



The Highlands Voice

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

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Big Run Pump Storage Project Appears to be Dead

Last month Randy Kesling updated you on the continuing saga of the pump storage project proposed by FreedomWorks, LLC for the Big Run area of Tucker County. You may recall that the Forest Service rejected FreedomWorks' application for a Special Use Permit (SUP) to conduct feasibility studies on National Forest land due to the inconsistency of the studies and the overall project with the Forest Plan. FreedomWorks contested the denial in two letters filed on the Federal Energy Regulatory Commission (FERC) project docket shortly after the Forest Service denied the Special Use Permit.

Since the publication of last month's issue of the Voice, FreedomWorks seems to have reconsidered its position. In a letter filed on the FERC docket on April 12, 2019, FreedomWorks withdrew its motion of March 19, 2019 protesting the Forest Service's denial of its Special Use Permit application. FreedomWorks cited communications with Senate Energy Committee staffers, who apparently informed FreedomWorks that the Forest Service permit denial could not be appealed. Also on April 12, 2019, FERC brought the formal process to a close by issuing an order denying FreedomWorks' application for a preliminary permit. FERC cited the Forest Service's Special Use Permit denial as the reason for its denial of the preliminary permit.

Federal Energy Regulatory Commission's denial means that the feasibility studies for the project cannot go forward. At this point, the project appears to be dead. It was clear from the beginning that this project was ill-sited and would have had unacceptable impacts on the environment and the tourism economy of Tucker County. We are pleased that the responsible federal agencies recognized the project's flaws and stopped it. While we understand the need for renewable energy storage, as well as the need for economic opportunities in the communities of the Highlands, such development should not occur at the expense of the natural qualities that make the Highlands special.

Score a rare win for the environment, and let's keep our fingers crossed that this project does not get resurrected!

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Thoughts from our President

By Larry Thomas

The mountains received some severe windy and rainy weather during March and April. Driving through the mountain's unpaved roads you can see the evidence in the form of numerous potholes, significant erosion and downed trees that have been cut back to allow vehicles to pass. It appears that the same weather patterns will continue into May.

FERC Denies FreedomWorks, LLC, (FreedomWorks) Preliminary Permit Application

As mentioned in the April *Highlands Voice*, on January 31, 2019 the Federal Energy Regulatory Commission (FERC) sent a letter to the Forest Service asking that if FreedomWorks files for the special use permit, would the Forest Service would allow access to lands within the Monongahela National Forest (MNF) to conduct licensing studies that would include land disturbing activities.

March 4, 2019 the Forest Service responded that it has determined that Freedom Works' licensing studies proposed in the SUP proposal are not consistent with the management goals, objectives, and standards identified in the Forest Plan for Management Prescriptions. Therefore, because Freedom Works' proposal to the MNF had been denied, Freedom Works will not be able to access NFS lands within the MNF to conduct licensing studies for the proposed Big Run Project.

March 17, 2019 and again on March 18, 2019, FreedomWorks filed requesting that FERC continue with the process to grant preliminary permit number, while they work through an appeal to the U.S. Forest Service for reconsideration of their decision. No response has been received from FERC to date.

On April 12 FERC denied the preliminary permit application stating. "The Forest Service has made clear through its January 3 and March 11 comments that it would be unlikely to issue a special use authorization for the project should it be licensed; and that it has denied FreedomWorks to enter Forest Service lands to conduct feasibility studies under a preliminary permit, which are necessary to the development of a license application for the proposed project within the Monongahela Forest. Although the upper reservoir and part of the lower reservoir would be located on private land, the project is partially located on and surrounded by the Monongahela Forest, and the location where FreedomWorks proposes to conduct drilling would be on Forest Service land. Thus, FreedomWorks would not be able to determine the feasibility of the proposed project without permission from the Forest Service to access the land within the Monongahela Forest. The Commission has previously determined that it would be ineffectual to issue preliminary permits for non-federal projects at federal facilities if the agencies that operate the facilities indicate opposition to the proposed projects. Similarly, there would be no purpose in issuing a preliminary permit here where the Forest Service has indicated that it is unlikely to issue the necessary authorizations for the project. Accordingly, FreedomWorks' preliminary permit application is denied."

FreedomWorks, LLC may file a request for rehearing of the FERC denial within 30 days of the date of its issuance, as provided in section 313(a) of the Federal Power Act, 16 U.S.C. § 825l.

The comments filed by the West Virginia Highlands Conservancy, Friends of Blackwater, West Virginia River Coalition, Sierra Club, and concerned citizens were not the grounds for this denial because they relate to the construction and operation of

the proposed project and are premature at the permit stage.

It will be interesting to see if FreedomWorks, LLC requests a rehearing.

ACP Pipeline Issues

The Atlantic Coast Pipeline has now faced setbacks, including decisions of the courts under lawsuits by landowners and conservationists.

Fish and Wildlife Case Is Set for Oral Argument on May 9

The lawsuit challenging the U.S. Fish and Wildlife Service's (FWS) biological opinion and incidental take statement for the Atlantic Coast Pipeline (ACP) that led to work stopping on the project is scheduled for oral argument on Thursday, May 9 before a three-judge panel of the U.S. Court of Appeals for the Fourth Circuit. The original FWS permit was voided by the Fourth Circuit in May 2018 in response to a lawsuit filed by the Southern Environmental Law Center (SELC) on behalf of Defenders of Wildlife, Sierra Club and the Virginia Wilderness Committee. A new FWS permit was issued on September 11, 2018 and is being challenged in this case.

Southern Environmental Law Center argues that the Fish and Wildlife Service's reissued permit relied on a series of irrational assumptions that mischaracterized the potential impact of the ACP route on the Rusty Patch Bumble Bee and erred in its analysis of the project's impact on three other endangered species: the Clubshell Mussel, Indiana Bat and Madison Cave Isopod.

The petitioners are requesting that the Court vacate the reissued biological opinion and incidental take permit.

New CSI Website Goes Live

West Virginia Highlands Conservancy is a member organization of the Allegheny-Blue Ridge Alliance (ABRA) whose Compliance Surveillance Initiative (CSI) among other things maintains a website as a resource for key documents, studies, regulatory actions and other pipeline issue developments.

A redesign of the website for ABRA's Compliance Surveillance Initiative (CSI) program has been activated this week. The site has a new address (<http://abra-csi.org/>) and is designed to be very user-friendly. The site, which was created by ABRA Communications Coordinator Deirdre Skogen, includes instructions on how you as a volunteer can become involved in the program, examples of non-compliance issues and numerous technical resources, including the unique CSI mapping system that links to surveillance photographs taken by the ABRA/CSI Pipeline Air Force. You are invited to use the new website as a resource. If you have questions, please direct them to <mailto:csi@abralliance.org>.

May promises to be another busy month for the Conservancy as well as other environmental organizations and we will keep you informed, as events occur, through the *Highlands Voice*.

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.

Stalking the Stream Critters, aka “Benthic Macroinvertebrates”

By Cindy Ellis

Recently I joined volunteers who wanted to know more about living beings in West Virginia’s waterways. Fifteen of us gathered on the banks of Davis Creek in Kanawha State Forest on a mild spring day to learn about flipping rocks and finding what lies beneath. We plunged into our lessons and were led to define a “macro” water creature as one not needing a microscope. Also, a 7-year-old among us knew and told what an “invertebrate” was, so, on April 6, our group was ready for a WV DEP/WV Rivers stream workshop.

After an introduction by Autumn Crowe of the West Virginia Rivers Coalition, Department of Environmental Protection’s Glenn Nelson and Tim Craddock led us through the basics. We were a diverse group, in age and purpose, but quite a number of us are already participating in stream surveys through a citizen science project of WV Rivers Coalition and Trout Unlimited. West Virginia Highlands Conservancy itself has contributed to training sessions and equipment for gauging the physical health of a streams, especially those with a potential to be impacted by the increase in construction of mega-pipelines here. Stream invertebrates can be one indicator of the well-being of our waterways.

We were briefed on the organisms most likely to be found and were eager to explore. So, armed with kick-nets, buckets, trays, tweezers, strainers and brushes, we teamed up to apply our new



information. “I found one!” was immediately and repeatedly heard from Henry the youngest student of the day. And the rest of us found some too.

For many, this was a first look at caddisfly nests, and underwater forms of crane flies, dragonflies, stoneflies and mayflies. Seeing the little gills flutter was entrancing. We found beetles and a hellgrammite too...and one non-insect; a crawdad.

Nelson and Craddock were patient and enthusiastic teachers. They educate about water “bugs” and much more as part of the DEP’s “Save Our Streams” program.

We left Davis Creek at the end of the session happy with our new information and eager to put it into practice. One can hope that the growth of programs such as this are evidence of a new interest in the health of the streams of the Mountain State...and of a willingness by more and more citizens to monitor our waters.

[Please note this link and this caution: “Entities wishing to collect benthic macroinvertebrates from West Virginia streams for basic environmental research studies or permitting projects will need to obtain a scientific collection permit from the West Virginia Department of Natural Resources” https://dep.wv.gov/WVE/watershed/bio_fish/Pages/Bio_Fish.aspx]

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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.

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.

Opposing Narrowing Clean Water Protections

By John McFerrin

The West Virginia Highlands Conservancy, along with the West Virginia Rivers Coalition and several other groups, has commented on the latest proposal to restrict the coverage of the federal Clean Water Act. If the proposed restrictions become final, it will result in a loss of protection for most headwater streams and many wetlands in West Virginia, as well as in the rest of the country.

Background

The controversy is about a definition in the Clean Water Act. The Act prohibits discharges (including filling) to the “waters of the United States.” Everybody agrees that this includes major rivers and streams. The controversy is over how far beyond those rivers and streams protection extends. Most at risk are ephemeral streams (those that do not run year round); in West Virginia that means headwater streams, including those affected by mountaintop removal. Also at risk are wetlands that are not directly adjacent to a substantial stream.

This fight has been going on with greater or lesser intensity since the Act was passed in 1972. It has included various versions of a definition as well as at least two reviews by the United States Supreme Court.

Many thought it was settled in 2015 when the Obama administration looked at the Supreme Court decisions, 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.”

While many might have thought it was settled, we had an election and the new administration had a different idea. It proposed a new definition that narrows the protections of the Clean Water Act. Most notably, it would eliminate protection for most headwater streams and for wetlands that are not adjacent to or directly connected to a navigable stream.

For a longer version of the history, see the January, 2019, issue of *The Highlands Voice*.

What the comments say

Much of the comments focus on the extent of the problem in West Virginia that would be caused by the proposal. They refer to Environmental Protection Agency data that 60 per cent of streams in West Virginia have no streams that flow into them and 37 per cent of streams do not flow year round. It is likely that these estimates understate the number of such streams in West Virginia that would lose protection under the proposed changes. The estimates only include streams which have been mapped and do not include multiple smaller drainages which would also be left unprotected under the proposed rule.

Wetlands would also be left unprotected. Under the most recent rule (the 2015 version), a wetland only had to have a “nexus” to a perennial or intermittent stream. The “nexus” language comes from a United States Supreme Court case in which the opinion uses that term. (Note: You know it had to be from the Supreme Court. An ordinary person would say “connection” while the Supreme Court thinks “nexus” sounds more judgmental.) That “nexus” requirement was widely assumed both in previous versions of the regulations and in the scientific literature to include a groundwater or other connection, not just surface flow.

The proposed regulations would not protect wetlands unless they are adjacent to a stream or connected by a direct surface flow to a perennial or intermittent stream. Even if the wetlands are

part of the same surface and groundwater system as a perennial or intermittent stream, they would not be protected. The scientific data which the EPA had assembled and reviewed before enacting the 2015 version of the waters of the United States definition (the one that would be replaced) recognizes that waters can be connected in five different ways: hydrologic, chemical, physical, biological, ecological. The proposed definition does not recognize this science, limiting connectivity to direct, physical water flow.

The result of the definition change would be dramatic. The comments estimate that anywhere from 30 to 60 per cent of the wetlands in West Virginia would lose protection.

The comments also make the connection between the proposed changes and human health. When headwater streams and wetlands lose protections, access to clean drinking water is threatened. The comments cite Environmental Protection Agency estimates that over 1 million West Virginians depend on drinking water that comes from areas containing streams that could lose Clean Water Act protection if the proposed amendment becomes final. In addition, wetlands provide a critical ecosystem function of retaining and filtering water. Removing protections for approximately half of the state’s wetlands leaves areas vulnerable to increased flooding and reduces the environment’s natural ability to improve water quality.

What’s next?

EPA has received thousands of comments on the proposed changes. It will now respond to those comments; responses are usually made by categories of comments, not individually. Once EPA responds to comments, it will publish a final rule. With as many people as there are who are interested in this rule, litigation will almost certainly follow.

How Stands the Atlantic Coast Pipeline?

If it seems as if there has not been much going on with the Atlantic Coast Pipeline (ACP) lately, it is because there hasn’t. Construction activities on the Atlantic Coast Pipeline are currently suspended because of the loss of a key permit from the U.S. Fish and Wildlife Service related to the agency’s assessment of the impact of the project on certain endangered species. A case challenging the Fish and Wildlife Service’s assessment is to be argued May 9 before the U.S. Court of Appeals for the Fourth Circuit. An opinion on the case is not likely until at least August, meaning that construction will continue to be stalled at least until the end of the summer.

Since the cessation of ACP construction, which at the time had been limited to the western 45+ miles of the route in Lewis, Upshur and Randolph Counties, WV, there has been some maintenance work.

West Virginia Department of Environmental Protection Makes Pipeline Permitting Easier

By John McFerrin

The West Virginia Department of Environmental Protection (DEP) has changed the conditions that are placed on permits for stream and wetland crossings for natural gas pipelines.

Background

Under the federal and state Clean Water Acts, anybody who wants to cross a stream or a wetland must have a permit. It has a choice of either getting an individual permit for each crossing or proceed under what is called a General Permit, often referred to as a Nationwide Permit.

Nationwide Permits are issued for large classes of activities. They are appropriate for projects with minimal individual and cumulative environmental impacts. It is a one size fits all approach for lots of nearly identical activities that have small impacts. Individual permits are site specific; developers would submit an individual plan for each crossing and regulators would look at each one individually.

There is a Nationwide Permit, known as NWP 12, that covers utilities. Anywhere in the country that someone wants to do “[a]ctivities required for the construction, maintenance, repair, and removal of utility lines” can apply to do it under NWP 12. “Utility lines” is defined in such a way that it includes natural gas pipelines.

If the project meets the requirements of the Nationwide Permit (minimal individual and cumulative environmental impacts) then the pipeline builder, etc. does not have to get approval for individual crossings. NWP 12 covers the whole project.

These Nationwide Permits are issued, or renewed, every five years. When they are, states can, and often do, attach conditions to these permits.

What happened

In 2017, when NWP 12 (the one that covers pipelines) was issued, West Virginia imposed some conditions. NWP 12 covers the whole country. The conditions that West Virginia and other states imposed are supposed to take into account local conditions.

In 2018, West Virginia decided that it did not like those conditions. Other than that the conditions make it inconvenient for pipeline companies, it has not offered much rationale for why it wants to change the conditions. Now it has made the changes. This was over the objections of several groups, including the West Virginia Highlands Conservancy.

Why this is a big deal

Both the Mountain Valley Pipeline and the Atlantic Coast Pipeline want to be able to cross streams and wetlands under NWP 12. It is easier to get approval for the whole pipeline (or at least the part in West Virginia; parts in Virginia and North Carolina would have to be approved separately) than have to make plans for each crossing and get them approved individually.

One barrier to either pipeline being able to use NWP 12 is the conditions that West Virginia put on it when that Nationwide Permit was renewed in 2017. One of the conditions was that any construction on any crossing had to be completed within 72 hours. Both the ACP and the MVP plan to cross some substantial rivers. The construction they would like to use would take more than 72 hours; this means they cannot qualify to proceed under NWP 12. Now that the conditions which West Virginia previously put on the use of NWP in West Virginia have been removed it will be easier to proceed under NWP12.

On the ground, this means that some rivers in West Virginia would be dried up during construction. To install the pipelines, MVP and ACP want to dry up (or “dewater” as they say) the rivers for weeks at a time. While the rivers are dry, they can dig a trench and lay the pipe across the dry riverbed.

Water quality standards are designed to maintain uses of the streams, including benthic communities. Allowing pipeline construction to dewater parts of a river for weeks at a time would not do that.



For the past five years, since announcing plans to build the Atlantic Coast Pipeline (ACP), Dominion Energy has touted that its construction of the project would employ “best in class” techniques to prevent sediment runoff from endangering streams and rivers. This situation, along with many others, was found by members of ABRA’s Compliance Surveillance Initiative team.

Adventures in Butterflies

By Steve Mace

This past Sunday while I was botanizing in Lawrence County, Kentucky, I spotted my first of the season Falcate Orangetip, my favorite butterfly.

The life history of this species is as interesting as it is beautiful. Thirty-eight of the last 40 years of my life was spent in Mason County, West Virginia so I'll speak of my experiences there.

I'd usually start seeing them there the last week of March. By the 10th of May, they were gone. Usually I'd see them along the moister areas along streams and ponds. The reason being, and I'm only guessing here, is that's mainly where the host plants grow that their larvae eat. Females lay a single egg on the flowers of species from the mustard family, the cutleaf-toothwort seemingly to be their favorite. Each female lays more eggs, but just one on each plant. The larva mainly eat flower buds, flowers, and developing seeds. And, if by chance another female lays an egg on an already occupied plant, larger larva have been known to eat the smaller. I don't know if they do this as a food source or to reduce competition for the food supply.

The cutleaf-toothwort is a spring ephemeral, meaning quickly fading. This species does its thing early, before the trees leaf out so as to get as much sunshine they can. By mid-May here, the tree leaves have formed their canopy and very little sunlight reaches the forest floor. The cutleaf-toothwort is now in its declining days, holding on for another month for the seeds to mature.

So I suppose this is why this butterfly species lifespan is so short. With the larvae host plants growing season limited, there's no need for Falcate Orangetips to continue into summer. There would be no food source for the larvae. Anyway, the larvae pupate by mid-June and develop until next spring at which time the species again flutter about in our leafless forests. Interesting enough, some don't emerge until the 2nd or 3rd spring. I have no idea why.

Occasionally I'll see males on dry ridge tops. I can only surmise this is done in search of females. I saw two males this past Sunday on a ridge top in Lawrence County, Kentucky and a female in Ritter Park in Huntington, West Virginia.



Male and female Falcate Orangetips on a Japanese Honeysuckle; The picture was taken on April 16, 2016 in McClintic Wildlife Management Area in Mason County, West Virginia. They are hard to photograph as they hardly ever land. Only the males have the orange tips.

Still in Need of Something to Read?

The Central Appalachian Red Spruce Initiative. (West Virginia Highlands Conservancy is a partner in CASRI) was an important part of a feature article in the Energy and Environment News. The entire story is way too long to reprint here. To see the whole thing, go to <https://www.eenews.net/stories/1060140777>

The story is a good read not just because it talks about people and projects we know. It is good because it features the specific (restoration on the Mower Tract, something that was the subject of a *Voice* story in June, 2017). Moving beyond a specific project, it has useful material on the history of the region and why Red Spruce now needs to be restored. The article also discusses the role of air pollution in the decline of Red Spruce as well as the connection of the passage of the Clean Air Act to the ability of Red Spruce to thrive.

The article also puts Red Spruce restoration in the context of climate change, including the role that trees play in carbon sequestration. Included are references to some of the latest research on the topic.

Last but not least, the story features comments from our own Dave Saville, one of the co-founders of the Central Appalachian Red Spruce Initiative.

Two thumbs up, way up.

Join Now !!!

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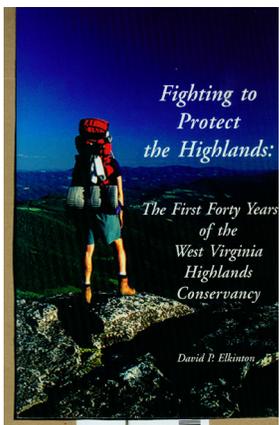
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GET A GREAT HISTORY BOOK

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 Dave Saville at WVHC50@gmail.com.

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.

Questions Raised about Proposed Mine Safety Testing Facility

National Institute for Occupational Safety and Health (NIOSH) (a part of the Centers for Disease Control and Prevention (CDC)) wants to build a facility that it could use for studies and research on mine explosions, mine seals, mine rescue, ventilation, diesel exhaust, new health and safety technologies, ground control, and fire suppression. It would like to build it on 461 acres in Randolph and Pocahontas Counties near Mace, WV. Much of the facility would be underground. Including a tunnel 500 feet below the surface where testing would be carried out.

It would replace a facility 60 miles south of Pittsburgh. The National Institute for Occupational Safety and Health (NIOSH) considered sites in two other states and determined that the one near Mace would be most suitable to its needs.

NIOSH has lost its lease in Pennsylvania so it can't stay there.

As part of its consideration, the National Institute for Occupational Safety and Health (NIOSH) has prepared a Draft Environmental Impact Statement. In an effort led by the West Virginia Rivers Coalition, several groups, including the West Virginia Highlands Conservancy, have reviewed the Draft. While not opposing the facility, the groups have suggested some things that the agency should consider before going ahead with the facility.

Most of the questions raised about the project centered on things that were omitted or things that should have been considered but were not. For example, the Draft Environmental Impact Statement

(DEIS) says that there are no caves on site. Yet the West Virginia Department of Natural Resources and the West Virginia Speleological Survey submitted comments which said that there were caves on the property. The groups suggest that this is a deficiency that must be corrected by preparing a new DEIS which discusses the caves and how the agency will address any problems that may arise because of them.

The same thing is true of sinkholes. The proposed site is in karst terrain which, by definition, has sinkholes. The Draft Environmental Impact Statement (DEIS) has not identified sinkholes that may exist on the property.

The existence of caves and sinkholes raise concerns about threats to groundwater that the Draft Environmental Impact Statement does not address. Most of the residents of the area get their water from wells and springs. The caves and sinkholes present pathways for any spills or anything that happens on the site to reach water supplies as well as other ground or surface water.

There are also questions about erosion prevention measures. The Draft Environmental Impact Statement (DEIS) assumes that standard practices for erosion prevention in road construction would be sufficient. The comments say that, with the type of soils that are present, standard practices would not be enough and that more is needed.

Erodibility of the soils is especially important in this location because of the presence of a trout stream. The Tygart

River Valley is a designated trout stream and has stricter water quality standards. Construction has to be taken with care to avoid damage to the trout fishery.

The entire point of doing an Environmental Impact Statement is to avoid doing something that is environmentally harmful out of ignorance. It assumes that if we have adequately identified the potential threats, we will take proper steps to avoid them.

Right now, the groups do not say that there are environmental harms that will definitely occur. The thrust of the comments is that there are several areas where there are potential threats and that, right now, we are ignorant of the extent of those threats. Before making a decision, we should do the following information gathering:

- Survey the property for caves, sinkholes, springs, seeps, wetlands, and springs. At present only 10% of the property has been surveyed.
- Consider the project's potential to introduce invasive species to the site and consider what can be done to prevent that.
- Look at the dangers to the trout habitat. The Tygart Valley River is a significant part of the range of brook trout. The impact of any facility upon trout habitat would have to be considered and plans made to mitigate it.
- Consider what impact the facility would have on recreation and tourism

Big Fun on the Horizon!

The West Virginia Highlands Conservancy Fall Review will be Oct. 18-19-20, Friday, Saturday and Sunday. Put it on your calendar now, in big letters, and plan to be there. We have a committee that is working on planning a fun time for everybody. It will also be the Annual Meeting of the West Virginia Highlands Conservancy, time to elect officers and Board members. Details to be announced.

Walking One Day in Kanawha County

In early spring, preceding foliar expansion on deciduous trees, the forest floor is a beautiful and abundant collection of wildflower species. Some of the common flowers include trillium, blood root, wild ginger, jack-in-the-pulpit among others. However, less common and more elusive plants were observed while walking in early April.



Eastern Leatherwood (*Dirca palustris*) is a small deciduous understory shrub growing in rich woods, more often along streambanks and rocky bluffs. The yellow bell-shaped flowers appear in small clusters before the leaves emerge. After fertilization, small green fruits (drupes) appear, eventually ripening to red. Leaves are oval with toothless margins and are borne alternately on twigs. Leatherwood is not common and may be easily confused with the more common spice bush (*Lindera benzoin*). A more appropriate name for this shrub would be “Leatherbark”. The bark is tough, pliable and strong. Native Americans used the twigs and bark for making bow strings, baskets, fishing line and rope.

Pennywort (*Obolaria virginica*), a small herbaceous perennial is found in leaf litter, often camouflaged. The small purple flowers are hidden and surrounded by thick obovate green bracts. The plant is thought to be partially mycoheterotrophic, meaning it gets some of its nutrients from leaf decomposing fungi.



Miterwort (*Mitella diphylla*) is a small perennial herb with miter-like flowers along a 12- inch spike-like raceme. A single pair of opposite leaves (diphylla) are located below the flower cluster along the spike. Heart shaped leaves, which are densely covered in short hairs, arise from the base of the plant. Miterwort is commonly found on or near rocks in moist areas.

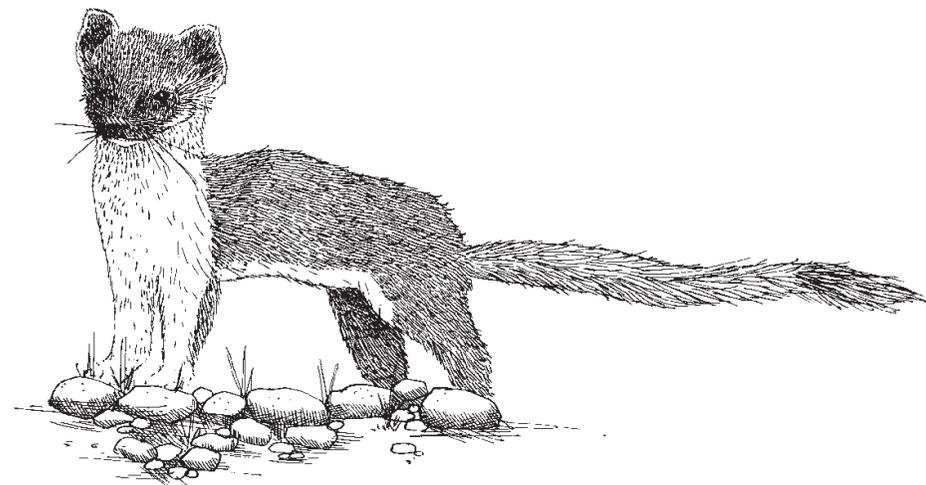
The Broad Form of the Company's Deeds

(Grandad all you bought was the air)

.,,and excepting and reserving all the coal
and other minerals
and other substances
on, in, and underlying said land
together with the right
of removing and taking away
the coal and other minerals
and other substances
from adjoining and adjacent land
through any openings
and the right to occupy
as may be necessary or convenient for mining purposes
without reservation or hinderance
and with proper rights to ventilation
and draining the mines
and all rights
of ingress, regress, or way
and the privilege of constructing
operating and maintaining railroads
and other roads
in, on, under, across, through and over the land
without being in any way liable
for any injury or damage which may be done to the land
or water therein upon
and generally free, clear and discharged
of and from all servitude to the land

whatsoever

Note: This is a found poem. Even if it sounds as if it might be a parody of a rapacious and overbearing mining company, it is the actual language from a severance deed, selling the surface of the land and keeping the coal and everything that might go with it. The poem was found and put into this form by poet Bob Henry Baber.



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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.

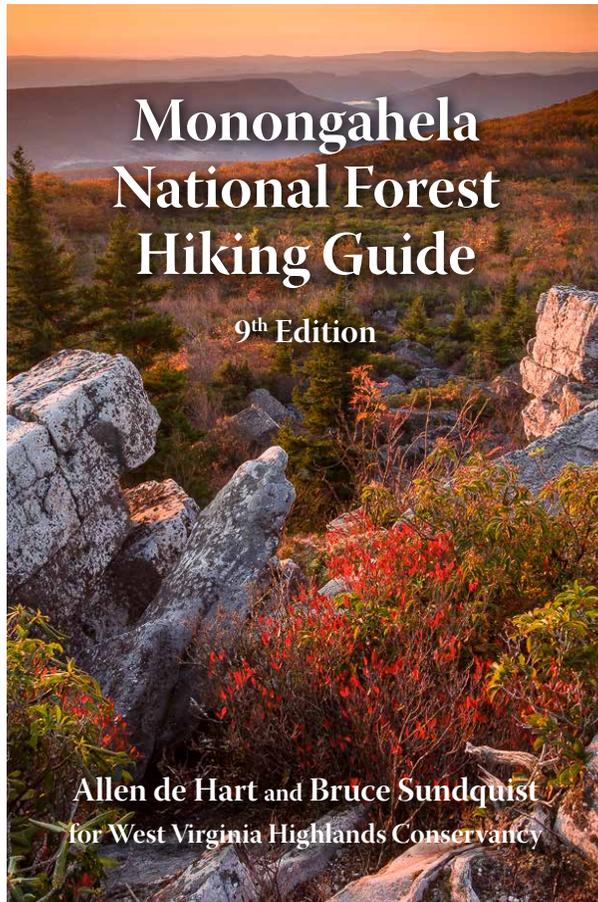
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To get free *I ♥ Mountains* bumper sticker(s), send a SASE to P. O. Box 306, Charleston, WV 25321. Slip a dollar donation (or more) in with the SASE and get 2 bumper stickers. Businesses or organizations wishing to provide bumper stickers to their 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 us know which (or both) you want.

Pump Storage: a Case Study

By Dave Cooper

Recent articles in *The Highlands Voice* about the proposed Big Run Pump Storage project in Tucker County written by Kent Karriker and Randy Kesling have been both interesting and informative.

Here is a little more background and history about pump storage for those wanting more information.

In 2005, in the midst of the fight against the huge coal slurry impoundment above the Marsh Fork Elementary School near Whitesville, we learned of a major dam failure at a facility called Taum Sauk. This was important news to those fighting the Shumate's Branch impoundment and dam, because regulators were reassuring local area residents that dam failures could not occur with all of the modern technology being used to monitor the dams.

Taum Sauk, in the Ozark Mountains in southeast Missouri, is a pump storage facility originally built between 1960 and 1962. It went into operation in 1963. Built to hold about 1.5 billion gallons of water, it was – by far – the largest pump storage project in America at the time it was built. It was constructed on top of Proffit Mountain, elevation about 1,700 feet. Water flows through underground tunnels from the upper reservoir into the lower reservoir during times of high electric demand. Taum Sauk has 760 feet of head (the difference in height between the upper and lower reservoirs) and the facility is capable of generating a little more than 400 MW of power. The upper reservoir is refilled during periods of lower electric demand, i.e. at night. It is operated by Ameren.

The original upper reservoir was contained by a rock-filled earthen embankment. The upper reservoir was routinely filled within a few feet of the top of the rock-filled wall, but lacked a spillway to release excess water in the event of overfilling. In September of 2005, Hurricane Rita caused some damage to the controls system which regulated the level of water in the upper reservoir, and improper measures were taken to correct the problem.

At 5 am on December 14, 2005, water overtopped the earthen wall of the upper impoundment and the wall failed, leading to a sudden and catastrophic release of water. About one billion gallons of water flowed down the mountain - but not through the tunnels or penstocks. The home of a

superintendent at a nearby state park was washed away at the bottom of the mountain. The inhabitants survived, with injuries.

A 2007 Associated Press article stated “probes were designed to stop the automatic filling if water got too close to the top of the reservoir walls and threatened to overflow. The probes were set so high that water never touched them the morning the reservoir overflowed and collapsed.”

The Missouri Public Service Commission's investigation of the incident concluded:

“...the loss of the Taum Sauk plant was due to imprudence on the part of UE (Ameren's AmerenUE Subsidiary). UE was well-aware of the catastrophic results likely to occur if the UR (Upper Reservoir) was overtopped by over-pumping. UE knew, or should have known, that storing water against the parapet wall of a rockfill dam was “unprecedented.” UE knew, or should have known, that operating with a freeboard of only one or two feet left no margin for error and required particularly accurate control of the UR water level. Given that circumstance, UE's decision to continue operating Taum Sauk after the discovery of the failure of the gauge piping anchoring system and the consequent unreliability of the piezometers upon which the UR control system was based is frankly beyond imprudent – it is reckless. UE also knew or should have known that the upper Warrick probes had been reset above the lowest point at the top of the UR.»

Ameren paid out about \$200 million in damages. There is a much more detailed explanation of the exact cause of the failure on the Lessons Learned

webpage of [damfailures.org](https://damfailures.org/case-study/taum-sauk-dam-missouri-2005/): <https://damfailures.org/case-study/taum-sauk-dam-missouri-2005/>

The Taum Sauk reservoir was rebuilt in 2010 with concrete walls 100 feet high, and photographs of the project give an idea of the scale of this huge project. It is breathtaking.

One would think that after the Buffalo Creek tragedy and the Martin County, Kentucky coal slurry disaster in October, 2000 that regulators would be extremely careful monitoring dams, but the Taum Sauk failure and the huge coal ash spill at the TVA Kingston plant in Tennessee in December 2008 are enough to make any reasonable person wonder whether the human factors can ever be completely eliminated. There is always pressure from upper management in corporations to delay maintenance and major repairs – they are expensive. TVA knew there was seepage into the earthen wall that surrounded their Kingston coal ash – yet they continued to operate the impoundment without fixing the problem immediately.

Another piece of information on pump storage which may be of interest: In Michigan's Upper Peninsula, researchers are investigating the feasibility of using old abandoned underground mines for pump storage: water would be pumped up to the surface at night, and released back into underground iron mines during periods of high electric demand.



Taum Sauk Pump Storage project under construction in 2009 following the 2005 dam failure. Photo: Wikimedia Commons

Interior Department Must Do Environmental Assessment Before Leasing Coal on Public Lands

A United States District Court in Montana has ruled that the United States Department of the Interior acted illegally when it tried to lift a memorandum on leasing coal on public lands.

Background

One of the biggest subsidies that the United States gives the coal industry is that it leases coal on public lands at below market rates. The rates that it charges for mining on public lands have not been adjusted since the 1980s. The system is full of loopholes and flaws in the way the leasing program is handled that result in lower royalties. The result is that it is cheaper to mine on public land than it is on private land.

As a practical matter, this subsidy is not available in West Virginia. We don't have much, if any, mining on public land. The West Virginia coal industry does not benefit from getting to mine coal on public land at below market rates.

Out west, quite the opposite is true. Most of the production is from leases on publicly owned land. They benefit from the low price that the United States charges for minerals mined on that land.

Before Mr. Obama left office, his administration had started to fix this. It put a moratorium on new leases. It undertook a study of the whole program of coal leasing on public lands. The study was supposed to look at the whole question of whether we should be mining coal at all on public lands. If fighting climate change is a national goal, then maybe the best thing to do with the coal that the government owns is just leave it in the ground.

If we are going to mine the coal, then the study was supposed to figure out what would be a fair price.

When Mr. Trump became President, things changed. The Department of the Interior cancelled the moratorium on new leases as well as the study of the policy on leasing in the future. It announced a policy of resuming the leasing of coal on public lands.

Now the District Court has put a stop to these changes. It ruled that the Department of the Interior did not perform a sufficient environmental analysis before this change in policy. The analysis would be required by the National Environment Policy Act (NEPA).

The Court did not rule that a full Environmental Impact Statement would be required. It may be that a less rigorous Environmental Assessment is sufficient. It gave the Department of the Interior thirty days to present arguments on what type of environmental assessment it would perform.

Strip Mines and Health

By John McFerrin

There have been some developments of interest to those who are concerned that large strip mines might be making people sick.

There have been starts and stops on this question both scientifically and legislatively. In 2016 the Office of Surface Mining (a part of the Department of the Interior) announced that it would fund a serious, scientific study of the question. Under the agreement between Office of Surface Mining and the National Academy of Science, the Academy was going to independently choose a committee of 12 subject matter experts to examine a growing amount of academic research that relates to possible correlations between increased health risks as a result of living near surface coal mine operations.

By 2017 the study was going great guns, having public hearings, gathering information, etc.

Then we had an election. Waving its dedication to "responsibly using taxpayer dollars" like a mighty sword, the new administration put the study on hold. It remained on hold for so long that the National Academy of Science gave up and cancelled the study.

Then we had another election. Some members of the Committee on Natural Resources of the United States House of Representatives had been curious about what had happened to the study and why it was cancelled. After the November, 2018, election those members were in positions where they had power to demand answers. They requested documents from the Department of the Interior on what happened.

The efforts to find out what happened to the study are parallel to the legislative efforts. Since 2013, Congress has had before it the Appalachian Communities Health Emergency Act or the ACHE Act. The ACHE Act would require the National Institute of Environmental Health Sciences to conduct a study of the health effects of strip mining. It would also place a moratorium on new mining permits "Until and unless the Secretary of Health and Human Services publishes a determination ... concluding that mountaintop removal coal mining does not present any health risk to individuals in the surrounding communities.

In April, 2019, the House Subcommittee on Energy and Mineral Resources held a hearing on the ACHE Act. It included testimony from Dr. Michael McCawley, a clinical associate professor at the West Virginia University School of Public Health. Dr. McCawley said, "My findings clearly show that there is causal evidence to believe the air pollution levels in this region are sufficient to account for an increased prevalence of disease.

"There is also ample evidence in the scientific literature, that the relationship is not simply correlative but causal," McCawley said. "A true and unbiased review of the published scientific literature would, I believe, support that conclusion."

The ACHE Act would have a long way to go to become law. Even if it does pass in the House of Representatives, it would still have to pass the Senate. The bad news (or good news, depending upon whether your health or profitability depends upon the continued existence of strip mining) is that it would be unlikely to pass the Senate with its present membership and leadership.

Board Highlights

The spring Board meeting of the West Virginia Highlands Conservancy was more informational than decisional. We had the usual presentations on the status of the organization: financial (not broke; not flush either); membership (stable); webmaster (good shape).

In the President's report, Larry talked about some of the things he has coming up. On May 4 he will participate in a tour of the Fernow Experimental Forest. He is interested in seeing the spot where they tried land application of drilling waste water several years ago and killed most of the vegetation. He would like to see how the area has recovered. (Note: it was a mess; see the story and pictures in the August, 2011, edition of *The Highlands Voice*.)

Frank Young reported on matters legislative. On the substance of legislation he referred to the April issue of *The Highlands Voice*. He reported that the West Virginia Environmental Council will soon be soliciting ideas about legislative priorities for next session. It will be hiring lobbyists in the fall and will be requesting money to help fund that effort.

Cindy Ellis reported that she had been active with Citizens for Clean Election. She did not talk extensively about its work but did distribute a handout describing it. Frank Young and Patty Gundrum are stepping in to meet with CCE and try to keep us informed with its efforts.

On matters of public lands, Kent Karriker talked about the proposed Big Run Pump Storage Hydroproject. To see what he said, see the story on the first page of this issue.

The Public Lands Committee is also continuing to monitor projects in the National Forest. We commented on three projects last fall, including the Spruce Mountain Grouse Management Area. It appears that the Forest Service took our comments to heart and made some modifications in the project. There are still some difficulties with some things, including how the plan addresses Flying Squirrel habitat.

There has been no apparent movement on the other two projects on which we filed official comments. However, Kent Karriker recently attended a pre-project stakeholders meeting for the upcoming Upper Greenbrier Southeast project. The project will be mostly a timber management project, but the Forest Service is also interested in pursuing spruce restoration where it is feasible. No specific proposals have been made yet.

Marilyn Shoenfeld reported on planning for a Fall Review. All the state park lodges were full so they reserved Jerico Bed and Breakfast (with cabins) near Marlinton. They are arranging meeting rooms and intend to plan a program that could attract more people than just Board members and their families.

Rick Webb reported that the Dominion Pipeline Monitoring Coalition has mostly gone dormant with all the action shifting to the Compliance Surveillance Initiative. It has a new and improved web site (abra-csi.org). There one can see a Power Point. CSI is doing training, working on a report on slope failures, and have filed lots of enforcement complaints. There are

field coordinators for Virginia and for West Virginia.

The West Virginia Highlands Conservancy has committed \$75,000 to the Compliance Surveillance Initiative; we have not paid the entire amount yet. Rick reported on how that money was being spent, whether we had spent our money prudently, etc.

We talked in general about sign on letters. Other groups regularly solicit our support for an issue of concern and ask us to endorse a position. In the past, Larry has reviewed the letters and decided if they are consistent with positions we have taken. If they are, then he signs on. One problem he has is that the letters often come to him with very little time to respond before a deadline. He is not entirely happy with this system. We are going to try a system in which Larry responds to requests that we cannot sign on without some time to consider the issue. He will then send the requests to relevant committee chairs for review before deciding.

We also addressed the makeup of the Board. Jeff Witten is now the representative of the Shavers Fork Coalition, replacing Jim VanGundy. Since this makes Jim VanGundy a free agent, we immediately snapped him up as an at large Board member. George Beetham's health has prevented him from coming to Board meetings and he has indicated his interest in resigning. Now we are in a position to accept George's resignation and Larry will appoint Jim to fill George's unexpired term.

If Everybody Did

By John McFerrin

One of the books of my youth was *If Everybody Did*. It was a series pictures of behaviors followed by what would happen if everyone took the same actions. My personal favorite was, "You throw your oatmeal on the floor. Think what would happen if everybody did." Turn the page and there was the same kitchen, waist deep in oatmeal.

Which brings us, sort of, to the New River Gorge National River's Sandstone Visitor Center, the site of the April, 2019, West Virginia Highlands Conservancy Board meeting.

The Visitors Center was designed with all manner of features to conserve energy and generally minimize its impact upon the earth. It is heated and cooled by circulating water underground until it reaches the earth's natural temperature and then returning it to the Visitors Center for heating and cooling. Its roof is a light color to reflect heat, making it easier to cool the building in the summer. It is landscaped with native plants that require less water, fertilizer, and pesticides than non-natives. What water they do need comes from runoff from the roof and storm water.

There are lots more features. The Visitors Center brochure lists twelve in all. There are little signs around the property pointing out the features.

As Humphrey Bogart said, sort of, in *Casablanca*, "the efforts of one little Visitors Center don't amount to a hill of beans in this crazy world." But think what would happen if everybody did.

President Trump Signs Executive Order to Speed up Pipeline Construction

By John McFerrin

On April 10, 2019, President Trump signed the Executive Order on Promoting Energy Infrastructure and Economic Growth. Its goal is to speed up the construction of oil and gas pipelines.

The first section of the Order sets out its purpose. It is nothing that anyone who has listened to President Trump and his administration for the past two years would find surprising. It is a celebration of the oil and gas industry, its importance in the economy, and the importance of having a “robust” oil and gas industry. Although there is no evidence that it was copied from the promotional materials of the oil and gas industry, its tone is such that it could have been.

The first section identifies the problem as inefficiencies and delays in the approval of “infrastructure” (aka pipelines).

The first section does end with this sentence: “By promoting the development of new energy infrastructure, the United States will make energy more affordable, while safeguarding the environment and advancing our Nation’s economic and geopolitical advantages.” Coming at the end of this paean to the oil and gas industry, this first reference to “safeguarding the environment” is a surprise and sounds like an afterthought.

The second section sets forth the policy of the United States: get those pipeline approved. It is couched in language such as “efficient permitting processes and procedures” and “timely action on infrastructure projects” but the sense of it is clear: move those applications, get those pipelines approved.

The third section of the Order gets down to specifics on what the President thinks the problem is: those pesky states are too closely reviewing pipeline projects.

Under the Clean Water Act, it is up to the Army Corps of Engineers to approve the crossing or filling of streams or wetlands. Although it is mainly the role of the Corps of Engineers, states have a role to play too.

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.

West Virginia is apparently already with President Trump’s program so far as 401 certification is concerned. It is apparently willing to modify its own rules to facilitate approval of a pipeline. See the story on page 5.

Other states, however, have not been so cooperative. New York and Washington, for example, have used the review of 401 Certifications to block pipeline projects. The National Governors Association responded to the Order with a statement expressing concern at the attempt to limit the role of states in preserving their own water quality.

After identifying the problem and the result he seeks, President Trump directs specific actions. The procedures for doing 401 Certifications are all set forth in regulations and in guidance documents that direct states how to go about reviewing stream and wetlands crossings and making decisions on 401 Certifications. President Trump cannot just make an Order and “poof” all those regulations and guidance documents disappear.

Because of this, President Trump ordered the Environmental Protection Agency to review, and revise if necessary, its guidance documents and make them consistent with the policy goals of the Order (get the pipelines approved). It has to do this within 60 days. Within 120 days it has to publish revised rules to make them consistent with the policy goals of the Order. The rules, like all rules, have to go through the formal rulemaking process. The Order directs EPA to have that process completed and the rules in place within 13 months.

ARE YOU READY TO PLANT SOME TREES?

Volunteers prepare to head out to plant some spruce trees, a part of the Central Appalachian Red Spruce Initiative. (West Virginia Highlands Conservancy is a partner in CASRI) Photos by Mark Muse.



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
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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