

West Virginia Highlands Conservancy
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The Highlands Voice

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

Volume 52 No. 8 August, 2019

The Compliance Surveillance Initiative: Birddogging Pipeline Construction

The West Virginia Highlands Conservancy is a supporter of the Compliance Surveillance Initiative. Anything with “surveillance” in its name starts off with a touch of the ominous, as if the CIA might somehow be involved. While the Compliance Surveillance Initiative is not, in actual fact, anything nearly so dramatic, it is making a difference in terms of how well the law is followed and water is protected during pipeline construction.

One measure of the difference it is making appears in a report prepared by Friends of the Earth and Oil Change International in March, 2019. That report-- *Atlantic Coast Pipeline – Risk Upon Risk*—identifies the Pipeline CSI as one of three challenges that present serious obstacles for ACP completion. To see the whole report, go to: <http://priceofoil.org/2019/03/25/acp-risk-upon-risk/>

The Compliance Surveillance Initiative (CSI) was developed largely under the leadership of Rick Webb as a project of the Allegheny Blue Ridge Alliance (ABRA). It provides extensive mapping tools, aerial surveys, and other support for the citizen monitors it trains. eAllegheny Blue Ridge AlliancA is a coalition of groups, including the West Virginia Highlands Conservancy and West Virginia Rivers Coalition, concerned about the Atlantic Coast Pipeline.

For more details about the Compliance Surveillance Initiative, go to the ABRA-CSI website (abra-cis.org). There you will find more information about the program, including guidance documents, the mapping system, and citizen-reporting tools and methods.

The CSI program was developed to operate in both Virginia and West Virginia. From the beginning, most of the aerial surveillance activity has been in West Virginia, since that is where construction activity has occurred.

Compliance Surveillance Initiative’ss efforts in West Virginia intensified in the fall of 2018 Through a cooperative arrangement amongst WV Highlands Conservancy, West Virginia Rivers Coalition, and Allegheny Blue Ridge Alliance,dCSI established a West Virginia Field Coordinator housed with West Virginia Rivers Coalition..The WV Field Coordinator spends about two thirds of her time on the work of the CSI.

The CSI program began to monitor the Atlantic Coast Pipeline and its primary focus remains upon that project. The resources of the program are, however, shared with the Mountain Valley Watch surveillance program that the POWHR coalition (Protect Our Water,

(More on p. 3)

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Thoughts from our President

By Larry Thomas

Last night I woke up at 3:10 am and was so pleased to see the sky filled with stars. The first night in a long time, because of the weather pattern we have been experiencing. Got out of bed, bundled up because of the very cool night air and headed outside to enjoy looking at the sky with its abundance of stars and the Milky Way crossing the sky right over my head. It was a wonderful experience heightened by seeing eight shooting stars and listening to the owls calling during the over an hour that I was out there. Many astronomers travel to this area because of the dark skies.

Actions in July that will be of interest to West Virginia Highlands Conservancy members.

Big Rock Project – This proposed project is in the Gauley Ranger District within the Cranberry River watershed north of Richwood in Nicholas and Webster Counties and is to provide diverse early successional forest (clearcutting w/reserves 1342 acres), improve forest health and growth (traditional cut 702 acres and helicopter thin 491 acres) and provide water sources for wildlife (creation of 20 vernal pools).

WVHC took another pretty big step and has filed a formal objection to the Forest Service's Big Rock Project. As we noted in our previous comments on the Big Rock project, WVHC believes that integrated timber management projects like the Big Rock Project can be compatible with, or at least not contradictory to, WVHC's mission and values. But as we pointed out in our previously filed comments, the draft Environmental Assessment (EA) that was circulated for public review had several critical problems related to the National Environmental Policy Act (NEPA) analysis and the protection of sensitive environmental resources. In response to our comments, the Forest Service addressed some of the flaws in its final EA and supporting documents.

Part of this effort with respect to NEPA involves proposed new regulations (see this recent news release: <https://www.fs.fed.us/news/releases/usda-proposes-bold-moves-improve-forests-management-grasslands>; there is also a story about it on p. 6 of this issue). But even before the new regulations have been finalized, the agency is cutting back on the amount of time and effort that it puts into its NEPA analyses. It appears that Big Rock and other recently proposed projects on the Monongahela have been affected by this emphasis on doing more with less.

We are not opposed in principle to these activities, as they are allowed and encouraged by the Forest Plan. However, we identified critical problems in the following areas that were the basis for filing our objection.

- Skid road decommissioning
- Ground-Based Harvest Activity on Steep Slopes
- Roads on Steep Slopes
- Threatened, Endangered, and Sensitive Species

Spruce Mountain Grouse Management Area - This proposed project is in the Potomac Ranger District west and southwest of Spruce Knob Lake and is near the community of Osceola, WV. The objective of the project is to restore and maintain

ruffed grouse habitat in the existing management area by increasing early successional habitat for cover and enhancing species diversity to increase foraging opportunities.

Our comments addressed the Draft Environmental Assessment for the project and included the commitment to resource protection measures for sensitive resources, adverse impacts to commercial timber harvest in West Virginia northern flying squirrel habitat, Blue Ridge St. John's Wort and Pearl Dace, and the prevention and control of non-native invasive species infestations.

<https://www.fs.usda.gov/project/?project=51058&exp=overview>

WVHC did not formally object to the Spruce Mountain Grouse Management Area Project because the Forest Service staff provided answers to our remaining questions that we raised concerning the project.

We did share one lingering concern we had with the way the Forest Service defined and delineated suitable habitat for the West Virginia northern flying squirrel. Based on their description, it appears that the Forest Service considered only areas with an overstory dominated by conifers to be suitable habitat. The Forest Service placed a 60 m "buffer" around overstory conifers but did not consider that buffer to be suitable habitat.

This approach is not consistent with the approach laid out by the USFWS in the updated recovery plan, nor is it consistent with the approach the Forest Service has followed since the update to the recovery plan in 2001. We were however willing to give the Forest Service the benefit of the doubt on including a 60 m buffer instead of the 80 m buffer that has been used to date. The 80 m buffer was instituted primarily to provide an extra safety factor, and it appears that the Forest Service has developed a better scientific rationale for the 60 m buffer. But again, we emphasized that the buffer is part of suitable habitat and, therefore, is subject to the protections contained in Forest Plan Standard TE64.

WVHC sent a letter thanking the staff for their diligent efforts to address all stakeholder concerns prior to making a final decision on the project. The staff worked hard to overcome obstacles and resolve issues in a way that creates a win-win situation for the Forest Service and stakeholders.

Other activities followed and that were reported in the July *Highlands Voice* were:

Proposed Pump Storage Project in Tucker County, West Virginia – No further action has been noted.

Proposed Black Rock Industrial Wind Project – Application for a permit has been filed with the Public Service Commission of West Virginia.

This year continues to be another busy year for the Conservancy and the Highlands of West Virginia and we will keep you informed through the *Voice* as events occur.

More about the Compliance Surveillance Initiative (Continued from p. 1)

Heritage, Rights) mounted to monitor construction activity on that project.

The focus of CSI's work in West Virginia is in monitoring and enforcement. With the Atlantic Coast Pipeline, the Mountain Valley Pipeline, the Mountaineer Xpress, and other smaller pipelines, pipeline construction is rampant in West Virginia. With only around a half dozen full time inspectors, The West Virginia Department of Environmental Protection (DEP) does not have nearly as many inspectors as would be necessary to monitor the 10,000 acres of earth disturbance from Atlantic Coast Pipeline, the Mountain Valley Pipeline, the Mountaineer Xpress alone.

Swirling in the background there may be questions of how sincerely West Virginia wants to control pipeline construction and whether the resources or political will exists to devote adequate resources to pipeline enforcement. No matter what anyone might think of these questions, the fact on the ground is that current state resources are inadequate. If citizens don't step in, adequate enforcement is not going to be done.

The work necessarily involves cooperation with the DEP. No matter what the West Virginia Field Coordinator or any of the citizen volunteers sees on the ground, they have no power to fine anybody, order anybody to fix anything, etc.

What they do is make what they call incident reports. Working with the Pipeline monitoring program developed by WV Rivers Coalition and Trout Unlimited, CSI had expanded a protocol for reviewing photos from both on the ground and in the air, verifying that the photo documents a potential violation, adding the incident to maps of pipeline construction areas that CSI maintains, filing complaints with enforcement authorities, and following up on any enforcement that is undertaken.

Using this protocol, the WV Field Coordinator has submitted 46 incident reports to the West Virginia Department of Environmental Protection to date. These reports have resulted in multiple follow-up inspections and two violations being issued. Where violations were not warranted, DEP inspectors issued warnings to improve erosion control deficiencies which resulted in better protections for our streams and rivers.

The process of citizens reporting potential pollution events also involves building relationships with the DEP inspectors. At first glance it would be easy to stereotype self-appointed inspectors as zealots or dilettantes, eager to see violations where there were none and not understanding what is and is not a violation. We have overcome those stereotypes. West Virginia Rivers Coalition, in partnership with Compliance Surveillance Initiative and the West Virginia Highlands Conservancy have facilitated "pipeline roundtable" meetings with DEP to discuss how to better streamline incident reporting processes and review agency expectations. The trained citizens are now taken seriously and viewed as a useful extension of the state's inspectors, making the DEP's own inspection program more effective. CSI's project partners also provide training to citizens. Some violations are obvious. If a citizen sees muddy water coming from a site, he or she doesn't need to know details of any regulations, legal jargon about "conditions not allowed in state waters", or the best management practices that should be in place. It looks like a violation because it very likely is.

At the same time, citizen inspectors are going to be more effective if they have some training about what is prohibited, what to look for, etc. The CSI partners provide that training. In partnership

with WV Rivers Coalition, Trout Unlimited, Wild Virginia, Appalachian Voices and other local groups over 500 citizen monitors have been trained 200 of which are actively monitoring pipeline construction. Trainings included water quality monitoring, visual assessment of pipeline construction, and using online mapping to assist monitoring efforts. As a result of the training they have received, the volunteer monitors are being accepted as reliable sources of information; the information they provide about violations is taken seriously by the DEP.

In addition to the trainings, the CSI WV Field Coordinator provided technical assistance to local groups, regional partners and concerned individual citizens. Most often this involved walking citizens through the processes of how to report pollution, how to access maps of the pipeline route, and how to access inspection reports and reports of violations. This information is not easy to access or readily available unless you know where to look. The Coordinator help groups, citizens and the media in accessing and understanding information.

The work of the CSI WV Field Coordinator has not been entirely training and assisting citizen inspectors. There are other things as well.

Projects as big as any of the pipelines that are proposed or under construction in West Virginia are subject to regulations and have to get permits. Before permits are issued they are often available for public comment, a time when the public can make suggestions on whether or not a permit should be issued or how it could be strengthened. When the Department of Environmental Protection does take enforcement action, there are opportunities to comment on that action, make suggestions on how the action could be more effective. As things have turned out, the usual comment on enforcement actions is that the fines have not been nearly large enough to deter the conduct in the future.

Many of the comments on proposed permits, changes in regulations, enforcement actions, etc. have been the subject of previous stories in *The Highlands Voice*.

Whenever these opportunities to comment have come up in recent months, the Field Coordinator has been instrumental in coordinating and making comments.

The WV Field Coordinator also coordinated a tour of the Mountain Valley Pipeline with West Virginia legislators. Even if only five of the legislators took advantage of the opportunity, those who did come got a chance to see first-hand the impact of pipeline construction. The field trip was followed by a town hall meeting for legislators to see and hear first-hand the impacts for WV landowners and communities. The Field Coordinator also facilitated a meeting for those legislators to share concerns about construction oversight and enforcement with DEP. The Pipeline Roundtable was attended by 20 individuals including 3 legislators, 10 DEP staff and 6 representatives from the Highlands Conservancy, the WV Rivers Coalition, Ohio Valley Environmental Coalition, and Indian Creek and Greenbrier Watershed Associations. We discussed the enforcement staff's capacity, the issues and impacts from large scale pipeline construction, and the resulting violations and fines. While there were no 'ground-breaking' revelations during this meeting, A lot of good information was shared among the parties that results in stronger commitment to work together to enforce pipeline construction projects and protect our water resources from further damage.

Happy Birthday, Coal River Mountain Watch!

In July, 2019, Coal River Mountain Watch celebrated its 20th birthday.

The mission of Coal River Mountain Watch is to stop the destruction of our communities and environment by mountaintop removal mining, to improve the quality of life in our area and to help rebuild sustainable communities. Small community groups come and go; just surviving and thriving for twenty years is an achievement.

Coal River Mountain Watch has done more in its 20 years than just survive. It has done all this, and more:

- Its previous executive director, the late Judy Bonds, won the Goldman Environmental Prize in 2003.
- It secured a safe new school for the kids of Marsh Fork Elementary.
- It led the way in revealing the health impacts of mountaintop removal and introduced the Appalachian Communities Health Emergency (ACHE) Act in the US House of Representatives every Congress since 2012.
- It provided safe water for a community whose wells were contaminated by coal waste.
- Its Tadpole Project has made a noticeable improvement in cleaning up the illegal dumps and accumulated trash along the Marsh Fork.
- It collected over 7,500 tires for recycling, keeping them out of the river and dumps.
- It provided tours and interviews to hundreds of students, journalists, and other visitors from around the world.
- It discovered and reported pollution by coal companies.
- It took part in several court cases and enforcement actions against outlaw coal companies and enabling agencies.
- It installed solar power and planted hemp at our office and community center, the Judy Bonds Center for Appalachian Preservation.

Congratulations on the first twenty years and good luck for the next twenty and beyond!



SAVE THE DATE!

West Virginia Highlands Conservancy Fall Review

When: Fri. 10/18, Sat. 10/19 and Sun. 10/20

Where: Elk River Inn and Restaurant, Slatyfork, WV

What: Outings, Programs, Panels and Fun

Theme: Seeking a sustainable future for West Virginia

For housing information: call Elk River Inn, 304-572-3741

Rooms with private bath \$89 per night single, \$99 double.

Rooms with shared bath \$63 single, \$68 double. Add 12% taxes. Includes breakfast.

For program information call: Marilyn Shoenfeld 304-866-3484 or marilyn.shoenfeld@gmail.com

Notes: Marilyn is not handling reservations. You should call the Inn directly. The innkeeper of the Elk River Inn and Restaurant has sent us the menu. It looks good. We have been there before. The food was as good as it looks.

Tracking “Timberdoodles”

By Casey Rucker and Cindy Ellis

Our vote was For the Birds! On Saturday, July 20, the WVHC Board of Directors voted to sponsor several tracking transmitters for migration research use with American Woodcock in Canaan Valley. We join the Friends of the 500th---the citizen support group for the wildlife refuge in Tucker County---in this venture. We are especially pleased to make this donation in view of the work of one of our founders, Joe Rieffenberger, on behalf of these interesting birds.

One source recognized Joe:

“The publication American Woodcock and Common Snipe Research and Management (1969) grew out of the research, as did American Woodcock in West Virginia by Robert C. Kletzly (1976). Early work was done by Kletzly, William Goudy, and Joseph Rieffenberger. Rieffenberger developed a night-lighting technique for capturing woodcock, based on using battery-powered, handheld spotlights and a 3-foot-diameter hand net; this technique is now widely used to catch woodcock for banding and for fitting with radio-transmitters. To read more about it, go to <https://timberdoodle.org/demo/sarah-fletcher-tract-tucker-county-west-virginia>.

Why Canaan?

One reason for the establishment of Canaan Valley National Wildlife Refuge was its importance as breeding habitat for the American Woodcock. This bird's population has been decreasing throughout its range, and it has become the focus of joint efforts among many organizations to stem or reverse the declines. Much remains to be learned about woodcock, however, before informed judgments can be made on the best practices to help conserve this bird.

Who is studying?

One avenue of research has been undertaken by the Eastern Woodcock Migration Research Cooperative, an international collaboration among governmental agencies and non-governmental organizations. Partners include the US Fish and Wildlife Service, the US Geological Survey, Environment and Climate Change Canada, the Ruffed Grouse Society, and others including a number of state agencies. Research coordinated by the University of Maine began in fall 2017 when six American Woodcock were fitted with satellite transmitters in Maine in advance of fall migration.

How does tracking happen?

In order to track American Woodcock movements in migration, birds are fitted with GPS transmitters that are also equipped with Platform Transmitter Terminals, or PTTs. The GPS component of the transmitter collects location data, while the PTTs sends the location data to satellites so that individuals' movements can be tracked in near real time.

What is learned?

The information gained from the transmitters affords greater understanding of the timing of movements, duration and location of stopovers, and the habitats used by American Woodcock in migration. Because the transmitters also let researchers know

whether a bird continues to live, they yield important data about individual survival during a season's migration. Marking birds in both northern and southern breeding areas will also assist in understanding different migration strategies for birds who breed at different latitudes. These data, combined with information from

many other sources, are ultimately intended to enable conservationists to employ a full-annual-cycle population model for the species. More information about the project can be found at www.woodcockmigration.org.

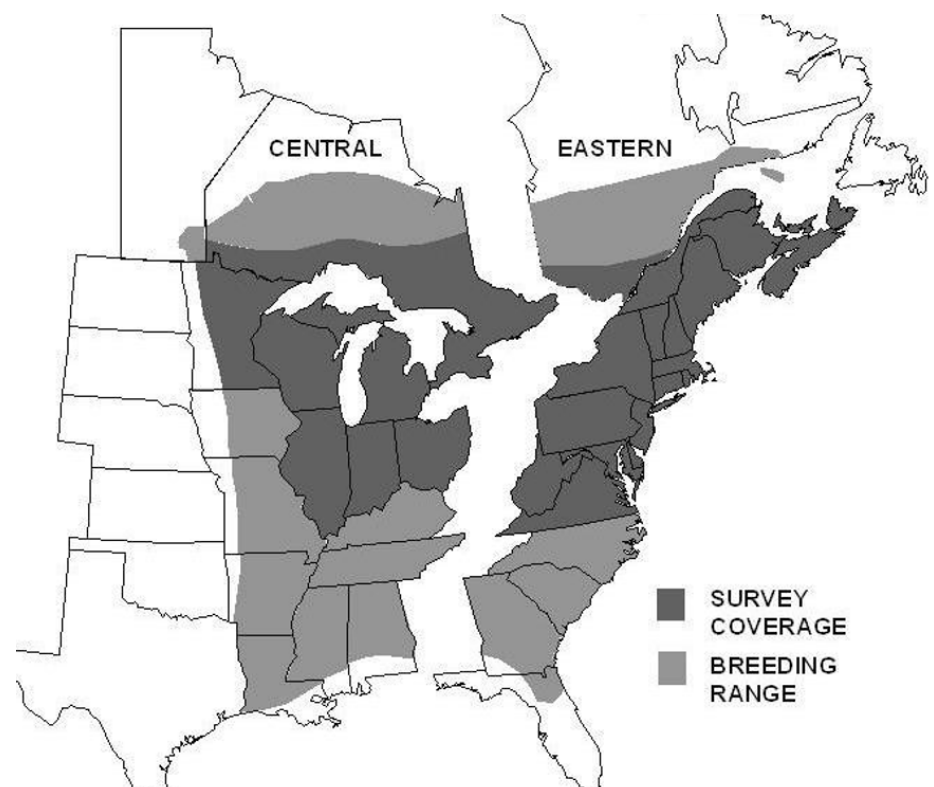
Why now?

Our organization's support helps the Friends of the 500th group to provide the first opportunity for the Eastern Woodcock Migration Research Cooperative to mark American Woodcocks in West Virginia. This October, an expert will visit Canaan Valley National Wildlife Refuge to capture individuals in mist nets. Instead of only receiving a leg band, PinPoint Argos 75

transmitters will be attached by harnesses to at least five individuals. The transmitters include batteries to power the transmission, yet the units only weigh between four and seven grams. After that the transmissions will be monitored to measure the movements of the birds as well as whether they survive their fall journey.

This project could not have been undertaken without the partnership of the US Fish and Wildlife Service and the refuge in providing additional funding as well as support for the on-site work in October. In the 21st century, conservation is understood more and more clearly to require collaborative efforts among many partners.

Stay tuned this fall as information beams skyward from our Canaan Valley woodcocks, and together we unravel a few more mysteries of the ancient ritual of migration.



Forest Service Proposes Less Environmental Review

The United States Forest Service has proposed a change to the regulations on how it administers the National Environmental Policy Act (NEPA). It proposes changing the regulations in such a way that it reduces the number of decisions subject to a full NEPA analysis and reduces the opportunities for citizen participation.

The National Environmental Policy Act was the first of the major environmental laws. Its purpose was, as President Nixon said when signing the bill, to see that “America pays its debt to the past by reclaiming the purity of its air, its waters, and our living environment.”

The Act does this by preventing the United States government from inflicting environmental harm out of ignorance. It doesn’t directly mandate that the government do no harm. Instead, it requires that the government consider the environmental consequences before taking any major action. Over the years, the courts have developed a requirement that the government take a “hard look” at the consequences of its actions.

The proposed rules reduce the number of actions that will receive this hard look. They make NEPA compliance less onerous for the Forest Service. In doing so, however, the rules make it more likely that the environmental consequences of its actions will be overlooked and not considered.

Of course, the federal government makes millions of decisions every day, most of them trivial. The National Environmental Policy Act’s requirement to prepare an Environmental Impact Statement (EIS) is limited to major federal actions. If something is a major federal action with a significant impact on the environment, an Environmental Impact Statement is required. Before there may be any decision, the agency must study the environmental impact. If the agency is not certain whether the impacts would be significant, it must prepare a somewhat less rigorous analysis called an Environmental Assessment (EA). One way to reduce the amount of time and effort expended on NEPA compliance is to exclude categories of actions and decisions from the requirement to prepare an Environmental Impact Statement or Environmental Assessment. That is what the Forest Service has proposed.

The other way to make NEPA less onerous to the agency is to cut out public participation. In a typical Environmental Impact Statement or Environmental Assessment, process, a government agency announces a proposed action and that it is considering its environmental impact. The public can suggest things to study, point out questions the agency has not thought of, and give the agency another perspective. If things are working as they should, the result is that there will be a better understanding of the consequences of the proposed action. The public can also formally object to the decisions that the Forest Service reaches through the EIS or EA process. In the proposed rules, the Forest Service is proposing to limit public participation by excluding more actions from the requirement to prepare an EIS or EA, thereby eliminating the opportunity to comment on draft projects and object to decisions.

The Forest Service wants to expand the number of projects that would qualify for “categorical exclusions” — projects that can bypass environmental analysis or environmental impact statements. The exclusions would apply to forest thinning, various types of road and trail building, brush removal and recreational site management. More controversially, forest projects of up to 7,300 acres (with logging on up to more than half of those acres) could be excluded

from NEPA review. Mineral and energy exploration — such as using seismic testing to gather geological data and various small-scale infrastructure building — could also be exempt if it lasts less than one year.

According to analysis performed by the Southern Environmental Law Center, the Forest Service proposal would cut the public out of decisions about:

- Commercially logging up to 4,200 acres (6.6 square miles) at a time;
- Building up to 5 new miles of roads at a time;
- Adding illegally created roads and trails to the official roads and trails systems;
- Closing roads used by the public to access hunting areas, streams for fishing, and trails;
- Bulldozing new pipeline or utility rights of way up to 20 acres

The proposal is especially problematic for Forests in the Eastern United States. Forests in the West are usually bigger than the ones in the East; the projects tend to be larger. A categorical exclusion of projects based upon size would tend to exclude more projects in Eastern Forests than it would in the West. Most timber projects in the East would fit within the 4,200 acre exclusion, potentially cutting the public out of essentially all decisions related to timber harvest.

The Forest Service is accepting public comments on this proposed rule until August 12, 2019. Comments can be submitted by emailing comments directly to nepa-procedures-revision@fs.fed.us.

Note: Some of the information for this story came from the *High Country News* and the Southern Environmental Law Center.

Inflamed

Summer’s already hatched
the scourges we scratch --
p.i., mosquitoes, ticks --
but on this hotter planet
we can’t take for granite
it won’t bring a brand new itch

-- Hugh Rogers

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Introductory	\$15		
Other	\$15		
Regular	\$25	\$35	\$50
Associate	\$50	\$75	\$100
Sustaining	\$100	\$150	\$200
Patron	\$250	\$500	\$500
Mountaineer	\$500	\$750	\$1000

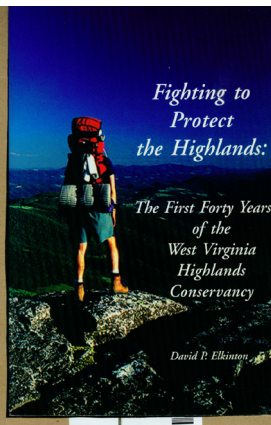
Mail to West Virginia Highlands Conservancy, P. O. Box 306, Charleston, WV 25321

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.

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.

Restoring Trout, Protecting the Future

By Chris Wood

“What is the name of that tree?” Brandon Keplinger, the district fisheries biologist for West Virginia Division of Natural Resources, asked the 20 or so fifth graders from Slanesville Elementary School in West Virginia.

The kids stood by the stream and looked up. “It’s a sycamore,” Brandon said. “You know how in the summer, you just like to sit under a shade tree and stay cool? Brook trout are like that, too. They need shade to cover their stream and keep them cool.”

Dustin Wichterman, who directs habitat restoration along many of the streams in the Upper Potomac for Trout Unlimited chimed in, “Do you like to swim in a swimming hole in the summer?” Every kid nodded their head. “Brook trout do, too. That’s why brook trout need deep pools to keep them cool in the summer,” Dustin continued.

The brook trout is the state fish of West Virginia, but due to development pressures and competition from non-native trout over the past 100 years, they occupy less than 75 percent of their historic habitat. The Slanesville students participate in a Trout Unlimited program called Trout in the Classroom where they raise trout in a tank, learn about the lifecycle of trout, and why clean water matters.

Today, the kids were releasing native brook trout into Dillons Run, a tributary of the Cacapon River. The fish were the offspring of brook trout captured from a stream in Wardensville, W.V. Because it is so healthy, the creek produces over 200 fish per every 100 yards



West Virginia brookie

or so. The DNR captures a few adult males and females and raise their offspring in a West Virginia University hatchery that mimics a natural environment—the fish eat bugs, not trout chow, for example.

So much of conservation is about overseeing loss—loss of wetlands, open space, forests, native species ... the heartbreaking list goes on. What is so heartening about this project is that its focus is on recovering hope.

“When I was a girl, there where brook trout everywhere,” said Patti Taylor, who has lived on Dillons Run for over 70 years. They have been absent from the stream for at least three decades.

Conservation is the single most optimistic and affirmative idea that America ever gave the rest of the world. That gets

blurry when you consider that according to the Eastern Brook Trout Joint Venture, brook trout have been extirpated from 25 percent of their historic range in West Virginia, and 85 percent of their habitat is highly fragmented and degraded.

Of course, Trout Unlimited is helping to recover native brookies; that’s our mission. It is super cool to see landowners



Dillons Run

on Dillons Run lining up to work with Dustin and his crew to improve their habitat, too. Most awesome, however, is seeing Brandon and his merry band of DNR brothers and sisters leading the charge on recovering West Virginia’s state fish.

Then you look at a group of kids from the local elementary school releasing native heritage strain brook trout into a creek that hasn’t seen brook trout in decades. “I’m coming back for you in a few years,” said a boy in an Incredible Hulk shirt. A girl with brown braids released her fish and said, “Goodbye, goodbye. Be safe!”

These kids are 11 and 12 years old. One can imagine them in a few years taking to their bikes, packing rods in backpacks, and fishing in Dillons Run for the progeny of these fish, or perhaps even catching one of these released fish which by then will be 14 to 16 inches long.

“Would you like to come back here after these fish grow, and try to catch them?” Taylor asks, leaning down and speaking to a group releasing fish in a pool in her front yard.

In unison, all of the kids shout a single word.

“Yes!”

This was previously published in *Trout*, the publication of Trout Unlimited. It is the second in a two part series; the first was included in the July, 2018, edition of *The Highlands Voice*.

Abandoned Gas Wells: Are They a Problem?

By John McFerrin

The June, 2019, issue of *The Highlands Voice* contained a very useful article on efforts to plug old gas wells. The crux of the story was that we have a bazillion (actually 4,500 currently orphaned gas wells with another 27,000 set to join them in the future) old gas wells that need to be plugged.

The story went on to talk about how little money there is currently available to address this problem. It went further to describe efforts to persuade the West Virginia Legislature to do something about this. While nothing passed in the most recent legislative session, the article ended on a hopeful note, pointing out that ideas often take a couple of years to bounce around the Legislature, gain supporters, etc. before passing the third year. Since this idea has been bouncing for two years, there is reason to hope that the Legislature will tackle this problem in 2020.

What the story did not address is exactly why we should do this. It is intuitively true that old wells should be plugged. It just seems like the sensible and tidy thing to do.

On the other hand, some of these wells have been abandoned for the better part of a century. Given enough time, nature is in many circumstances capable of healing itself. Are these abandoned wells really doing any harm? Might we just as well leave them alone?

For the answer to this, we turn to the American Geoscientists Institute. It has collected research on dangers from abandoned wells. The answers are: (1) Yes, they are doing harm; and (2) No, we should not just leave them alone.

This is what the American Geoscientists Institute says about the dangers from abandoned wells:

Risks to Groundwater, Air, and the Surface Environment

- Orphaned wells are often abandoned without any plugging or cleanup, but even plugged wells may leak, especially those plugged in the past, when plugging procedures were less rigorous and used less durable materials. Unplugged or poorly plugged wells may affect:

- Groundwater – old wells may have degraded well casing or cement that can allow oil, gas, or salty water to leak into freshwater aquifers. An assessment of 185

groundwater contamination incidents in Ohio from 1983 to 2007 found 41 incidents caused by leakage from orphaned wells, compared to 113 incidents caused during drilling and production.

- Methane emissions – a study of 138 abandoned wells in Wyoming, Colorado, Utah, and Ohio found that over 40% of unplugged wells leaked methane, compared to less than 1% of plugged wells. This study estimated that abandoned wells account for 2-4% of the methane emissions from oil and gas activity.

- The surface environment – orphaned sites may still have old equipment, contaminated soil from small spills, and other waste at the surface. In some unplugged or poorly plugged wells, oil, gas, drilling mud, or salty water can rise up the well and spill at the ground surface or, in the case of offshore wells, into open water.

The American Geoscientists Institute also has something to say about the added danger imposed when you introduce widespread hydraulic fracturing into a location where there are abandoned wells:

Abandoned Wells and Hydraulic Fracturing

Hydraulic fracturing uses the high-pressure injection of fluids into oil- or gas-bearing rocks to fracture them and allow oil and/ or gas to flow out. The increased pressure in the rocks during this process can push oil or salty water up nearby unidentified or improperly plugged abandoned wells. In one of the more extreme cases of this, the U.S. Environmental Protection Agency cited an abandoned well in Tioga County, Pennsylvania, that produced a 30-foot geyser of brine for more than a week as a result of hydraulic fracturing of a nearby well. In addition to these fluids contaminating soil and potentially reaching groundwater, the unexpected pressure release caused by this fluid escape reduces the effectiveness of the hydraulic fracturing operation, so there are both environmental and economic incentives to identify and plug wells near a planned hydraulic fracturing operation.

The information from the American Geoscientists Institute is done from a national perspective. It draws on information from several state and national sources, including the factoid that there have been 3.7 million wells drilled in the United States since 1859. It makes reference to several programs to plug abandoned wells, including one in Pennsylvania that plugged over 3,000 orphan wells between 1989 and 2017.

Unlike some Institutes that are little more than lobbying organizations masquerading as researchers, the American Geoscientists Institute is just a bunch of people interested in rocks who like to share their research with each other and the public. They are devoted to calling them like they see them. To see its entire summary of the problem of abandoned gas wells, go to www.americangeosciences.org/geoscience-currents/abandoned-wells. If you want more depth, there are lots of footnotes to more detailed articles.

As a national organization, the American Geoscientists Institute offers a national perspective. For something more local, consider the West Virginia Surface Owners Rights Organization. It has a slide show on the drilling of a well. While it does not address abandoned wells, the things that could happen during the drilling are the same things that could happen to an abandoned well. To see it, go to wvsoro.org/gas-well-drilled-ground-can-go-wrong/.

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.

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3) After you click on «Save» in one of the above, an «Account Summary» screen will come up. At the bottom of that screen is «Community Rewards.» Click «Enroll» and fill out the required information there, click «Save», and it takes you to a new page, then click «Search» and click on button in front of West Virginia Highlands Conservancy, then click «Enroll.» You're done!

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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:

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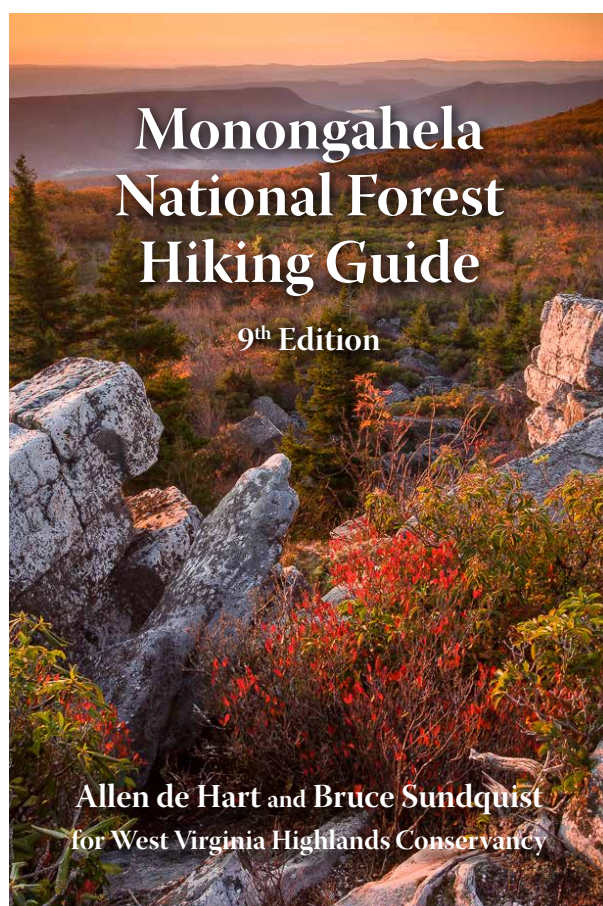
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Board Highlights

By John McFerrin

The Board was hampered by the absence of some of our leaders. In spite of this, we managed to address some ways we could make the organization run better both now and in the future. We also got some updates on issues of interest and made some decisions about things we would support.

President Larry Thomas was absent because his brother is seriously ill and needed Larry's presence. Vice President Marilyn Shoenfeld was also absent at another meeting. Being fully aware that Nature Abhors a Vacuum and not wishing to annoy Mother Nature, Hugh Rogers boldly strode forth into the breach, called the meeting to order, noted the presence of a quorum, and presided over the meeting.

On deciding how the organization could run better, Dave Saville first brought us up to date on current membership. He began by noting that "membership" is a subjective term. We have dues paying members, complimentary members, trial memberships, lifetime memberships, people whose membership dues are overdue, people who do not pay dues but give to the fund appeal, etc. How many members we

have depends upon how we count all those categories. So that we could make a meaningful comparison, he had reported a report of only dues paying members for each year since 2010. This shows us that, using this measure, we are stable since then,

Moving beyond this, we talked about things we could do to make our mailing list more accurate. We send out complimentary issues of the Voice to members of the West Virginia Legislature and to some agency employees. We are going to review the list to make sure addresses are still current, etc. We are also going to start requesting that the Post Office return to us any undeliverable Voices. It costs us to get back the undeliverable ones but it is the only way to make sure that our mailing list is current.

So far as the future is concerned, we had a session last year on the future of the organization and what direction we should take. We formed a committee to revisit the results of that session and think about how we might move forward.

We noted with sadness that LeJay Graffious has resigned his Board seat. He serves on several boards and felt as if he was not making a substantial contribution to ours. He resigned so that someone who could make a bigger contribution could take his seat.

In the Voice editor's report, John noted that he thought that the July issue was an excellent one, mostly because it was a team effort. Several Board members wrote or suggested stories.

Treasurer Bob Marshall presented matters financial. There was nothing remarkable in the presentation: money in, money out with an adequate amount of each. Frank Young reported that the West Virginia Environmental Council is in the process of soliciting ideas about legislative priorities for next session. There will soon be a questionnaire for us to fill out on legislative priorities. The

Environmental Council will be hiring lobbyists in the October and will be requesting money to help fund that effort. It has a year around, but part-time lobbyist, Karan Ireland, who monitors interim sessions on an as needed basis.

On matters of public lands, Kent Karriker talked about projects on the Monongahela National Forest that are in various stages of development: the Panther Ridge Wildlife Habitat Enhancement Project, the Big Rock Project, the Spruce Mountain Grouse Management Area, and the Greenbrier Southeast Project. We had

previously filed objections to the Panther Ridge Wildlife Habitat Enhancement Project; they are described more completely in the July issue of *The Highlands Voice*. We have just recently filed objections to the Big Rock Project. Our objections are not outright opposition. There are, however, aspects of the projects where the analysis could be more thorough and some matters given closer attention. Our objections point those out.

On the Spruce Mountain Grouse Management Area, we are having ongoing discussions with the Forest Service. Some of our suggestions are making

their way into the final plans for the project as a result of these discussions. For a little more information, see the story on p. 2 of this issue.

As a general matter, there is a nationwide Forest Service initiative to increase timber production on the National Forests. Since the Forest Service has not increased funding for such an increase, it forces individual Forests to do more of the planning, etc. that is required for timber management with less money. This will result in some skimpy analysis and cutting of corners on Forest Service projects.

Kent also noted that the Big Run Bog pump storage project has returned. The developers intend to redesign the project so as to avoid Big Run Bog. Although no detailed plans are available, it appears that the trout stream in the area would still be imperiled.

We had as our special guests Angie Rosser of the West Virginia Rivers Coalition and Lew Freeman of the Allegheny Blue Ridge Alliance. They brought us up to date on the activities of the Compliance Surveillance Initiative. (See the story on p. 1).

The West Virginia Highlands Conservancy has supported the Compliance Surveillance Initiative financially in the past and is considering future support although we made no decisions at this meeting.

Dave Saville talked about the balsam fir planting program and how the West Virginia Highlands Conservancy might provide additional support. He described the challenges involved in



(More on the next page)

And the Highlights Just Keep on Coming (Continued from p. 12)

gathering seeds and an initiative to start a Seed Production Area within Canaan Valley State Park. He also discussed a conference and workshop in October on spruce plantings as well as a need for more trees and organizational expenses for a Balsam Fir Planting Program on the Canaan Valley National Wildlife Refuge. With all this going

on and all the need, we decided to support this effort financially.

Cindy Ellis described a program on the Canaan Valley National Wildlife Refuge to monitor woodcocks. This involves equipping woodcocks with little backpacks with transmitters so that researchers can monitor their activities. (See the story on p.

5) We decided to make a donation to support this effort.

In matters of outreach, Cindy Ellis reported that there are 176 public libraries in West Virginia. We have distributed Hiking Guides to 60 of them. The project continues, with a goal of sending to all libraries by year's end.

Uninvited (but welcome nonetheless) Guests

Here are the 23 species seen, heard, or both during, before, or after the Board meeting at Saranam Retreat Center, Randolph County, West Virginia, US

Black-billed Cuckoo 1
 Ruby-throated Hummingbird 1
 Turkey Vulture 1
 Red-bellied Woodpecker 1
 Downy Woodpecker 1
 Eastern Wood-Pewee 1
 Eastern Phoebe 2
 Great Crested Flycatcher 1
 Yellow-throated Vireo 1
 Red-eyed Vireo 2
 Blue Jay 1
 Black-capped Chickadee 1
 White-breasted Nuthatch 1
 House Wren 1
 American Robin 2
 Brown Thrasher 1
 American Goldfinch 1
 Field Sparrow 1
 Song Sparrow 1
 Eastern Towhee 1
 American Redstart 1
 Magnolia Warbler 2
 Northern Cardinal 1

Observations by Cindy Ellis



American Redstart



Eastern Phoebe



Yellow Throated Vireo

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.

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.

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

Federal Court Says Atlantic Coast Pipeline Not Protecting Endangered Species

By John McFerrin

The United States Court of Appeals for the Fourth Circuit has once again stopped the Atlantic Coast Pipeline because of the failure to comply with the Endangered Species Act. It held that the United States Fish and Wildlife Service had been arbitrary in approving plans for protecting endangered species.

Background

The Endangered Species Act was enacted to protect and conserve endangered and threatened species and



Rusty Patched Bumble Bee

their habitats. Whenever any federal agency is faced with an application for a permit for construction or other activity, it is required to determine if the activity is likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat.

To make this determination in the case of the Atlantic Coast Pipeline, the Federal Energy Regulatory Commission (FERC) consults with the Fish and Wildlife Service. The Fish and Wildlife Service then issues what is called a Biological Opinion. It states the Fish and Wildlife Service's opinion on whether or not the proposed activity is likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of critical habitat.

A determination that an activity will harm an endangered species does not mean that the activity is automatically prohibited. If the activity threatens the continued existence of a species then it

is prohibited. If it harms some members of an endangered species but does not jeopardize the continued existence of that species, then the Fish and Wildlife Service may issue what is known as an incidental take permit.

An incidental take permit allows someone to "take" a limited number of individuals of an endangered species if the taking is incidental to another activity and not the goal of the activity. "Take" is defined as the "harassing, harming, pursuing, hunting, shooting, wounding, killing, trapping, capturing, collecting of a listed species", or any "attempt to engage in such conduct." It really means kill but if Congress had just said "kill" the Courts would have had to deal with future hair splitters who argued that they could pester an endangered species six ways from Sunday but if there was no corpse there was no violation.

What happened here—Round I

In the case of the Atlantic Coast Pipeline, when the Federal Energy Regulatory Commission approved the pipeline in the fall of 2017, it made its approval conditional upon the pipeline getting all required approvals from any other agency. Shortly after that, the Fish and Wildlife Service issued a Biological Opinion in which it concluded that the pipeline was not likely to jeopardize the existence of any of the affected listed species but it was likely to result in a "take" of some individuals. It also issued an Incidental Take Permit authorizing the taking of "a small percent of" the species.



Madison Cave Isopod

Several citizen groups challenged this decision before the United States Court of Appeals for the Fourth Circuit. In May, 2018, the Court vacated the Incidental Take Permit. The appeals court panel found the agency's limit on the "take" -- which includes harassing, harming, wounding, killing, etc. -- of at-risk species was too vague and didn't satisfy basic legal standards.

What happened here—Round II (the current round)

After the decision in the first round, the Fish and Wildlife Service tried again. After nineteen days of additional deliberation Fish and Wildlife Service issued a new Biological Opinion and Incidental Take Permit. The Fish and Wildlife Service determined that pipeline construction would not jeopardize the rusty patched bumble bee or the clubshell. It also imposed take limits on the Indiana bat and the Madison Cave isopod.

This time around, the Court concluded that the Fish and Wildlife Service had been arbitrary and capricious in its findings and vacated the agency action.

If there is a single theme that runs through the decision it is that the Fish and Wildlife Service just got in a hurry and slapped its opinion together without considering all the available data. The Court says:

We cannot ignore that it took FWS a mere 19 days to issue the 2018 Biological Opinion and Incidental Take Statement after FERC resumed formal consultation with the agency following our first decision in this matter. In fast-tracking its decisions, the agency appears to have lost sight of its mandate under the ESA: "to protect and conserve endangered and threatened species and their habitats." . . . This mandate has "priority over the 'primary missions' of federal agencies.

The Court also quoted a Fish and Wildlife Service document on the need to "fast-track" its findings:

Our internal direction is that we can't require surveys and will not

(More on the next page)

Pipelines and Endangered Species (Continued from previous page)¹

make further requests for surveys that interfere with applicant's project schedule since these are priority fast-track projects, and we will not state that we have insufficient information to initiate consultation and will not delay initiation of consultation based on lack of baseline/species survey data.



Clubshell Mussel Photo courtesy of US Fish and Wildlife Service

Against this background, the Court examined the evidence as it applied to each species. With the Rusty Patch Bumble Bee, it noted that the species is severely imperiled. Its numbers have declined precipitously in the past few years and the remaining

colonies are few and small. Some were observed foraging along the pipeline route. One of the ways they can increase is that each colony can produce several queens. The queens go off and hibernate and then start new colonies in the spring. In spite of the fact that the Atlantic Coast Pipeline was going to crush a colony (and its potential to start new colonies) the Fish and Wildlife Service found that it was "not likely to negatively impact the fitness or survival of the population,"

With the clubshell (a type of mussel) the Court focused most upon the population in Hackers Creek, a tributary of the Monongahela River. The clubshell has been listed as endangered since 1993; there is a population in Hackers Creek. As currently projected, 6.4 miles of pipeline construction right-of-way and 11.9 miles of access roads will exist in the upstream drainage area of Hackers Creek. Six tributaries of Hackers Creek will also be crossed by the pipeline.

The clubshell is particularly vulnerable to siltation. When there is too much silt in the water it can close its gills. The gills can become coated with silt so that it lacks oxygen. The Fish and Wildlife Service concluded that the Atlantic Coast Pipeline would not negatively impact the fitness or survival of the population.

The Court disagreed with that finding. It largely relied upon its determination that the Fish and Wildlife Service had relied upon old data that did not appear to be reliable.

For both the Indiana Bat and the Madison Cave Isopod, the Fish and Wildlife recommended approval of an Incidental Take Permit. Such a permit is appropriate when the activity (the pipeline, in this case) will "take" some bats or isopods but the taking will only be incidental to the activity, not the purpose of the activity.

The Court agreed that a permit might be appropriate in this situation. In spite of this, the Court vacated the Fish and Wildlife approval. To be appropriate, the take allowed must be based upon some cogent connection between the data and the limit. It must also consider all relevant and available data. The Court determined that the Fish and Wildlife Service did not meet these requirements.

What's next?

The Fish and Wildlife Service tries again. In its statements following the decision, Dominion made clear that it does not consider this a fatal setback. Rather, it considers this something that it can cooperate with the Fish and Wildlife Service to fix. It assumes that the Fish and Wildlife Service will review its Biological Opinion and Incidental Take Statement and issue new ones more firmly based in data and more clearly articulating the basis for its decision.



Indiana Bat

Pipeline Update

So how stands the Atlantic Coast Pipeline? Is it still moving forward?

The short answer is that, as of now, it is not moving forward on the ground. The project is shut down, stymied by a series of unfavorable court decisions (vacated or suspended permits). Many would see the unfavorable court decisions as a result of the developers' corner cutting approach to planning and environmental compliance. After all, no court has ever said, "Stop! This whole thing is illegal. Take your pipeline and go home!"

Instead, Courts have assumed that the pipeline was possible. So far the developers have regularly lost in Court because they have sought to cut corners, to fast-track permit review. The Courts have responded by telling the developers to slow down, do the analysis, etc. before rushing ahead.

In the long run the developers may decide that the task is just too daunting. They may conclude that, if someone makes them comply with all laws, building this pipeline through this terrain is not possible.

They have not, however, said that. We remain with an Atlantic Coast Pipeline where there is no construction right now and developers determined to go ahead.

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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