



The Highlands Voice

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

Volume 52 No. 12 December, 2019

The West Virginia Legislature

Ready or Not, Here it Comes!

By John McFerrin

We are in the season of preparation. Whether we use the Wal-Mart calendar (where we have been in full bore preparation for Christmas since at least October) or the Christian calendar (where we are at the beginning of Advent, the four Sundays before Christmas, the time of preparation for Christmas day and the Christmas season), this is a time of anticipation and preparation.

Yet Christmas is not the only event for which preparation is required. The Twelve Days of Christmas are barely over when we find ourselves face to face with a more ominous event: the opening of the 2020 West Virginia Legislative session on January 8, 2020.

Much of this issue of *The Highlands Voice* is devoted to that preparation. There are several stories about proposals which may well be taken up by the Legislature. Whether they are never taken up, taken up and immediately dropped, or actually become law depends upon a host of factors: whether the Governor proposes bills that overshadow them; how much enthusiasm the Legislators (and particularly the powerful Legislators) have for the proposals; the effectiveness of the lobbyists both for and against the proposals; the visible enthusiasm of citizens for the proposals.

These are just the factors that are visible, the ones we know will make a difference in the fate of these bills. Lurking in the background are questions of campaign financing, a system which can both generate immediate enthusiasm for a proposal or dampen any enthusiasm that may exist.

Most of the lobbying for the West Virginia Highlands Conservancy is done by the lobby team of the West Virginia Environmental Council. The Environmental Council has gone through an elaborate process of setting legislative priorities. The lobby team hopes to spend its time advocating for the items on the list of legislative priorities that came out of that process.

All these carefully laid plans could easily be upended if the Governor or some powerful Legislator proposes something contrary to the interests and values of the Environmental Council. If that happens, the lobby team would shift gears and work to oppose that proposal.

So here we are. The following pages have some of what might happen. Nobody knows what will happen. The only thing we can do is prepare the best we can and grab on for the ride.

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Thoughts from our President

By Larry Thomas

Another Invasive Has Been Found in West Virginia
The United States Department of Agriculture (USDA) and the West Virginia Department of Agriculture (WVDA) have now confirmed the presence of a new, invasive insect, the Spotted Lanternfly, in West Virginia. In the January 2019 issue of the Highlands Voice I mentioned the probability of the Spotted Lanternfly reaching West Virginia and now unfortunately it has been confirmed.

According to a release from the West Virginia Department of Agriculture, a small population of Spotted Lanternfly was detected in the Bunker Hill area of Berkeley County on October 30. The release stated the United States Department of Agriculture—Animal and Plant Health Inspection Service (USDA-APHIS) confirmed the findings.

The release stated that treatments will be conducted for the Spotted Lanternfly in the spring of 2020 in cooperation with USDA-APHIS, if needed. In the release, the West Virginia Department of Agriculture stated they are encouraging landowners to inspect their property for eggs masses, especially on properties that contain numerous Tree-of-Heaven.

Since the first Spotted Lanternfly was identified in Berks County, Pennsylvania in 2014, populations have been established in Delaware, New Jersey, New York and Virginia. With strict quarantines in place, the spread of the bug has been relatively slow.

Now that the Spotted Lanternfly has reached West Virginia, trees on our public and private could be among the biggest losers.

Why the alarm? Simple The lanternfly can devastate crops such as grapes, peaches, plums, cherries and hops along with our hardwood forests that are now at particular risk because the Spotted Lanternfly has arrived. Most of the state's deciduous forests are made up of hardwoods, which are popular for making furniture and cabinets as well as other uses.

Because the pest is an intensive and indiscriminate feeder with at least 70 known hosts, it is believed that it will pose a real threat to the health of our trees, profitability of the state's timber industry, profitability for landowners and severance tax revenue for the state.

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

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

Because the Spotted Lanternfly has gotten a foothold, the WVDA must educate business owners as well as landowners on how to identify it and its egg masses. Formal classes must be developed emphasizing the importance of stopping the Spotted Lanternfly, as well as its life cycle and habits, how to find and destroy the creatures, and best practices.

What has been learned so far is the bug is highly attracted to Red Maples — a popular tree in urban landscapes — and the non-native Ailanthus, also known as Tree-of-Heaven. Tree-of-Heaven originates from China, where the Spotted Lanternfly is also native. The tree was introduced to the U.S. as an ornamental plant in the 1780s

and is ubiquitous on many properties, which wasn't a problem until now. I spoke with a representative of the USDA and they are inspecting properties in the confirmed area for additional Spotted Lanternfly egg masses. The eggs are laid in gray sheets and look like dried mud. The eggs can be laid on any surface, including patio furniture, trailers and wood piles — which makes unintentional transport of the species to new areas even more likely.

We must be vigilant. The more people looking for the Spotted Lanternfly and scouting for it, hopefully the Spotted Lanternfly could be less impactful in West Virginia.

It Is Extremely Important to Report Your Findings

If you find an insect that you suspect is the Spotted Lanternfly,

please contact your local Extension office or State Plant Regulatory Official to have the specimen identified properly.

To locate an Extension specialist near you, go to the U.S. Department of Agriculture (USDA) Web site at www.nifa.usda.gov/Extension. A directory of State Plant Regulatory Officials is available on the National Plant Board Web site at www.nationalplantboard.org/membership.

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

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Public Lands Advocates Visit Senate Offices

November 20, a group representing the West Virginians for Public Lands, Rhea Mitchell, WV Rivers' public lands coordinator; myself representing West Virginia Highlands Conservancy; Angie Rosser, WV Rivers Coalition executive director and Barry Rainwater, Adventures on the Gorge. visited with members of the staffs of Senators Manchin and Capito.

Our mission was to deliver hundreds of postcards and a letter supporting the Land and Water Conservation Fund signed by 1,457 individual members, 77 businesses, and 41 organizations, requesting their continued support for the fund by supporting and voting for permanent funding. That same day Land & Water Conservation Fund identical funding bills passed out of the Senate Energy and Natural Resources Committee and the Congressional Natural Resources Committee. We remain optimistic that permanent funding will pass for this very important Fund that has benefitted 54 of the 55 counties in West Virginia.

(More on p. 3)



More from President Larry (Continued from p. 2)

Forest Service Projects We Are Watching

The Conservancy has received a November 21 response, from the Forest Service, to our comments for the Draft Decision Notice for the Panther Ridge Habitat Enhancement Project Environmental Assessment (EA) and Finding of No Significant Impact (FONSI). Members of the Public Lands Committee are now reviewing the response.

November 25, the Forest Service notified the Conservancy of the next project area on the Cheat-Potomac District that will be undergoing interdisciplinary analysis through the NEPA process - Grassy Ridge. The Forest Service held a field-based stakeholder meeting last summer to introduce the project area and garner

some input from partners. Since that meeting, the Grassy project was placed on hold while the Greenbrier District proceeded with another project, Greenbrier Southeast. Now that that project is far enough along in the process, they are initiating the NEPA process on Grassy Ridge. Again members of the Public Lands Committee are reviewing the documents submitted with the notification. West Virginia Highlands Conservancy continues to work with partners and supporters to protect the incredibly important highlands of West Virginia. It is increasingly difficult to keep up as lots of good and potentially concerning information surfaces every day.

2020 Legislative Session Looming

By the West Virginia Environmental Council legislative committee

Death, taxes and the West Virginia Legislature are inevitable in the mountain state of West Virginia. And the WV legislature will convene again the second week of January. And so the West Virginia Environmental Council (WVEC)- of which WV Highlands Conservancy is a supporting member- is engaging in its final flurry of setting legislative priorities for the coming year.

There are priority issues for which bills are already or soon will be written for pro-active lobbying by WVEC and its allied lobbyists. These include bills designed to improve water quality, to allow household level retail Power Purchase Agreements (see related article on page 6-7), “Clean Elections” and anti-corruption legislation, and the Modern Jobs Act allowing strip-mined lands to be used for renewable energy generation.

Other issues for which legislative bills might or might not be ready by January but for which we are on alert for “bad” legislation include pipeline issues, public lands protections (including no logging in state parks), more funding and staff for WV Department of Environmental Protection, petro-chemicals / plastics, coal oil and gas related issues (including severance taxes), among others.

As most *Highlands Voice* readers know, developing legislative priorities has been an annual exercise for WV Environmental Council for three decades. This exercise includes surveying environmental groups and their members for their current environmental issues of most concern. And each year there are several “overlapping” issues from previous years because many of the “old” issues are still around.

But this year a new “local” issue has leaped forth- climate change. Specifically, there is demand for “Climate Impact Analysis on all new permitting”. Since this is a “new” issue for WV Environmental Council, we are gradually working it into the mix of priorities- which consists partly of ongoing assessments of what is and is not doable legislatively.

Ironically, at its most recent board of directors meeting, WV Highlands Conservancy president Larry Thomas officially recognized a Climate Change committee, and appointed long time Conservancy member Perry Bryant as chair of that new committee. That committee is currently developing a first official WVHC public statement on Climate Change issues.

Developing lobbying priorities is a year-round activity. New issues come up nearly every month. Just recently we learned of likely upcoming bills to expand Off Road Vehicle (ORV) trails- perhaps even onto public lands. Currently most “official” ORV trails (such as the Hatfield-McCoy Trail) are on former mining sites and other private lands. Efforts to expand ORV trails onto public lands will be controversial among the general public.

So stay tuned. The 2020 show is about to begin.

The Highlands Voice is published monthly by the West Virginia Highlands Conservancy, P. O. Box 306, Charleston, WV 25321. Articles, letters to the editor, graphics, photos, poetry, or other information for publication should be sent to the editor via the internet or by the U.S. Mail by the last Friday of each month. You may submit material for publication either to the address listed above or to the address listed for Highlands Voice Editor elsewhere in this issue. Electronic submissions are preferred.
The Highlands Voice is always printed on recycled paper. Our printer uses 100% post consumer recycled paper when available.
The West Virginia Highlands Conservancy web page is www.wvhighlands.org.

The West Virginia Highlands Conservancy is a non-profit corporation which has been recognized as a tax exempt organization by the Internal Revenue Service. Its bylaws describe its purpose:
The purposes of the Conservancy shall be to promote, encourage, and work for the conservation—including both preservation and wise use—and appreciation of the natural resources of West Virginia and the Nation, and especially of the Highlands Region of West Virginia, for the cultural, social, educational, physical, health, spiritual, and economic benefit of present and future generations of West Virginians and Americans.

All Terrain Vehicles on Public Lands?

By Beth Little

The idea that we should allow all terrain vehicles (ATVs) on public lands in West Virginia is one that has been kicking around for years without much progress. Now, as we approach the 2020 Legislative session, there are straws in the wind, indications that there is plenty of enthusiasm for the idea.

The first was during the 2019 session. There was a proposed resolution requesting that Congress take action to allow ATVs on federal land in West Virginia. The resolution did not pass, either because it had little support or because it got lost in the hurly burly that is the Legislature.



Forest Service. It manages that land according to federal law and the Management Plan for each National Forest, not according to the wishes of the Legislature. There is no indication that Congress would comply with the wishes of the West Virginia Legislature.

What the resolution tells us, however, is that there is interest at the West Virginia Legislature for ATVs on public lands.

In what is a more substantive indicator of interest, Senator Mark Maynard announced at an interim committee meeting of the Committee on Parks, Recreation, and Natural Resources in September that he intends to propose a bill that would authorize ATVs on West Virginia's public lands.

Finally, in October, Senator Maynard was named as Chair of the Government Organization Committee. In an interview following his taking this new position, he said that one of his goals was to have an ATV trail on public land in West Virginia.

Even with all these indications of enthusiasm, there are a few things that the Legislature should think about before plunging headlong into ATV trails on public lands.

ATV trails on public lands are a bad idea. But first, a discussion of ATV trails on private lands.

ATV trails on private lands are a bad idea unless done right. Doing it right is expensive.

The Hatfield McCoy Trail system was started with hundreds of thousands of dollars from the new federal transportation legislation called ISTEA (Intermodal Surface Transportation Efficiency Act) passed in 1991; and as the legislation has been renewed over the years (usually referred to as the RTP), Hatfield McCoy has continued to receive hundreds of thousands every year to satisfy the legislative mandate that 30% of the RTP funding be applied to motorized trails. Plus, users at Hatfield McCoy are charged a fee.

This has resulted in a trail system that has regular maintenance, new trails to replace those being retired or restored,

and comprehensive law enforcement. Law enforcement is needed to protect the safety of riders from various dangerous practices such as riding without a helmet, carrying passengers, and allowing young riders on adult machines.

ATVs are heavy and powerful, but there is a particular feature that makes them more dangerous for under-aged riders. On most ATVs the rear axle is fixed. This means that to manage a curve, while the rider is leaning to the inside to prevent tipping over, he or she must release pressure on the inside footrest so the tire can slip, while maintaining pressure on the outside foot rest. This requires a certain size and athletic dexterity in the rider. There are smaller ATVs for younger riders.

Even on private lands, ATV trails should not be routed where they will disturb others, and they should not be allowed to create serious degradation of the land, which will impact the water.

One problem with ATVs on public lands is that they are not compatible with other forms of recreation. Even driven by sedate senior citizens, who want to visit wild areas that they lack the fitness to get to, they are noisy and intrusive. Driven by those for the fun of riding, they are dangerous and destructive. So they need separate trails, which brings up another problem.

One of the strongest activists for ATV trails on public lands in West Virginia was Jeff DeVol, president of the WVOHVA, and



owner of an ATV dealership in Parkersburg. He maintained that an ATV trail should be at least 60 miles long in order to provide an adequate riding experience; otherwise, there would be problems. It takes a lot of acreage to provide 60 miles of trail that don't interfere with other forms of recreation.

A major task of the law enforcement needed is preventing riding off-trail. One pass of the knobby tires churns up the soil, and then it looks like another trail for others to follow. Pretty soon there is major damage.

Also, as explained above, ATV trails are expensive, and the problem with ATV trails on *public lands* is that even if a plan is done right with an adequate budget to start with, *public* budgets are not permanent. They are subject to change over time. To a new administration with new people and new priorities, the funding for ATV trails may look like a good place to make cuts. SB 676

(More on the next page)

More About ATVs (Continued from previous page)

(considered during the 2019 Legislative session) would establish a fund much like the federal RTP, but even a fund has to be reauthorized. Without continuous funding for maintenance and law enforcement, an ATV trail would become a disaster.

The federal RTP funds, administered by the West Virginia DOH, have been used to establish and maintain dozens, if not hundreds, of trails in West Virginia over the years, many of them on public lands. Of particular note is the MRTC (Mon River Trail Conservancy) system in northern WV, which provides many many miles of popular non-motorized trails.

A Recreational Trails Advisory board (WVRTAB), appointed by the governor, evaluates grant applications for trails and makes recommendations, through the DOH, to the governor. There have been some grant applications for motorized trail systems in WV other than Hatfield McCoy, and both the WVRTAB and the DOH have given them priority in an attempt to balance the Hatfield McCoy funding, but the proposed trails have failed – some to even get off the ground, and the rest after only a year or two. Senator Maynard (our legislators?) would be advised to consult with staff at the DOH to learn why.

Senator Maynard (our legislators) would do well to rely on years of expertise from the WV DOH and the Hatfield McCoy system about running ATV trails instead of listening to lobbyists who are working for the profits of out-of-state corporations.

To those senior citizens and other disabled people who long to experience back country without the required physical effort, I suggest they employ a tour service that provides llamas, horses, or mules. It can't be as expensive as purchasing and maintaining an ATV.

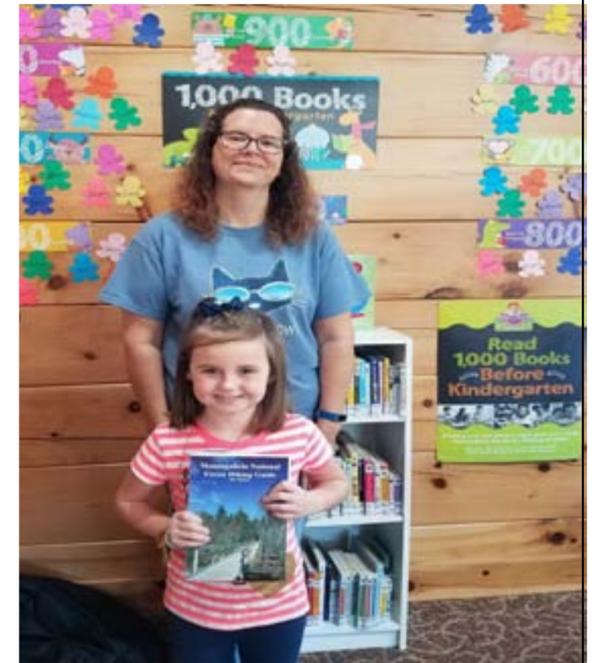
Beth Little served for many years on the WV Recreational Trails Advisory Board by appointment of three different governors.

The Plan to Give a Hiking Guide to Public Libraries Continues



Becky Harvey of the Buffalo Library

A young WVHC member presents our book to branch librarians in Putnam County;



Renae Shingleton of the Poca Library

Power Purchase Agreements: Making Renewable Energy Possible

By Frank Young

Power Purchase Agreements (PPAs) are contracts which assure that a market exists for those kilowatt hours of electricity generated by the solar panels, wind turbines, coal fired steam turbines, or other electricity generating mechanisms. Such contract agreements are necessary to allow the financiers of electricity generating facilities to know that willing buyer-seller agreements from which to market the electricity produced are in place.

Under existing West Virginia law, only licensed utility companies can sell electricity on a retail level to a consumer of electricity. This means that electricity sold at retail (directly to consumers) in WV is only sold by subsidiaries of either American Electric Power Co. or of First Energy Corp. Currently Power Purchase Agreement contracts are exclusively wholesale level power sales contracts between electricity producers (for example owners of steam generated power plants like First Energy Corp) and their subsidiary retail marketers such as Monongahela Power Co. PPA contracts are also used by, for example, the owner of a wind energy facility (such as Invenergy Corp., the owner of the Beech Ridge Wind Farm in Greenbrier County) that generates electricity for the wholesale electricity market and a public utility electricity retailer such as Appalachian Power Co. or Monongahela Power Co.

Retail level PPAs are not allowed in West Virginia. I cannot contract a Power Purchase Agreement (PPA) with XYZ Solar Co. to put solar panels on the roof of my home in order to sell me the electricity thereby generated. Why not? Because XYZ Solar Co. is not a legally designated public utility that is set up to serve all customers in a designated service area.

The Legislature could fix this. By statute, it could allow a solar power company to install solar panels on a home and sell the electricity (a Power Purchase Agreement) to the homeowner

without being considered a public utility subject to the requirements of the Public Service Commission.

The effort toward allowing retail level PPA contracts relates mostly to rooftop solar panel installations on residential structures such as a home or an apartment building. This would be a revolutionary approach to how electricity is produced, distributed and marketed. The big utility companies currently display no interest in furnishing their customers rooftop generated electricity. And so the existing electric utility companies fight against legislation to allow contracts (Power Purchase Agreements) between consumers and rooftop solar panel leasing companies.

Why is this important to WVEC and its organizational members such as WV Highlands Conservancy? It is important because small scale (sized to provide electricity to individual households, for example) renewable energy resources such as solar panels would reduce the market demand for fossil fuel fired electricity. This would reduce the amounts of coal or other steam produced electricity fuels that would need to be mined, transported and burned. This would, in turn, reduce the local miseries caused by mining coal and of drilling and fracking for natural gas, as well as allow an overall reduction of the harmful effects of burning fossil fuels on regional and worldwide climate. Less fossil fuel combustion equals less both local disruptions and worldwide pollution.

This will not be the first attempt at allowing retail Power Purchase Agreements. There was a bill in the 2019 Legislature that would have done that. Unfortunately, it died in the Senate's Energy, Industry & Mining committee.

For more specific details of why residential scale Power Purchase Agreements would be feasible, see the bullet point Q&A "flyer" on page 7..

Land and Water Conservation Fund Plods Ahead

The Land and Water Conservation Fund collects royalties from oil and gas production on the outer continental shelf. It then uses those royalties to fund acquisition of public land, improvements in parks, etc.

Before this year, the Fund would expire periodically and had to be renewed. Congress fixed this earlier this year by authorizing the Fund permanently. Permanent authorization of the Fund by Congress was a big step but it is not the final step. Current law does not require that the money that is available for the fund actually goes into the Fund. Congress still must make appropriations to the Fund. Now there is legislation pending in Congress to take this final step.

On November 19, the Senate Energy and Natural Resources Committee passed a bill that would fully fund the Land & Water Conservation Fund with a 13 to 7 vote. Next, the Land and Water Conservation Fund funding bill will go before the full House and Senate for a vote.

As the Chair of the Senate Energy and Natural Resources Committee, Senator Joe Manchin played an important role. His steadfast support of the Fund played a significant role in its passage by that committee.

WEST VIRGINIANS FOR ENERGY FREEDOM

Powering West Virginia's energy freedom with Power Purchase Agreements

Power Purchase Agreements (PPAs) are a widely available method to finance distributed energy generation projects. They are legal in at least 28 states, including Virginia, Ohio, Pennsylvania, Maryland, and Georgia, but are **NOT** currently available in West Virginia. This document explains why making PPAs legal will benefit West Virginia.

How do Power Purchase Agreements work?

- Tax-paying third-party developer installs, owns, and operates a distributed energy system on a customer's property
- Customer purchases the system's electric output at a fixed rate – generally lower than that of the local electric utility – for a predetermined time period, usually 15-25 years
- Eligible energy resources include but are not limited to solar, wind, run-of-river hydropower, geothermal, biomass, natural gas, and combined heat and power (CHP)

Who can utilize a PPA?

- Commercial businesses and manufacturers (57% of all installed non-residential U.S. solar capacity in 2017 was third-party owned.¹)
- Municipalities and governments
- Tax-exempt entities like schools, churches, hospitals, and nonprofits (Nearly 90% of all solar installed on American schools since 2014 has been financed via PPAs.²)
- Farms
- Homeowners

How do PPAs benefit customers?

- PPAs allow customers to benefit from distributed energy with low to zero upfront cost while enabling electric bill savings from day one
- PPAs allow customers to lock in their energy rates, so they can stabilize monthly budget expenditures and protect themselves against utility rate increases (West Virginia had the fastest growth rate in electricity prices in the nation between 2008 and 2017.³)
- PPAs allow tax-exempt customers to benefit from tax credits through the project's developer

How can PPAs benefit West Virginia?

- Broaden access to affordable energy (States that allow third-party PPAs account for 93% of the increase in American solar capacity since 2015.⁴)
- Expand economic development (More than 800,000 American workers are employed in renewable energy industries.⁵)
- Create good local jobs in rapidly growing energy sectors (Solar PV installer and wind turbine technician are the #1 and #2 fastest-growing occupations in the nation.⁶)
- Attract employers to locate and invest in West Virginia (More than 150 major global corporations have made corporate commitments to use 100% renewable energy.⁷)

¹ Source: Solar Energy Industries Association - <https://bit.ly/25h3Hkm>

² Source: Solar Builder Magazine - <https://bit.ly/2Q3bCW3>

³ Source: WVU College of Business and Economics Bureau of Business & Economic Research - <https://bit.ly/2UcRMWv>

⁴ Sources: U.S. Energy Information Administration *Electric Power Monthly* - <https://bit.ly/2QrRufn>; *Customer First Renewables* - <https://bit.ly/2FR3VNX>; *DSIRE* - <https://bit.ly/2P8aXNC>

⁵ Source: International Renewable Energy Agency *Renewable Energy and Jobs Annual Review 2017* - <https://bit.ly/2qV00Hb>

⁶ Source: Bureau of Labor Statistics *Occupational Outlook Handbook* - <https://bit.ly/2a3YMrh>

⁷ Source: *Be100* - <https://bit.ly/1KpYyW0>

A Green Amendment: Could We Ever Have One?

By Cindy Ellis

Two Words

Climate Change. When WV Delegate Evan Hansen spoke to us at our Fall Review, he pointed out that he was the first to publicly use that two- word phrase on the floor of our legislature's house chambers. Then he continued by mentioning two more provocative words. Green Amendment.

Delegate Hansen reminded us that Pennsylvania, despite a record of pollution to rival that of West Virginia, has a decades-old provision to protect a healthy environment and that, in recent years, court cases have reaffirmed those protections.

Here is the amendment:

"The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and aesthetic values of the environment. Pennsylvania's public natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people."



Delegate Evan Hansen

A reporter for the Bay Journal [focusing on Chesapeake Bay] summed up the recent action. Donna Morelli said, "Until lately, those high-sounding words have been just that, without any real impact on what happens in the state. But twice in the last four years, Pennsylvania's Supreme Court has rendered decisions putting teeth in the environmental

rights amendment — first, in a lawsuit over whether communities have the power to bar hydraulic fracturing and, later, over how the legislature is spending revenue derived from leasing state forestland for "fracking," as the controversial natural gas extraction method is known."

Could that ever happen in West Virginia?

There's another example. Even the extractive state of Montana has a similar provision in its constitution and there the Blackfoot River was safeguarded by the same kinds of appeals.

Ensuring those provisions and mounting those court cases would be challenging.

Much of the push for the act in Pennsylvania came from the Delaware Riverkeepers headquartered in Bristol. Its leader, Maya

van Rossum, has written a book, "The Green Amendment: Securing our Right to a Healthy Environment". In it, she outlines the history of the efforts to pursue the security offered by formal amendments, along with a multitude of examples of damaged communities and landscapes, some in West Virginia.

She says, "...pollution and environmental destruction are *not illegal* in this country. People are free to pollute, damage, and desecrate the environment so long as they obtain government permits or licenses to do so..." and "...Sadly, government-issued licenses to pollute are rarely denied..."

We have certainly seen that happen in the Mountain State. And we want change.



So, we could be heartened by our delegate's audaciousness in introducing new words.

And we can watch the legislature in the New Year to see if any others join in his boldness, and join us in efforts to "conserve and maintain" our rights.

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.

An idea whose time has come

By John McFerrin

The Modern Jobs Act (MOJO Act) takes several realities and tries to put them together in a way that benefits West Virginia. Those realities are:

- West Virginia has more than 550 square miles of strip mined land and other degraded lands. 98% of this land is just sitting there. The idea that there is this much strip mined land might make some of our hearts hurt but that is the reality. There are 219 square miles of land that are suitable for large scale solar farms.
- There are major companies who have made commitments to using renewable energy at their facilities.
- West Virginia gets more than 90 per cent of its electricity from coal.

These realities are set out in Legislative Findings in the bill; they are supported by research by the bill's lead sponsor (Evan Hansen) and a company where he works (Downstream Strategies).

One difficulty with recruiting modern jobs to West Virginia is that two of these realities are in conflict. If a company has a commitment to renewable energy, it will not come to a state where over 90 percent of the electricity comes from coal.

The MOJO Act attempts to make West Virginia more attractive to modern jobs by using the first reality (vacant strip mined land) to reconcile the second and third realities. It does this by encouraging the building of solar energy facilities on old strip mine sites.

The MOJO Act would only apply to large industrial users, those who use more than one megawatt per month. It would encourage solar facilities by removing them from the control of the Public Service Commission. Under present law, someone who wished to produce and sell electricity would be classified as a public utility, subject to the Public Service Commission. Under the MOJO Act, someone could build a solar farm on an old strip mine and sell the electricity to a large industrial user free of the control of the Public Service Commission.

Of course, encouraging solar facilities on old strip mines does not guarantee that they will start popping up like dandelions in the spring. That requires financing, customers, and a whole host of other things. The MOJO Act just tries to remove barriers to this happening and encourage it.

Neither would the MOJO Act guarantee that modern jobs would flock to West Virginia like West Virginians to Myrtle Beach. Modern jobs require modern workers, good roads, etc. The MOJO Act just seeks help make renewable power more available and, by doing so, remove one of the barriers to a substantial portion of those jobs coming here.

The 2020 Legislature will not be the first try for the Modern Jobs Act. In spite of its catchy nickname (The MOJO Act), the Modern Jobs Act did not make much progress during the 2019 session of the West Virginia Legislature. It was not passed by either of the committees to which it was assigned.

This is not unusual. Unless they have the enthusiastic support of the Governor or one of the big dogs of the Legislature, proposals often do not make much progress in the Legislature their first year. Proposals without a powerful person in their corner usually get introduced the first year, talked about the second year, and finally passed in the third or fourth year. The Modern Jobs Act made a step along this road to passage during one of the interim Legislative sessions. It was talked about. In a major milestone for the Modern Jobs (MoJo) Act, the Joint Stand-

Modern Jobs Act

ing Committee on Energy heard from four experts on opportunities for solar energy in West Virginia, with a focus on the MoJo Act.

WVU Law Center for Energy and Sustainable Development Director Jamie Van Nostrand explained how the bill would open West Virginia to new investments by Fortune 500 companies with renewable electricity targets. Charlie Dennie from Alpha Technologies described the demand he's seen from Alpha's customers to have its South Charleston data center powered by renewables. Neil Habig from Dakota Power Partners identified opportunities for utility-scale solar in West Virginia, along with some of the challenges. Chip Pickering from Pickering Energy Solutions talked about his Parkersburg-based solar installation company and his vision for expanding access to solar in West Virginia.

With this momentum, the Modern Jobs Act will almost certainly be back for another try, either for final passage or for more steps along the road to eventual passage.

Happy Birthday!

For over 25 years, West Virginia Land Trust has been working to conserve West Virginia's special places. Since 1994, it has protected over 10,000 acres of land, created outdoor recreation opportunities, safeguarded our drinking water supplies, protected scenic views, preserved historic sites and family farms, and much more.

Its mission is to conserve special places that give our state its distinctive character. That means that it may consider scenic, wildlife, botanical, recreational, or historic conservation values when evaluating a project. The Land Trust works with landowners to determine the best conservation approach for each property.

So, to the West Virginia Land Trust we say Happy Birthday, and many more!



Better Bonding for Coal Mines Proposed

By John McFerrin

Ever since the passage of the federal Surface Mining Control and Reclamation Act, coal mines have had to post a bond to guarantee reclamation. If the company went out of business, disappeared, or for some reason did not reclaim the mine site, the state could forfeit the bond and do the reclamation.

In most situations, companies would post a bond backed by an insurance company, a cash bond, or some other type of financial instrument. Because the bond was cash or backed by a bank or insurance company, the state was assured that the money would be available if it needed it for reclamation.

In some situations, however, companies would do what was called “self bonding.” They would submit financial records sufficient to demonstrate that, if they did not do the reclamation, money would be available for the State to take and do the reclamation. They were, in effect, being their own insurance companies or banks, guaranteeing that their reclamation obligations would be met.

Self-bonding worked well enough so long as the coal industry was prospering. The assets of companies were pledged to guarantee that reclamation would be completed. So long as there were assets, the reclamation was guaranteed.

Then came the long term, and apparently permanent, decline in the coal industry. Between 2015 and 2016, the country’s three largest coal companies (Alpha Natural Resources, Arch Coal, and Peabody Energy) filed for bankruptcy, leaving \$2.3 billion in outstanding self-bonds. This summer, Revelation Energy and Blackjewel filed for bankruptcy, putting nearly 1,700 miners out of work, leaving the fate of thousands of acres of mines hanging in the balance, and potentially costing taxpayers hundreds of millions of dollars in outstanding reclamation costs.

With the economic difficulties in the coal industry, companies that had previously had plenty of money suddenly didn’t have assets. Their “self-bonding” became a worthless promise. Reclamation was no longer guaranteed.

Now there is a bill pending in Congress that would fix this problem, at least for future mines. The “Coal Cleanup Taxpayer Protection Act of 2019”, introduced by Representatives Matt Cartwright (PA-

08) and Debbie Dingell (MI-12), would eliminate self-bonding for future mines.

For existing mines the solution is more complicated. The Act would not magically put money for reclamation into the pockets of struggling coal companies. Broke companies would still be broke. Mining permits are, however, required to be renewed periodically. When permits at existing mine come up for renewal companies would have to replace their self-bonding arrangement with an actual bond backed by a surety.

The Act makes other changes to bonding practices as well. Most notably for West Virginia, these include restrictions on alternate bonding systems.

West Virginia has always used what is called an ‘alternative bonding system.’ Under this system, companies would post a flat per acre fee which was designed to be relatively low. The bonds were always designed to be inadequate to do the reclamation.

At least in theory, these inadequate bonds would be sufficient because West Virginia had its Special Reclamation Fund. All coal companies pay into this fund based upon the tons of coal they produced. If a company went under or disappeared, the Department of Environmental Protection could forfeit the inadequate bond and then take whatever it needed from the Special Reclamation Fund to pay the rest of the cost of reclamation.

This system only worked in theory. In actual practice, the rate at which companies pay into the Special Reclamation Fund has always been too low to fund all the reclamation at bond forfeiture sites.

This problem (and the West Virginia Highlands Conservancy’s involvement) has been going on for decades. Every year or two representatives of the West Virginia Highlands Conservancy (and occasionally others) would meet with the Office of Surface Mining and the West Virginia Department of Environmental Protection to talk about the Special Reclamation Fund. All would more or less agree that the Fund was inadequate and that we needed to fix it. Then another year or two would go by, the Fund wouldn’t be adequately fixed, and we would have the same meeting again. A year or two later we would have the same meeting again.

Cindy Rank, Mining Committee Chair of the West Virginia Highlands Conservancy, described it this way, “This

has gone on too long. We have begged, pleaded and litigated since at least 1990 to make the state comply with the law. The state’s response has been to dance around the issue and make only incremental and inadequate improvements. OSM has known about the ever expanding liabilities and issued warning letters, but has not followed through with the necessary enforcement measures to make the state fulfill its legal responsibility under the law. There is little consolation in knowing the predictions and warnings of the past years are coming to fruition in such devastating fashion and there is no excuse for allowing this to continue.”

The proposed Coal Cleanup Taxpayer Protection Act of 2019 recognizes this problem. It would require audits of bond pools such as the one West Virginia uses to assure that they are solvent. Since an audit would very likely reveal that West Virginia’s bond pool is insolvent, this could result in West Virginia being required to strengthen its bond pool.

The bill (H.R. 4435) faces a long, uphill slog to passage. It currently has six cosponsors; there is no companion bill in the Senate.

The West Virginia Highlands Conservancy has joined in a letter in support of this bill.

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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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.

Facts About Red-Tailed Hawks

The Red-Tailed Hawk is a bird of prey known as a raptor. They can be found throughout most of North America. These birds are found as far north as northern Canada and interior Alaska and as far south as Panama and the West Indies. The red-tailed hawks that live in northwest Canada are much darker in color with a marbled white, brown and gray tail instead of a red one.

Females are about 25% heavier than males.

Hawks and falcons are known for their keen eyesight.

Red-tailed hawks are mature enough to find a mate at the age of two and they mate for life.

The raspy cry of a red-tailed hawk is used in movies to represent any eagle or hawk.

Red-tailed hawks usually build their nests in the crowns of tall trees where they have an optimal view of the surrounding landscape. They will also be seen nesting on cliff ledges, window ledges and billboard platforms.

They are one of the most widely distributed hawks in the world. They can adapt to living in various conditions and altitudes such as deserts, grasslands, forests, agricultural fields and even urban areas.

A red-tailed hawk's diet consists of small mammals including rodents and rabbits, birds, reptiles, fish and insects. Red-tailed hawks will steal prey from other raptors.

The red-tailed hawk is one of the largest birds you will find in the sky in North America, yet even the biggest female weighs only approximately three pounds.

You can sometimes catch red-tailed hawks hunting as a pair, guarding opposite sides of the same tree to catch tree squirrels.

Red-tailed hawks do not have many predators, but they do compete with the great horned owl. The great horned owl is larger, so they will attack red-tailed hawks to take both their food and their nests.

The oldest known red-tailed hawk was at least 30 years and 8 months old when it was found in Michigan in 2011.



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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.

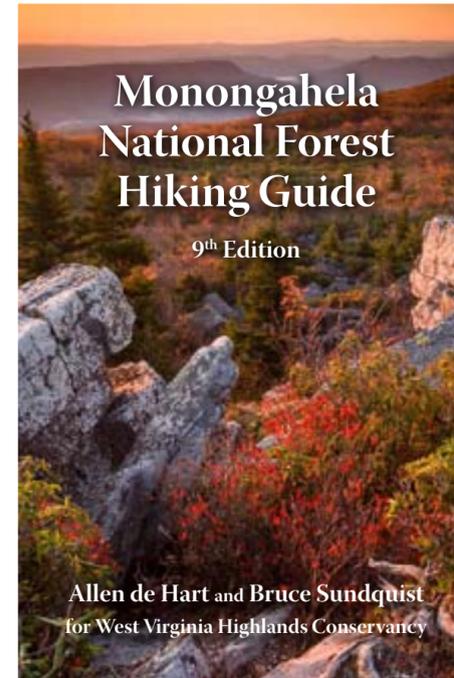
The Monongahela National Forest has long been known as a 'Special Place'. The hiking, backpacking, and cross-country skiing opportunities it provides are among the best in the eastern U.S. New wilderness and backcountry trails have been added to the outstanding areas we have appreciated for decades – 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.

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The Highlands Voice is now available for electronic delivery. You may, of course, continue to receive the paper copy. Unless you request otherwise, you will continue to receive it in paper form. If, however, you would prefer to receive it electronically instead of the paper copy please contact Dave Saville at WVHC50@gmail.com. With electronic delivery, you will receive a link to a pdf of the Voice before the paper copy would have arrived.

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

Forest Service Responds to Conservancy's Objection on the Panther Ridge Project

The Forest Service is on the cusp of finalizing its National Environmental Policy Act (NEPA) decision for the proposed Panther Ridge Habitat Enhancement Project. On November 21, 2019, Forest Supervisor Shawn Cochran issued a letter explaining his responses to the two formal objections to the project, one of which was filed by the West Virginia Highlands Conservancy (the other one was filed jointly by Friends of Blackwater and the Center for Biological Diversity). According to this letter, the Forest Supervisor is largely upholding the decision by District Ranger Cynthia Sandeno to move forward with the project. However, he did instruct her to correct several deficiencies in the NEPA analysis before signing the final decision.

The proposed project is intended to enhance early successional habitat for game and non-game wildlife, primarily through commercial timber harvest and prescribed fire. The Conservancy initially offered comments on this project during the official notice and comment period on the draft Environmental Assment, which occurred back in the fall of 2018 (see the President's column in the December, 2018 *Voice*). Although the Forest Service made some changes based on our comments, we felt that substantial deficiencies in the project design and NEPA analysis remained, so we filed a formal objection to the project during the official pre-decisional objection period in the summer of 2019 (see the President's column in the July, 2019 *Voice*). As we noted when we filed our objection, the Conservancy does not seek to stop the project, but does seek to ensure that impacts are properly analyzed and that sensitive resources are properly protected.

The following is a summary of the Forest Service's responses to the objection issues that we raised:

- We contended that the single action alternative that the Forest Service considered in detail did not meet the National Environmental Policy Act's requirement to study "appropriate alternatives to recommended courses of action." In his response, Supervisor Cochran concluded that the agency's perfunctory mention of another alternative that was not studied in detail was sufficient to meet NEPA's alternative analysis requirement.

- We objected to the way that the Forest Service calculated the overall amount of harvest and road density in relation to the larger area of the landscape in which the activity occurs. Basically, we said that they may be proposing more disturbance than the Forest Plan allows within a particular area of the Forest at one time. It is a complicated issue to explain in this small space, but suffice it to say that Supervisor Cochran largely disagreed with our objection point, although he agreed that the analysis of road density needs to be a bit tighter. His response gives the agency wide latitude in defining the area of the landscape to which these calculations are applied.

- We objected to the open-ended explanation of how the Forest Service would determine which skid roads would be decommissioned and the methods to be used. We also asked that the design features addressing road decommissioning be re-written to make it clear that all skid roads would be decommissioned when use has been completed. The Forest Supervisor asserted that the responsible official has discretion in making these determinations, and he stated that the necessary details for making these determinations exist in various places in the project file. But he agreed that the description in the Environmental Assessment was too vague. He instructed the responsible official to develop a checklist outlining how decommissioning decisions will be made and how methods will be selected. He did not directly address our request to re-write the design features.

- We objected to the use of the term "skid trails" to describe all of the routes used for skidding logs. Skid trails are defined as pathways that are created by dragging logs over the land surface. But due to the sloping landscape, such overland skidding is rare on the Monongahela, with the vast majority of skid routes being built by using cut-and-fill road construction techniques. Such constructed routes are defined as "tractor roads." The distinction is important, because regulations and directives require decommissioning of temporary roads, including tractor roads. Supervisor Cochran directed the Forest to distinguish between skid trails and tractor roads in the EA to the extent possible. However, he offered a very expansive

interpretation of the agency's discretion to decide what is a road and what is a trail, which, in our view, is at odds with the very clear definition of a road that appears in the Code of Federal Regulations.

- We objected to the way the Forest Service used acres of clearcut and "heavy thinning" harvest as a surrogate for basal area removal in their analysis of impacts on watershed hydrology. Basal area is a standard measure of the amount of live wood growing on the land. Widely accepted research shows that removal of more than 20 – 25 percent of the basal area can cause an increase in runoff. We contended that the Forest Service was underestimating the amount of wood being removed because they did not include any of the removals due to other harvest activities besides clearcutting and heavy thinning. Supervisor Cochran disagreed with our contention.

- We expressed concern that the proposed fire line management techniques are vague and may lead to the cutting of beneficial downed woody material in stream channels. We asked the agency to develop protective measures to ensure that such cutting does not occur. Supervisor Cochran disagreed that such measures are needed.

- We raised objections to numerous sections of the EA that discussed impacts on watersheds and sensitive species. We pointed out that in many cases the agency simply stated that no significant impacts would occur, without providing any evidence to back up those assertions. Supervisor Cochran largely agreed with us on these points, and while he did not direct the Forest to do extensive additional analysis, he did direct them to provide rationale to support the conclusory statements.

Friends of Blackwater and the Center for Biological Diversity raised several additional objection issues pertaining to inadequate description of baseline conditions, inadequate explanation of the need for habitat enhancement and the methods for achieving it, inadequate analysis of federally-listed bat species, and

(More on the next page)

Forest Service Responds to Conservancy Comments (Continued from previous page)

inadequate analysis of impacts to recreation. Supervisor Cochran directed the Forest to resolve discrepancies in the analysis of the bats, and to refrain from making a final decision until after the U.S. Fish and Wildlife Service completes its consultation under the Endangered Species Act. He did not issue any instructions on the other issues.

The Forest Supervisor's response to objections ends the administrative process for public challenges. Once the Forest has done the additional work specified in the Forest Supervisor's instructions, District Ranger Sandeno can issue a final decision and work on the project can proceed. If the Conservancy or the other objectors wish to challenge the project further, we

would need to file a lawsuit. At present the Conservancy's Public Lands Committee is still digesting the objection response and has not made a recommendation regarding legal action.

Trout Unlimited Urges Congress to Keep Funding Mine Cleanups

By Chris Hunt

Trout Unlimited has joined a bipartisan group of partners and lawmakers in calling on Congress to provide continued funding for the cleanup of abandoned mines and the legacy pollution of historic coal production.

The House Subcommittee for Energy and Mineral Resources met to discuss H.R. 4248, which would reauthorize the Surface Mining Control and Reclamation Act of 1977 and provide ongoing funding through 2036. TU needs your help: Please email or call your congressional representative today to support abandoned mine cleanup.

Since 1977, the Abandoned Mine Reclamation Fund has poured more than \$5.5 billion into abandoned mine projects across the country. The fund is supported by a small per-ton fee on current coal production. But the work is not done. Another \$10.5 billion in cleanup is ahead of us, and addressing acid mine drainage pollution would add billions to the cost.

Trout Unlimited volunteer leader Robert "Bobby" Hughes of Ashley, Pa., has spent his entire life in the coal region of northeastern Pennsylvania. He is executive vice president for the Pennsylvania Council of Trout Unlimited and executive director of the Eastern Pennsylvania Coalition for Abandoned Mine Reclamation.

"The majority of the streams that I've grown up around still run orange to this day," he said in his testimony before the subcommittee. "It's not fair that my children to have to live with this legacy of past mining," he added.

Pennsylvania has more abandoned mine land sites than any state in the nation. TU has spent decades working with partners to clean up water pollution from abandoned mine drainage (AMD), which has left streams devoid of life. Worked with partners on more than 200 projects in the state, we are restoring streams and seeing wild trout populations rebound in the West Branch Susquehanna River watershed.

These extensive restoration projects create direct local jobs for equipment operators, truck drivers, engineers, technicians, even former mine industry employees. For every federal dollar invested in cleanup, \$1.59 is added to the local economy.

"Ongoing federal funding is essential to states, tribes and groups like mine that work with local communities to address hazardous conditions, improve water quality, and promote

economic development in historic coal mining areas," Steve Moyer, TU's vice president for government affairs, wrote in a letter to the subcommittee. He thanked Reps. Matt Cartwright (D-PA) and Glenn Thompson (R-PA) for cosponsoring the legislation, and Subcommittee chairman Rep. Alan Lowenthal (D-CA) and ranking member Rep. Paul Gosar (R-AZ) for holding the hearing.

"For the few centuries of American coal mining," Cartwright said at the hearing. "it was standard practice to mine an area until the coal was gone and then have the company simply move on to a new mine without cleaning up the old one. As a result, millions of Americans live less than a mile from an abandoned coal mine. These hazardous sites pose risks to our health, our safety, our environment and our economy."

Thompson extolled the successes of the Abandoned Mine program and noted the need to continue the work. "I've seen waters go from orange to clear and some pretty good fishing, let alone great habitat that gets planted on those reclaimed areas in cooperation with our sportsmen to support game."

Lowenthal highlighted the bipartisan support for H.R. 4248, and urged colleagues to move forward quickly before the collection of AML fund fees expires in 2021.

"I know Congress is known for waiting until the last possible second on absolutely everything, so discussing this bill two years before expiration may seem out of character," Lowenthal said. "But this is a problem that isn't going away."

Note: This article originally appeared in *Trout*, the publication of Trout Unlimited.

In a Related Matter

The West Virginia Highlands Conservancy has joined in a letter supporting the same legislation that is the subject of this story.

HIGHLANDS CONSERVANCY BOUTIQUE



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