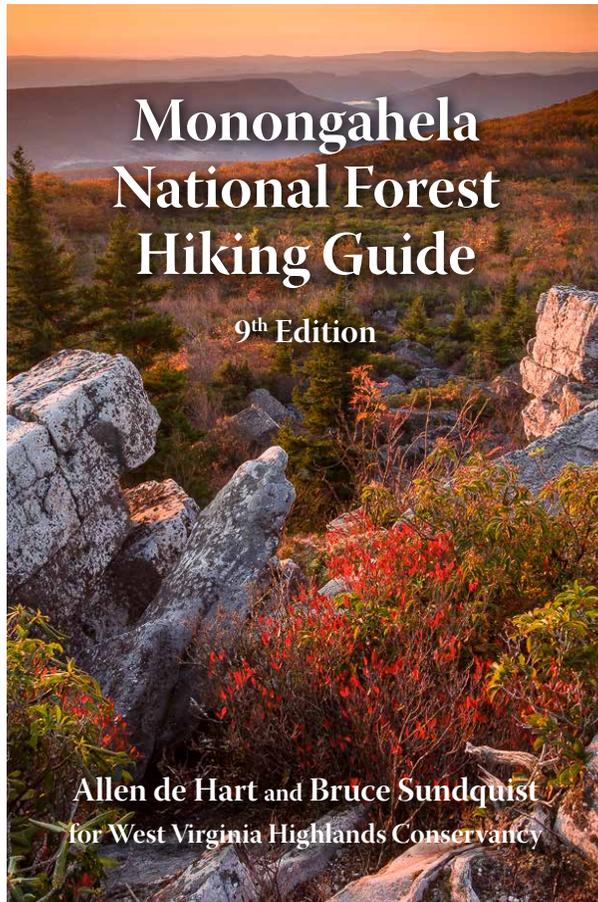
**Send \$18.95 plus \$3.00 shipping to:
West Virginia Highlands Conservancy**

P.O. Box 306

Charleston, WV 25321

OR

**Order from our website at
www.wvhighlands.org**



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.

Pipeline Construction Monitoring and Compliance

By April Crowe

Keeping up with pipeline construction is enough to make anyone's head spin! The 3 major pipelines currently under construction--Atlantic Coast (ACP), Mountain Valley (MVP) and Mountaineer Xpress (MXP)--amount to a total of 10,489 acres of earth disturbance. There are only 5 DEP Inspectors covering this onslaught of construction across West Virginia. Divided equally, each of those Inspectors would be responsible for overseeing approximately 2,000 acres. That's enough ground to cover to keep them very busy! Citizen monitors are helping to provide the Inspectors with some support by serving as eyes on the ground and reporting potential problems so Department of Environmental Protection (DEP) can prioritize areas for inspections.

The Allegheny-Blue Ridge Alliance (ABRA) Pipeline Compliance Surveillance Initiative (CSI), WV Rivers Coalition, Trout Unlimited (TU) and West Virginia Highlands Conservancy have a unique partnership to train citizens on how to monitor construction and report potential violations. The Pipeline Air Force monitors from above to pinpoint problem areas and volunteers trained by WV Rivers, Trout Unlimited, and Compliance Surveillance Initiative can follow-up on the ground.

The information gathered from the aerial photos and the boots on the ground is sent to Autumn Crowe, Staff Scientist for WV Rivers Coalition and CSI's WV Field Coordinator who then forwards complaints to DEP. She has been reporting potential problems and tracking pipeline violations since construction began. To date, 5 complaints have been submitted on the Mountaineer Express, while DEP has issued 24 violations; 15 complaints on Mountain Valley Pipeline and 20 violations issued; and 26 complaints on Atlantic Coast Pipeline with 2 violations issued.

DEP inspectors don't always issue a violation when a complaint is received, but they do follow-up on the complaint with an inspection. Complaints are forwarded to the company's Environmental Inspector and an inspection is scheduled. During the onsite inspection, if there are no impacts to water quality and only marginal deficiencies are observed, a warning is issued. If the deficiency is not corrected, that warning will turn into a violation upon the next inspection. When conditions not allowable in state waters are encountered, such as sediment deposits in the stream, that triggers an enforcement action and a Notice of Violation is issued.

Following an aerial flight on ACP in November, we submitted 19 complaints to DEP spanning Lewis, Upshur, Randolph and Pocahontas Counties. Those complaints were for tree clearing without erosion controls in place, erosion control measures that did not match their permit requirements, and failing erosion controls and sediment deposits outside their limit of disturbance. DEP Inspectors were then deployed to investigate those complaints. While weather and the holidays have hindered some inspections, we did receive a status report on a few of the issues.

Regarding the tree clearing without erosion control measures on Michael Mountain in Seneca State Forest, the DEP Inspector found that ACP had installed temporary water bars and no earth disturbance had occurred beyond tree clearing because of the stop work order. No erosion was observed, and the water bars were in good working condition. In response to our similar complaint on Thorny Mountain in Seneca State Forest, the DEP Inspector was

told that the state was logging the right-of-way and it was not the company's operation. The DEP Inspector will be following up with the WV Division of Natural Resources to confirm.

Our complaint on the Unnamed tributary of Thomas Creek in Pocahontas County was related to the positioning of their erosion control devices not matching their permit and possible construction activities outside the limit of disturbance. Upon inspection, DEP noted that the silt fence was moved due to the steepness of the slope leading up to the stream. He did not see any activity outside the limit of disturbance and the water in the stream was running clear.

The Inspector had similar findings at the site of a complaint along Turkey Bone Road in Randolph County. Our complaint at that site contained aerial photo evidence of sediment deposits in a wetland. During the inspection, the stream and wetland were running clear, so no violation was issued. However, since the site was covered in snow, he couldn't determine if there were sediment deposits outside the limit of disturbance. The Inspector will have to conduct a follow-up inspection at that site.



DEP Inspection of Unnamed Tributary of Thomas Creek in Pocahontas County

Additional inspection reports and subsequent violations will be posted on the DEP's document database that we monitor on a regular basis. Unfortunately, the Inspector can't tell us if a violation was issued at a particular site until the company has received notification. We have a good working relationship with the DEP Inspectors and many of them are grateful to have the extra eyes on the ground and in the air to assist them with oversight of these large pipeline projects.

More Trouble Headed Our Way?

By John McFerrin

In September, 2018, the West Virginia Legislative Auditor completed and delivered to the Legislature an audit of West Virginia's State Park system.

The Audit found that the Park system is not self-sufficient. It is around the middle of national rankings so far as self-sufficiency is concerned. Among states that do not charge an entrance fee, West Virginia is the closest to self-sufficiency.

The Audit also found that there are still unmet maintenance needs. During the last session the Legislature gave the Park system authority to sell bonds. The proceeds of the bonds will pay for a substantial fraction of the needed maintenance but will not pay for it all.

The Audit identified several sources of additional revenue, including more Legislative appropriations and some fees or excise taxes. It did not recommend any specific fees but did give examples of fees that other states charge and dedicate the revenue to their parks.

The Audit made several recommendations. First, it recommended that the Park system consider again charging entrance fees. The Audit referred to an earlier effort by the Division of Natural Resources to institute a pilot project of charging entrance fees. That project never came about because the Governor opposed it.

The Audit recommends that the Division of Natural Resources undertake a pilot project to charge entrance fees. It also recommends that this time it make sure the Governor is on board with the effort before the Division goes ahead.

The Audit also recommends that the Director of the Division of Natural Resources be authorized to sell or lease park lands:

It is the Legislative Auditor's opinion that in order to enhance the management of the State Park System, statutory authority should be granted to allow the DNR director to sell or lease park land and recreational facilities when it is in the best interest of the Park System. Provisions could be made to require such transactions to be approved by a legislative committee. Any decision to sell park land or timber should also take into consideration the impact of negative public perception and attendance numbers in the parks. Furthermore, DNR should consider the impact of the loss of scenic, cultural, archaeological and/or historical areas prior to considering any sales or leases of park lands.

The recommendation does not directly say that the director should be authorized to sell the timber. The paragraph does contain a warning of the "negative public perception" if timber is sold.

Context is important here. The previous paragraph talks about how much West Virginia could expect to make from timber sales on State Parks. That paragraph also contains this sentence: "The revenue generated from timber sales could be reinvested into the park system." Given this context, interpreting this report as a recommendation by the Legislative Auditor that West Virginia timber in its State Parks would require only a slightly creative reading.

Maybe this Audit doesn't mean anything. Maybe it is one of those reports that the Legislature says, "Thank you very much" and then files it away, never to be heard from again.

Then again, maybe the Audit is something. The 2018 Legislature brought us a serious effort, backed by the Governor, to timber in the State Parks. Maybe the Audit is a reminder to prick up our ears, keep sniffing the wind, and not throw away our picket signs.



Land and Water Conservation Fund: Not Authorized, Still Hoping

The Land and Water Conservation Fund keeps struggling. It expired in September, 2018. Now there are ongoing efforts to have it renewed. While the Fund has widespread public support (and the support of both of West Virginia's Senators) it has not been able to make it over the finish line.

The Land and Water Conservation Fund is one of America's most important conservation program. It collects a royalty on offshore oil and gas drilling. It then uses these royalties to make grants to protect parks, trails, wildlife refuges and recreation areas at the federal, state and local level. For more than 50 years, it has provided critical funding for land and water conservation projects, access to recreation including hunting and fishing, and the continued historic preservation of our nation's iconic landmarks from coast-to-coast.

The latest disappointment came in mid-December. Advocates for the Land and Water Conservation Fund had hoped to have a vote on reauthorization of the Fund or have that reauthorization included in the continuing resolution, the one that would have funded a large fraction of the government. In spite of the advocates' best efforts, the U.S. Senate failed to move forward on the package of public lands legislation that included the permanent reauthorization of the Land and Water Conservation Fund.

What the supporters of the Fund got instead was a promise. Senate leaders promised that reauthorization of the Fund would be brought up for a vote in January, 2019. Because the Fund has widespread support among the public and among members of Congress, its supporters are optimistic that if it is ever allowed to come up for a vote the Land and Water Conservation Fund will be reauthorized.

Wetlands, Headwater Streams Losing Protection?

By John McFerrin

The United States Environmental Protection Agency and the United State Army Corps of Engineers have unveiled a proposal to reduce the waterways and wetlands that are protected from pollution. It proposes to do this by adopting a revised definition of “waters of the United States”, the term the Clean Water Act uses to describe what waters are protected.

Background

Short version

We've been fighting for over forty years about how far the coverage of the Clean Water Act extends. President Trump just fired another shot.

Long version

This all started in 1972 with the passage of the federal Clean Water Act. That Act prohibited discharging pollution into the “waters of the United States.”

It left undecided exactly which waters were covered. Of course it covered big rivers, rivers like the Cuyahoga in Ohio. Its catching on fire in 1969 was one of the things that embarrassed us into passing the Clean Water Act in the first place; it had to be covered. Nobody disputes that rivers such as it and substantial rivers and streams are “waters of the United States.”

The trickier part comes in figuring out how far beyond major rivers and streams the jurisdiction of the Clean Water Act extended. Big rivers are just the sum of smaller tributaries and the discharge of groundwater. The smaller tributaries are just the sum of even smaller waterways, including some that don't run all the time (called ephemeral streams). Sixty percent of streams are dry for part of the year but then connect when it rains. Any pollution dumped into those waters could affect key ecosystems. Should they be protected?

Then there were wetlands. Some are adjacent to major rivers; some drain to larger rivers, or even not so large streams and rivers. Most are hydrologically connected to larger bodies of water. What about them? Are they “waters of the United States”?

The Environmental Protection Agency and the Corps of Engineers did regulations that tried to describe what waters were covered by the Clean Water

Act. Even with regulations and guidance, it still seemed as if determinations of what were “waters of the United States” were on a case by case basis.

Even the United States Supreme Court got into the act. In 2001 and 2006 it considered the question of what the phrase “waters of the United States” meant and came away with two and a half answers. As with many Supreme Court cases, this one produced multiple opinions. Some

Big rivers are just the sum of smaller tributaries and the discharge of groundwater. The smaller tributaries are just the sum of even smaller waterways, including some that don't run all the time (called ephemeral streams). Sixty percent of streams are dry for part of the year but then connect when it rains. Any pollution dumped into those waters could affect key ecosystems. Should they be protected?

justices said the EPA could regulate any place where water flowed at any point in the year. Others supported a more narrow definition. On wetlands, some thought that there had to be a continuous surface flow to a substantial stream before EPA could regulate it. In what was taken to be the deciding vote in one of the cases, Justice Kennedy called for the rules to cover any wetlands with a “significant nexus” to those navigable waters—in other words, any wetlands that genuinely affect the waters of the United States the EPA has jurisdiction to protect.

Since the Supreme Court had not really clarified anything, the Obama administration undertook to clarify the rule. It assumed that “significant nexus” was the standard and that the term was susceptible to a scientific definition. It reviewed some 1200 scientific papers, received thousands of comments, and produced a 400 page document justifying a clarified definition of “waters of the United States.”

The final Waters of the United States rule, published in June 2015, outlined which bodies of water were automatically covered by the Clean Water Act — requiring permits for discharges or dredging or dirt fill — and which ones still needed to be dealt with on a case-by-case basis. For instance:

- In the past, tributaries of navigable rivers were evaluated on a case-by-case basis. But under the new rule, they're automatically protected if they have a bed, a bank, and a high-water mark. This includes

many streams that are dry for part of the year. Waterways without these features are still dealt with case by case.

- Wetlands and ponds are now automatically covered if they're within 100 feet or within the 100-year floodplain of a protected waterway. Otherwise, it's case by case.

- Certain “isolated” waters that are not connected to navigable waters now get automatic protection if they have a “significant nexus” to protected waters...

The rule also explicitly exempted a number of bodies of water often found on farms, such as puddles, ditches, artificial ponds for livestock watering, and irrigation systems

that would revert to dry land if irrigation were to stop.

One man's “clarification” is another man's (or oil company, or real estate developer, or agribusiness) “federal overreach.” Litigation ensued. As a result, the 2015 rule never went into effect.

Candidate Trump jumped into the fray, calling the WOTUS (by then it had its own acronym, just like the big boys—FBI, IRS, FEMA) rule economy strangling, jobs killing, etc.

Barely a month after he became President Trump he issued an executive order on “Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the “Waters of the United States” Rule”. In it he directed the Environmental Protection Agency and the Corps of Engineers to review the 2015 rule and consider adopting the most restrictive of the options considered by the Supreme Court.

The EPA and the Corps have since suspending the 2015 rule until 2020. By then they expect to have in place a rule that is more acceptable to President Trump's constituencies.

Why this is important

Nationally, the proposed rule removes protections for millions of acres of wetlands and small streams. In West Virginia, we are particularly concerned with

(More on the next page)

More about Wetlands, Headwater Streams Losing Protection (Continued from p. 14)

protections for headwater streams, including intermittent and rain dependent streams. It makes a difference in the regulation of mountaintop removal mining. Some of the streams that are being filled are headwater streams that would no longer be protected under the proposed rule.

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. The proposed changes could put many of these waters 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 would not be protected under the proposed rule.

The EPA website provides a Geographic Information Systems Analysis of the Surface Drinking Water Provided by Intermittent, Ephemeral, and Headwater Streams in the U.S. The national map is interesting and informative, as are the individual state maps and narratives. (http://water.epa.gov/lawsregs/guidance/wetlands/surface_drinking_water_index.cfm)

The narrative for West Virginia describes our dependence on these small streams for drinking water: *"In West Virginia, 14,825 total miles of streams provide water for surface water intakes supplying public drinking water systems; of this, 8,387 miles, or 57%, are intermittent, ephemeral, or headwater streams. Over 1 million people in West Virginia receive drinking water from public drinking water systems that rely at least in part on intermittent, ephemeral, or headwater streams."*

Add to those numbers the many individuals who depend on surface water for their own private springs and cistern systems and the numbers are greatly increased. These are the waters that would no longer be protected if the definition of waters of the United States is revised as proposed.

Where we are in the process

Candidate, and now President, Trump has been talking about this for so long that it feels as if it should have already been done. But it hasn't. Executive Orders are not rulemaking and rulemaking takes time.

The proposed rule was published in the Federal Register on December 28, 2018. This starts a sixty day comment period. There is a public hearing scheduled for January 23, 2019, in Kansas City, Kansas.

Anyone who can't attend the public hearing can still submit comments. The EPA's preferred method for receiving comments is through the *Federal eRulemaking Portal*: <http://www.regulations.gov>. To use that system you have to know the docket number: Docket ID No. EPA-HQ-OW-2018-0149, to the. Follow the online instructions for submitting comments. All submissions received must include the Docket ID No. for this rulemaking.

To see all the documents related to this rulemaking, go to the Federal eRulemaking Portal: <http://www.regulations.gov>, Docket ID No. EPA-HQ-OW-2018-0149.

Once the EPA and Corps of Engineers have the public hearing and receive public comments the agencies will respond to the comments and publish a final rule.

Once the final rule is published there is always the possibility of litigation. Given the interests at stake and the number of people affected, it is doubtless more accurate to say the probability of litigation.

A Little More Information, Another Perspective



We all have our different perspectives and our own interests. To see what effect the proposed rule change would have on birds, go to <https://www.audubon.org/news/the-waters-united-states-wotus-rule-what-it-and-why-its-important>

Suffice it to say that the Blue Winged Teal and the Canvasback (among legions of others) are not the tiniest bit happy about this development. Had they mastered typing (not having hands and the webbed toes are problems), they would certainly be commenting.



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