



# The Highlands Voice

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

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## Proposed Changes Threaten Birds

By John McFerrin

The United States Department of the Interior has proposed regulations that would reduce protection for migratory birds through a dramatic reinterpretation of the Migratory Bird Treaty Act.

### Background

The Migratory Bird Treaty Act is the United States' effort to implement a 1916 treaty between the United States, Mexico, and Great Britain (agreeing on behalf of Canada) to protect birds that migrate among the three countries. The treaty was later expanded to include Russia and Japan. It prohibits pursuing, hunting, taking, capturing, killing, or attempting to do the same migratory birds, their nests, or their eggs. The list of birds protected by United States law goes on and on--three species of cranes, three species of cowbirds, sixteen species of owls, fifty five species of warblers (by my count), etc. etc. etc., for pages and pages, birds that only the most enthusiastic birder would even know

existed. If you want to see the whole list, go to 50 Code of Federal Regulations § 10.13.

Protection for all birds on the list is not absolute. Some birds on the list are hunted for sport or even food in some rare instances. The Secretary of the Interior has issued regulations listing some birds that may be pursued, hunted, killed, etc. Absent a regulatory exemption, the killing, capturing, etc. of birds on the list is prohibited.

### What the fight is about

For a century everybody--agencies, the birds, the public, everybody--assumed that the Migratory Bird Treaty Act protected birds from all killing, whether specifically intended or not. Going out and intentionally killing a bird was, of course, prohibited. Doing something such as destroying habitat that also resulted in the deaths of birds was also prohibited, even if the primary purpose of the habitat destruction was something other than killing birds.

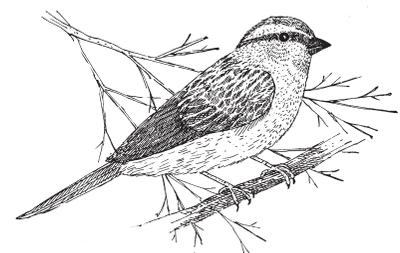
**(More on p. 3)**



**One of our favorite migratory birds, due in West Virginia any day now.**

### What's inside:

Thoughts from our President	2	Hiking guide distributions	10	Get stuff	16
Pump storage bites the dust	4	Well deserved thank you	10		
ATVs can't get started	5	Guaranteed smile	10		
How to join	6	Get a Hiking Guide	11		
Get a history book	6	Bats	12		
Coronavirus tips and info	7	ClimateWise	13		
Change to NEPA	8	Legislative news	14		
Truth telling in Washington	9	Crawdads get a boost	15		
Roster of officers	10	Poetry	15		



## Thoughts from our President

By Larry Thomas

March, the month that will change our lives forever. It's hard to believe the change in our world that has occurred with the Coronavirus pandemic spreading to over 140 countries. Who knows how long this worldwide event will last, but one thing seems for sure? Human activity throughout the world, including West Virginia, will likely be so much different. What changes and how things change remains to be seen.

What of the West Virginia Highlands Conservancy stated mission? Is this a time when we can let down our guard and assume that everything will be fine? My thought is a big NO! Government agencies and industry have already demonstrated their willingness to take advantage of the situation and we must be even more vigilant and work even harder. Daily, I am receiving proof as many organizations are requesting support in working on issues that would affect the highlands and its environment.

Rest assured, the Board and its committees are alert and seizing opportunities for the protection of West Virginia's highlands. March was again another busy month for the environmental community both federally and within West Virginia.

The WVHC Public Lands Committee continued reviewing the United States Forest Service projects and has provided comments as appropriate. WVHC believes that early, frequent, and thorough public involvement is the key to designing a project that can achieve a consensus of support among the agency and the full spectrum of stakeholders. Comments were provided for two projects.

### Grassy Ridge Project

The Grassy Ridge Project is a 5,545-acre project area located in Randolph and Pendleton counties on the Cheat-Potomac Ranger District. Approximately 94% of land within the project area is under National Forest System ownership. This project area was partially managed under a previous NEPA decision (Big Mountain, 2016). Activities completed under the Big Mountain Decision included riparian and stream habitat restoration, aquatic passage improvements, and decommissioning of legacy ground disturbance features.

The project area lies within the Management Prescription 4.1 of the Monongahela National Forest Land and Resource Management Plan (Forest Plan, pg III-9), which emphasizes:

- Active and passive restoration of spruce and spruce-restoration communities.

- Research or administrative studies on spruce restoration. Recovery of threatened and endangered species and other species of concern associated with spruce and spruce-hardwood communities.

- Management of hardwood communities where spruce is a negligible or absent component.

- Generally restricted public motorized access and use.

- A mix of forest products.

WVHC comments included Purpose and Need, Spruce Enhancement and Connectivity, Age Class Diversification Using Vegetation Management, Wildlife Habitat Enhancement and Riparian and Stream Habitat Enhancement.

WVHC also provided informal comments on this project in November 2019 after attending the initial planning meeting. **Upper Elk Ecological Restoration Project**

The Upper Elk Ecological Restoration Project is a 41,026

acre project area located in Pocahontas, Randolph, and Webster counties and is centered around the vicinity of Slatyfork, WV. In the Upper Elk project area boundary, an estimated 33,328 acres (81 percent) are National Forest System (NFS) lands, and 7,698 acres (19 percent) are private lands. Proposed activities would only take place on NFS lands within the project area.

The Marlinton-White Sulphur Ranger District of the Monongahela National Forest proposes to implement vegetation management, watershed improvement, recreation improvement, and associated activities within the Upper Elk project area over the next ten years to help meet direction in the Monongahela National Forest Land and Resource Management Plan (Forest Plan).

WVHC comments included Purpose and Need, Commercial Timber Management – Regeneration and Thinning, Noncommercial Timber Stand Improvement, Spruce Restoration - Commercial Spruce Treatments, Spruce Restoration - Noncommercial Spruce Treatments, Road Work Related to Timber Harvest, Wildlife Habitat Enhancements - Commercial and Noncommercial Timber Management – Cutback Borders, Wildlife Habitat Enhancements - Wildlife Openings, Wildlife Habitat Enhancements - Water Sources for Wildlife, Watershed Improvement – Increased Road Maintenance, Watershed Improvement – Road Decommissioning, Watershed Improvement - Aquatic Organism Passage (AOP), Watershed Improvement - Stream and Riparian Habitat Enhancement, Soil and Water Restoration Treatments on Legacy Features, Recreation Improvements, Non-Native Invasive Species Treatment, Range Allotment Improvements. Other Considerations mentioned were the West Virginia northern flying squirrel, Potential for spruce restoration in MP 3.0, Potential impacts on the viewshed of the Highland Scenic Highway, Use of the terms “restoration” and “forest health”.

The WVHC Public Lands Committee continues to monitor all project activities within the National Forest

### Ulysses Pumped Storage Hydropower Project

The March Highlands had a story, page 15, about the FreedomWorks, LLC (permittee) for the proposed Ulysses Pumped Storage Hydropower Project to be located in Grant County, West Virginia. On January 12, 2020 WVHC filed comments and a Motion to Intervene to establish status in the case before the Federal Energy Regulatory Commission (FERC) should WVHC want to file additional comments or take further action once the proposed studies were completed.

On March 18, 2020 WVHC received a Notice of Surrender of Preliminary Permit filed by FreedomWorks, LLC, permittee for the proposed Ulysses Pump Storage Hydro Project. The preliminary permit for the project will remain in effect until the close of business, April 17, 2020.

A public forum was held on the project at the Grant County Courthouse with more than 40 people signing up to speak during which Tim Williamson, the owner of FreedomWorks could not gain public support for the project and ultimately said he fully respected the wishes of the community and would pull all permit requests around the project from FERC.

In addition, WVHC has signed on to other organization comment letters on issues of interest to WVHC, after the appropriate WVHC committee has reviewed the letter and approved our signing on.

Thanks to all the WVHC committees for their work in protecting the highlands.

Please follow the guidelines and stay safe!!!

## More about Migratory Birds (Continued from p. 1)

The proposed regulation wants to change that. Under the proposed regulation, only actions that have as their goal the killing of birds would be prohibited. Actions that had another purpose but resulted in the deaths of birds would not be prohibited. Shooting a migratory duck would be prohibited; causing its death by draining wetlands would not be.

The proposed regulation would remove protection for migratory birds from the only real threats they face. Although there are rare exceptions, we don't routinely and deliberately kill birds. There was a time when migratory birds were hunted for their feathers but times have changed. There was a time when four and twenty blackbirds might be baked in a pie but the nursery rhyme reflects the eighteenth century, when it first appeared in print.

Instead of being hunted for their feathers or baked in a pie, the threats birds face are modern ones--oil pits and spills, high-tension power lines, communications towers, etc. Birds can die when they land on an uncovered oil waste pit that appears to be typical pond, or run into an unseen power line. According to studies, power lines kill up to 64 million birds a year. Communications towers are estimated to kill up to 7 million birds per year, and uncovered oil waste pits account for up to another 500,000 to 1 million bird deaths every year. Data on wind turbines are harder to come by, but current estimates are approximately 234,000 bird deaths a year.

These death tolls—even with the Migratory Bird Treaty Act being in effect—are dramatic enough. The really sobering thought, however, is that the majority of the efforts being made today to prevent the tolls from being higher are being done in an effort to comply with the Migratory Bird Treaty Act.



**Blackpoll Warbler. In order to take full advantage of the Migratory Bird Treaty Act, it migrates from South America to Alaska each year.**

While the Migratory Bird Treaty Act has not saved all birds from these threats, it has acted to reduce the threats. It has done so both by the rare prosecution (14 in the last two decades) and by encouraging companies to come up with innovative ways to avoid bird deaths.

Our experience in West Virginia demonstrates both how the Act (as it has always been interpreted) has both punished irresponsible companies for killing birds and urged companies to plan operations so as to avoid bird deaths.

In 2011, approximately 500 birds were killed in an accident at the Laurel Mountain industrial wind facility. The fatalities occurred by collision and exhaustion at the Laurel Mountain substation, where the lights were left on during foggy weather. Wind power generation plant AES Laurel Mountain LLC pled guilty to two federal misdemeanors for failing to comply with the Migratory Bird Treaty Act by not using "reasonable, prudent and effective measures to avoid or minimize the impact of lighting on migratory birds."

The Atlantic Coast Pipeline included provisions to protect migratory birds in its planning. The pipeline's Migratory Bird Plan contains fifteen pages of conservation measures to mitigate and minimize impacts to migratory birds. These measures have been fully incorporated into Federal Energy Regulatory Commission's project approval.

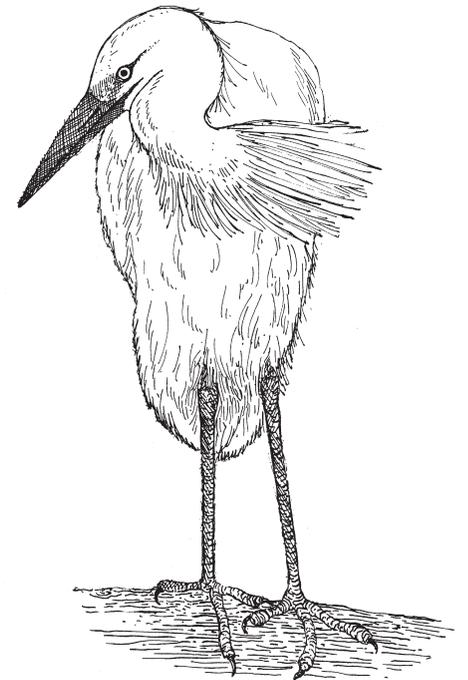
The same thing happened with the Mountain Valley Pipeline. To protect migratory birds in the path of the pipeline, MVP committed to several avoidance and minimization measures developed in coordination with Fish and Wildlife Service, and incorporated into project approvals.

Without the Migratory Bird Treaty Act (in its present interpretation), none of these protections would have happened. The wind power generation plant did not set out to kill birds. It just left the lights on with the predictable result that birds were killed. The pipeline companies did not set out to kill birds by destroying their habitats. They just want to build a pipeline; bird deaths are a byproduct. Under the interpretation of the Act proposed, the companies could kill birds with impunity. Unless they had as their subjective intention the killing of birds, the Migratory Bird Treaty Act would not restrain them.

Nationally, had the proposed policy been in effect at the time, British Petroleum would not have been liable for killing more than 1 million birds during the *Deepwater Horizon* disaster. Because British Petroleum did not set out with the intention of killing birds, had the proposed policy been in effect over \$64 million of settlement funds would not have been paid out to help birds impacted by the spill, including protecting or restoring more than 350,000 acres benefitting birds and people.

The word "gut" is often used (and overused) to describe proposals to reduce the effectiveness of regulatory statutes. Overenthusiastic opponents of even modest proposals sometimes describe them as "gutting" a statute.

This time it really applies. If the Migratory Bird Treaty Act is only relevant to the intentional killing of birds, it is meaningless. It goes from being a modern tool to protect birds to a relic, a nearly meaningless reminder of a time when we shot pigeons for food and Snowy Egrets for their feathers. We may as well file it away with statutes prohibiting wearing hats in public theaters.



**Snowy Egret**

# Ulysses Pumped Storage Hydropower Project Abandoned

By David Johnston

Faced with overwhelming community opposition, it appears that FreedomWorks LLC will abandon its most recent attempt to build a pumped storage hydroelectric generating plant in the West Virginia highlands. At a public meeting in Petersburg on March 9, FreedomWorks principal Tim Williamson acknowledged a straw poll indicating that few, if any, landowners would sell or lease their property for the project, and agreed to withdraw the project's Federal Energy Regulatory Commission (FERC) permit application.

The Ulysses Pumped Storage Hydro (PSH) project was proposed to be located in Grant County. The plans would have created two reservoirs of 1100 to 1300 acres each. One would have been located near Bismarck and Mt. Storm on the Allegheny Front, and the other in the valley of the North Fork of Patterson Creek, near Greenland Gap. The reservoirs would have been connected by seven-mile long underground penstocks. Water would flow from the upper to the lower reservoir through an electric generating station located near Scherr during times of peak demand, and be pumped back to the upper reservoir during off-peak hours.

FreedomWorks had previously pursued a Pumped Storage Hydro project on Backbone Mountain between Thomas and Parsons in Tucker County. That project would have directly affected public lands and wetlands, fisheries, and endangered species habitats. It failed to gain a permit from the Forest Service to even proceed to a feasibility study. The Ulysses project would have been located entirely on private land and would not directly affect national forest or other public lands. and thus would not require a Forest Service permit.

FreedomWorks applied for a Federal Energy Regulatory Commission (FERC) preliminary permit to conduct feasibility studies in October 2019. A comment period ran from November to January. Comments were submitted by the US Department of the Interior, West Virginia Rivers Coalition, the West Virginia Division of Natural Resources Wildlife Resources Section, and the West Virginia Highlands Conservancy (WVHC). WVHC also filed a motion requesting Intervenor status in the project.

Most of the comments were critical of the project's potential impact on fisheries and other water resources, unique habitats for birds and other species, and of omissions, flaws and inconsistencies in the published plans. Nevertheless, FERC issued a permit for the preliminary study in February. While acknowledging the concerns expressed by the commenters, FERC noted that FreedomWorks would be obligated to consult with relevant agencies and interested parties, and include studies addressing the issues raised before applying for a permit for construction.

The upper reservoir would have been built in the watershed of Mill Run, a tributary of the Stoney River. The initial plans showed the reservoir covering most of the few residences in the area and a church. This area contains reclaimed mines with the possibility of open underground tunnels. Issues of concern included the potential for release of mine waste chemicals, water seepage outside the dam containment, and catastrophic collapse of underlying voids. The reservoir would have covered large areas of grassland and savannah habitat for numerous bird species, including the American Bald Eagle, and potentially compromise caves that are home to several bat species, including endangered ones. The reservoir would presumably have fully dewatered Mill Run, a recognized trout fishery. The plans included no provision for managing water flowing off slopes above the enclosed reservoir, which would normally flow into Mill Run.

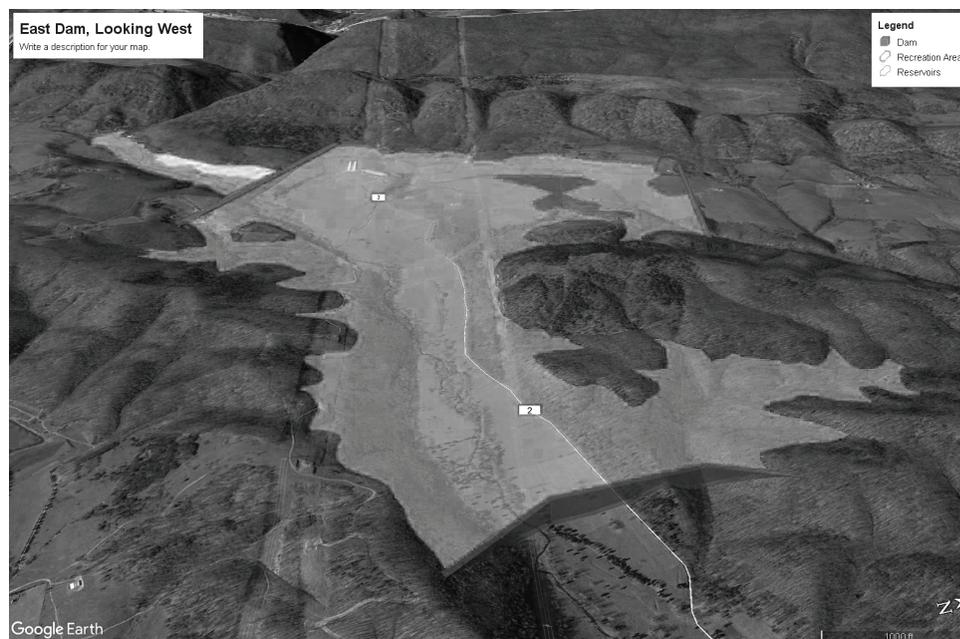
The lower reservoir would have flooded the valley of the North Fork of Patterson Creek just below Greenland Gap and Falls Gap, an area of active farms owned by families with multi-generational ties to the area, and with significant scenic and historical value.

The initially-published plans contained a number of inconsistencies. It was ambiguous whether the two reservoirs would form a true closed-loop system, as claimed. The published maps could be interpreted to include inflow and outflow from existing waterways, or to cut them off, without provisions for handling existing water flows.

The "footprint" of the reservoir was drawn in a way that did not follow the land contours of the stated water level. At the upstream end, where the North Fork flows out

of Falls Gap, a dam was shown, but it was unclear if it would dam the North Fork. If it were not dammed, the lower reservoir would have to extend up into Falls Gap, inundating a popular waterfall. Yet if the North Fork were dammed at that point, there was no provision for what to do with the continued flow of the North Fork, a significant stream at that point. On the downstream side no outlet was provided, so the North Fork would have been rendered permanently dry. By cutting off the North Fork in the middle, the reservoir would have impacted both upstream and downstream fisheries and riparian habitat, yet no provision for a fisheries study was included in the permit application.

Later drawings revised the plans, but introduced new inconsistencies. The upper reservoir was reconfigured to avoid the church and most residences, but had to be enlarged and made deeper, with the consequent need for more enclosing dams and greater pressure on the underlying ground. The lower reservoir



**View of the lower reservoir from the east, looking toward Greenland Gap and Falls Gap**

**(Continued on the next page)**

## More about Pumped Storage (Continued from previous page)

was moved further down the valley, onto the property of a new set of landowners. The dam at the upstream end of the reservoir was moved to clearly cut off the North Fork downstream of Falls Gap, forming a new, smaller reservoir. The flow of the North Fork would be diverted into a box culvert running about a mile under a hill and into a small tributary of the Middle Fork of Patterson Creek. A new recreation area was shown next to smaller reservoir. Yet at the water level indicated for the reservoir, the park would have been fully underwater!

Although the Grant County Commission indicated support for the project based on the potential economic benefits, the Commission also indicated that eminent domain would not be considered; the project would need to proceed with the cooperation of the affected landowners. FreedomWorks concurred with this sentiment, and promised to find ways to adapt the project to the needs and concerns of the landowners. However, it became clear in a series of meetings among landowners that there was widespread and vehement opposition to the project.

This culminated in a public meeting sponsored by the Grant County Development Authority. The Grant County courthouse hearing was packed with residents, with no standing room left. Tim Williamson of FreedomWorks outlined the project plans and benefits, and reiterated that the project was in a preliminary study stage, and that adaptations could be made to make the project palatable

to the landowners. However, several speakers representing the landowners recounted the potential environmental, hydrological, and geotechnical impacts, as well as the destruction of their farms, cemeteries and historical family touchstones. A straw poll was called of those who would never consider selling or leasing their land to the project under any circumstances. Nearly every hand in the room went up. Williamson acknowledged that the project could not proceed in the face of such overwhelming opposition. He later indicated that he would withdraw the FERC application the next day.

On March 16 FreedomWorks sent a letter to FERC surrendering its preliminary permit. WVHC will continue to monitor and closely examine any future proposals for a pumped storage hydroelectric project.

Pumped storage hydro is not necessarily undesirable from an environmental standpoint, as it has the potential to replace fossil fuel-generated peak demand electricity with energy generated by renewables. But with their need for large reservoirs, such projects unavoidably will have significant impacts on environmental, scenic, and recreational values, and on the

people with ties to the affected land. Finding a location where these impacts can be minimized to the point that they do not overwhelm the potential benefits will remain an exceedingly difficult challenge for such projects.



**Footprint of the lower reservoir showing topographic contours. Smaller reservoir at lower left would have been created by flow of North Fork Patterson Creek.**

### The Bad That Didn't Happen

In December, 2019, much of *The Highlands Voice* was devoted to preparation for the 2020 session of the West Virginia Legislature.

Among the stories was one by Beth Little. It listed some statements by public officials and other indications that there might be a proposal to allow all terrain vehicles (ATVs) on public lands. The same story also explained why allowing ATVs on public lands in West Virginia would be a bad idea.

Now the Legislature has come and gone and nothing happened. There was a bill that looked as if it could have either authorized ATVs on public lands or been amended in order to do that. As it went through the process, the parts about public lands disappeared and left only some innocuous provisions about what someone would have to do to make an ATV "street legal" (lights, muffler, etc.)

So, at least for now, our public lands are safe. It's not world peace or a coronavirus vaccine but it's not nothing either.

### 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.

### 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](mailto: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.

### Join Now !!!

Name \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Phone \_\_\_\_\_ Email \_\_\_\_\_

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

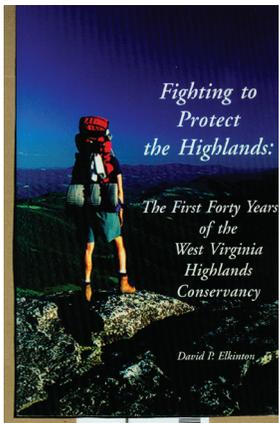
Mail to West Virginia Highlands Conservancy, P. O. Box 306, Charleston, WV 25321

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

You may also join on-line at [www.wvhighlands.org](http://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](http://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](mailto: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.

## In Person Board Meeting Cancelled

Because of the coronavirus and the recommended social distancing that resulted, the Board of the West Virginia Highlands Conservancy will not have the regular in-person meeting that was scheduled for April 26. The Board is currently exploring options for having the meeting on line, over the phone, etc.

It has been our practice for many, many years to make the Board meetings open to all members, whether or not they were Board members. Although not allowed to vote or make motions, those who were not Board members could participate in discussion.

Although that practice will continue in the future, it is not possible to make Board meeting attendance available for non-Board members until the coronavirus difficulty is over.



Practicing proper coronavirus hygiene.

## How to Do Social Distancing

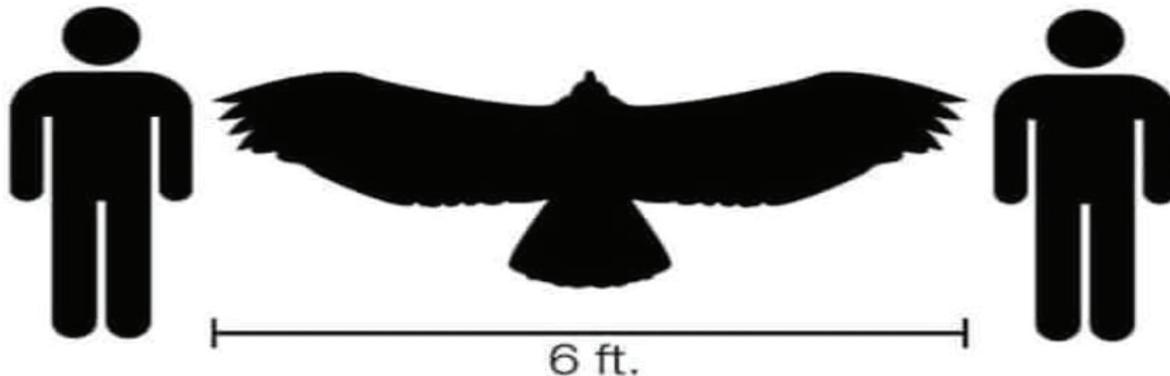
For the last few weeks there have been innumerable (*The Highlands Voice's* crack staff of enumerators lost count at a bazillion and twelve) newspaper and magazine stories full of tips on how to thrive during this time of social distancing. This is one of the best. It comes from the West Virginia Land Trust:

During this time of social distancing, we strongly encourage you to get outside for a good dose of fresh air and vitamin D. Despite the great uncertainty of the pandemic, some things are certain: Spring wildflowers are starting to pop up, and will put on their great display for the next eight weeks regardless of what's happening in the human world. American Woodcocks are circling breeding sites at dawn and dusk with their crazy courtship flight. The "river of birds" that is our springtime migration will soon begin its annual northward flow from points south. Mountain streams are gushing, trees are budding, spring peepers are deafening the evenings around ponds, and birdhouses are being explored by hopeful nesters.

a brief guide on

# PHYSICAL DISTANCING

keep one turkey vulture of space between you and others



(Thanks to Mountain State Birding for the tip.)

# Changes Proposed to NEPA Rules

By John McFerrin

Council on Environmental Quality has proposed changes to the regulations on how the National Environmental Policy Act is implemented. If the changes become final, they would limit the scope of the Act, potentially limit public participation, and limit the duty of the agencies to look at cumulative impact of decisions. Taken as a whole, the changes would dramatically reduce the effectiveness of the National Environmental Policy Act.

The proposed changes do not repeal NEPA. They just limit its scope.

**Background stuff (if you're in a hurry you could skip it; the rest of the story would still make sense)**

The National Environmental Policy Act is the oldest of the raft of environmental laws that were passed in the 1970s. Before the 1970s, there was little federal environmental law. Absent some restrictions imposed by state law, companies were free to bulldoze, pollute, allow rivers to catch on fire, etc. pretty much at will. The National Environmental Policy Act was the beginning of the effort to change all that. When President Nixon signed the Act, he said it would help as, "America pays its debt to the past by reclaiming the purity of its air, its waters, and our living environment."

The National Environmental Policy Act (NEPA) is a short statute, only six pages long. It has been filled out by fifty years of regulations and court interpretations. Although it is routinely part of court cases, there has been no major Council on Environmental Quality regulation change since 1978.

NEPA does not directly prohibit pollution. It assumes that we would not intentionally degrade our environment, that if we knew an action we were considering would do damage we would not go ahead with that action. Instead of prohibiting pollution, it requires that we study the environmental effects of proposed actions. As it has been applied for the last fifty years, it requires that we take a hard look a possible environmental consequence. Now with the proposed changes, the look would not be as broad and would not have to be all that hard.

**What the proposed changes are**

- Limits the number of proposed actions that would be subject to NEPA review. Something as big as the federal government makes a bazillion decisions

every day. It could not study the environmental impact of each one. That is why NEPA is limited to major federal actions. The proposed rules would narrow the actions which would require NEPA review.

- Impose arbitrary time limits for NEPA review. Rushing through the review will in many instances result in a faulty review. "Haste makes waste" did not work its way into cliché status for nothing. Its corollary is "waste makes litigation." Lawyers feast on agency decision making that was rushed through, ended up challenged in court, and had to be done over again. The result of this change may be that NEPA review will take longer.
- Prohibit the gathering of new scientific and technical information to inform analysis. In undeveloped areas, there would often be limited information. To be effective, the NEPA process often needs to collect new data.
- Allow public hearings and meetings to be conducted electronically. This is particularly damaging in West Virginia where many rural areas do not have access to high speed internet. (The proposal is not a coronavirus adaptation to discourage in person interaction. It will exist after the coronavirus difficulty has passed and will still be objectionable).
- Prohibits consideration of the cumulative impacts of proposed actions. This effectively eliminates consideration of the impact of a proposed project on climate change. This is a reversal of a 1997 Guidance by the Council on Environmental Quality which said "Generally, it is also critical to incorporate cumulative effects analysis into the development of alternatives for an EA and EIS. Only by reevaluating and modifying alternatives in light of the projected cumulative effects can adverse consequences be effectively avoided or minimized. Considering cumulative effects is also essential to developing appropriate mitigation and monitoring its effectiveness." Since climate change is a world wide phenomenon that results from the cumulative actions of many actors, this could effectively prohibit consideration of climate change.

- Allows applicants to prepare environmental analysis themselves. Nothing requires the agency to assure that the environmental analysis meets NEPA requirements. If applicants are allowed to prepare their own analysis there is great danger that "a man hears what he wants to hear, and disregards the rest" (Simon, Paul). It is not unlike putting the bear in charge of the beehive. Note: *The Highlands Voice* is sick to death of the fox and henhouse cliché. Through crowdsourcing our readers, we have accumulated a list of alternatives.
- Allows some activity to proceed before the NEPA process is complete. The whole point of NEPA is to consider alternatives to a proposed action, including the option of not going ahead. If projects may move forward before the NEPA process is complete, it becomes extremely unlikely that any other alternatives will be considered.
- Eliminates the requirement that all reasonable alternatives be considered. NEPA was designed to aid decision making, to encourage us to consider alternatives, including the alternative of doing nothing. In its most cynical form, it is a process that we must plod through so we can affirm a previously chosen result. This change pushes us toward this cynical result. A NEPA process that does not consider alternatives is no longer one that helps us choose the best course of action. Instead, it is a process that validates a pre-determined decision, regardless of environmental consequences.

## Why It Matters in West Virginia

Nobody knows for sure how this will matter in West Virginia because nobody knows what will come along to potentially threaten our woods and waters. Had these proposed rules been in effect in the past we probably would not have had:

- Programmatic review of the environmental impact mountaintop removal mining in southern West Virginia. In the late 1990s and early 2000s the Environmental Protection Agency undertook a

**(More on the next page)**

## Ms. Bell Goes to Washington



West Virginia Highlands Conservancy Board member Ellie Bell at the Rally to Protect Your Voice/Protect NEPA in Washington. Her trip was sponsored by the Mom's Clean Air Force. While in Washington, she met with members of Senator Joe Manchin's (D-WV) office about the NIOSH facility proposed for Randolph and Pocahontas Counties near Mace, WV and near Ms. Bell's home.

Ellie Bell testifying before the Council on Environmental Quality on the proposed NEPA "modernization". She told of the her community using the NEPA process in order to hold NIOSH accountable in its planning and implementing its research project with the least negative impact on the community. She gave examples of how the proposed changes to NEPA would leave them without the ability to make this a safe project. (For more about the project she was talking about, see the February, 2020, and May, 2019, issues of The Highlands Voice).



## Changes Proposed for NEPA Rules (continued from previous page)

study of mountaintop removal mining in southern West Virginia. It gathered a lot of data which demonstrated the dramatic environmental effects of disposing of mining waste in nearby streams. While the Environmental Protection Agency did not move to halt the practice (For an explanation, see the entire economic and political history of West Virginia), it did provide a plethora of data on the practice.

- Protection of endangered fish species in West Virginia. Because of findings

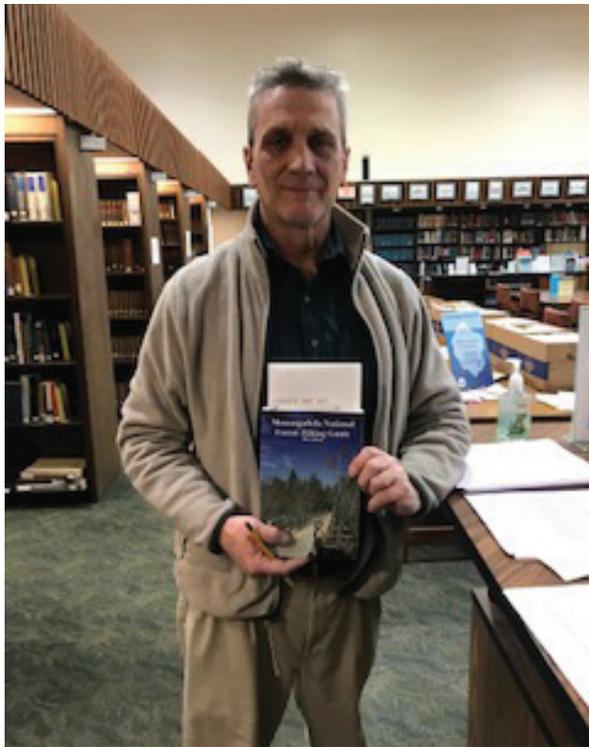
during the NEPA process, the US Forest Service withdrew a logging proposal in the Monongahela National Forest after determining that the project would significantly impact the endangered Candy Darter. Without NEPA, this project may have moved forward and the sensitive fish species would have moved closer to extinction.

- Protect the endangered Cheat Mountain Salamander. During the NEPA process, the Atlantic Coast Pipeline was found to threaten the salamander. The pipeline

was then rerouted to protect the critical habitat of this important species that is found nowhere else on earth.

The West Virginia Highlands Conservancy has joined in with other groups in opposing these rule changes.

## Spreading the Word



**A Hiking Guide to the West Virginia Library Commission, housed in the Culture Center.**

## Thank You!

Thanks to Hugh Rogers for completing another book donation project! He sent copies of our new 9th edition Hiking Guide to the Mon Forest to colleges in the Mountain State.

So in recent years, the West Virginia Highlands Conservancy has donated Hiking Guides and our History books to West Virginia public libraries and colleges. We also donated the children's book on mountaintop removal, "Lone Mountain," to libraries. We continue to do our part to keep mountaineers informed.



**Editor's note: This picture is not in here because it makes any point or illustrates anything. But every time I look at, it makes me smile. That's enough.**

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## Mon National Forest Hiking Guide

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

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

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

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

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

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

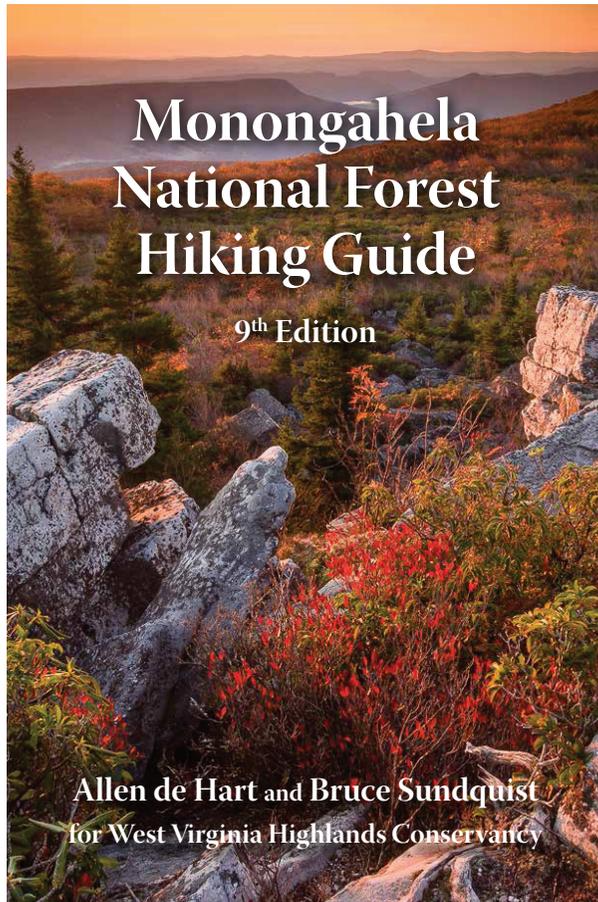
**Send \$18.95 plus \$3.00 shipping to:  
West Virginia Highlands Conservancy**

**P.O. Box 306**

**Charleston, WV 25321**

**OR**

**Order from our website at  
[www.wvhighlands.org](http://www.wvhighlands.org)**



### The Highlands Voice: It's Not Just for Reading Any More

*The Highlands Voice* is the main way that the West Virginia Highlands Conservancy communicates with its members. But we would like to communicate with more than our members. We have a valuable perspective and information; we would like to communicate with everybody. We still offer electronic delivery. If you would prefer to receive it electronically instead of the paper copy please contact Dave Saville at [WVHC50@gmail.com](mailto:WVHC50@gmail.com). With electronic delivery, you will receive a link to a pdf of the Voice several days before the paper copy would have arrived.

No matter how you receive it, please pass it along. If electronically, share the link. If paper, hand it off to a friend, leave it around the house, leave it around the workplace. It's not just for reading. It's for reading and passing along.

### BUMPER STICKERS

To get free *I ♥ Mountains* bumper sticker(s), send a SASE to P. O. Box 306, Charleston, WV 25321. Slip a dollar donation (or more) in with the SASE and get 2 bumper stickers. Businesses or organizations wishing to provide bumper stickers to their customers/members may have them free. (Of course if they can afford a donation that will be gratefully accepted.)



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

## Why Bats?

By Katherine McFerrin

Amid the COVID-19 pandemic one might wonder how this virus came to be. While it's well known that the virus came from a live-animal wet market in Wuhan, China, there's more to the background story than that. It's been proposed that the virus was transferred to humans from pangolins that were sold at the market or perhaps snakes. Whether pangolin or snake, that infected animal, known as the intermediate host, a vector from which the virus spread to humans, presumably got the virus from an even earlier host. These initial hosts, called reservoir hosts, likely would've been bats.

Bats already get a bad rap for carrying rabies and the fungi that causes histoplasmosis, a type of lung infection, among other

diseases. However, now as their tendency to spread infectious diseases to humans is evident once again, a valid question to ask is why is it so often bats that carry these diseases? "These diseases", ones carried by animals that can be transferred from animal to animal as well as animal to human are called zoonotic diseases. When such diseases are transferred from one species to another it's called a spillover.

Bats are a prime host for zoonotic diseases because bats prefer to live close to one another in large groups. Colonies range from a few dozen to several hundreds of bats. Bats not only give the diseases plenty of opportunities to spread within the colony, but they are a convenient mode of transportation for diseases. Like airplanes carrying and delivering precious cargo, bats carry these diseases and then export them via feces, known as guano, as well as scratching and biting.

Despite carrying such infectious diseases, bats aren't too affected by the diseases. This may have to do with the bats' immune systems and body physiology that allows them to fly. Organisms have an antiviral immune pathway that deals with invading pathogens. In bats this pathway has evolved to be not as vigorous as in other mammals. At first thought, the bats' immune system set up sounds counter-intuitive. However, it allows the bats to have just enough defenses against the diseases to survive, but not enough defenses to send their immune system into overdrive. In humans and other mammals, a large immune system defense can cause severe illnesses in response to viruses such as the symptoms of COVID-19 and even autoimmune diseases. Bats don't have the energy or time for this.

Flying is taxing on a bat, requiring lots of energy. When they fly, bats increase their body temperature to around 104°F. At high temperatures such as inside a flying bat, viruses aren't able to replicate as easily. With their modified immune systems and high body temperature during flight, bats are able to carry zoonotic diseases while not being affected.

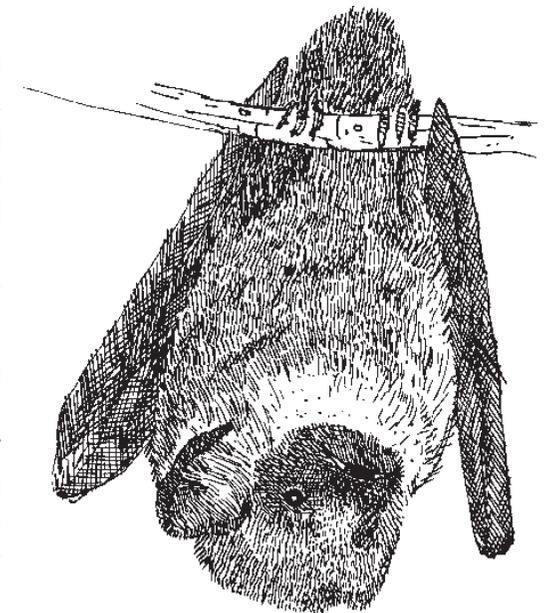
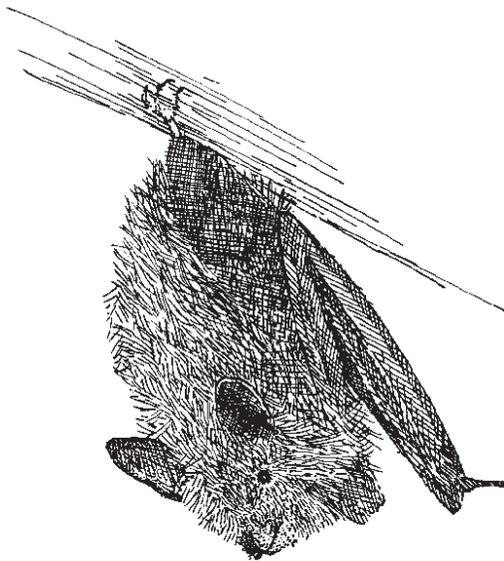
A human fever is part of the immune system. It is the body trying to inhibit the virus's ability to replicate while destroying some of its proteins. Because of this, a virus that came from a bat may be unaffected by the human immune system.

Although bats are ideal hosts for zoonotic diseases with their large group living and body physiology, the question of why bats could be further pondered. Why some bats but not others? Say for example, why are the bats in China carrying COVID-19 but not bats in West Virginia? Home to 14 bat species, WV has more than enough caves and forested hills for the bats to reside. So why not our bats? Maybe we're just lucky, but more likely, it's due to other influences than just the bats that led to the outbreak in Wuhan.

In West Virginia, there are a multitude of reasons why our bats haven't spread COVID-19. Because bats don't necessarily harbor the same diseases, the ones here might not carry COVID-19. The conditions simply might not be in line for a spillover event to occur. Humans or other animals would have to be in close contact with infected bats that have the virus. We also don't have markets with lots of different animal species close to one another. For those reasons, we can consider ourselves lucky.

While bats do carry and spread infectious diseases, it isn't their fault for causing massive human disease outbreaks. The diseases jump from bats to humans (or bats to other animals and then humans) when humans encroach on bats' habitats. Habitat invasion such as building animal farms in woods with bats or razing bat populated trees to build a suburb increases the probability that humans or animals will come into contact with a bat or its feces that are carrying diseases. Whether an unfortunate pangolin happened to be walking near an infected bat colony at the wrong time or the mixture of animals at the wet-market in Wuhan gave the virus its chance to spread, the human closeness to bats or other infected animals is to blame.

Fears of bats and the diseases they carry should not overshadow the bats' importance to us. Bats are pollinators. As they fly from tree to tree and drink nectar from flowers, they distribute pollen that has been picked up on their fur to other plants. Pollination by bats is called chiropterophily. Fruit bats help disperse seeds from the fruit they eat by expelling the seeds in their guano which acts as a fertilizer. Bats are also pest controllers. Eating thousands of insects a night, bats keep insect populations in check. This helps decrease agricultural pests and diseases spread by insects. Bats even act as indicators of biodiversity since their presence indicates



**(More on the next page)**

# ClimateWise April 2020

By the West Virginia Highlands Conservancy Climate Change Committee

While it's hard to think about climate change when our world has been totally disrupted by coronavirus, the WVHC Climate Change Committee is continuing with our monthly articles in *The Highlands Voice*. This is April's ClimateWise, looking at the impacts that climate change may have on the Allegheny Highlands.

When it comes to understanding the impacts of climate change on the environment, perhaps Dr. David Titley put it in the best perspective. Dr. Titley, a former professor of meteorology at Pennsylvania State University, said that climate change is the opposite of the old BASF slogan. That slogan was: We don't make things, we make things better. Climate change doesn't make things, it makes things worse. With that in mind, here are some projected impacts of climate change on the highlands.

## Temperature

Fortunately, the temperature increases since 1901 have been less in West Virginia (1°F) than the United States as a whole (1.8°F). The US Forest Service (see [https://www.fs.fed.us/nrs/pubs/gtr/gtr\\_nrs146.pdf](https://www.fs.fed.us/nrs/pubs/gtr/gtr_nrs146.pdf)) has projected that under their high emissions scenario temperatures in the Central Appalachian area will increase by 7.8 °F by the end of the century with the number of hot days (above 95 ° F) projected to double by 2050. The low emission scenario projects an increase of 1.9° F for Central Appalachia as a whole. Interestingly, the Allegheny Mountains of West Virginia and Maryland are projected to *cool slightly* under the low emission scenario, and not increase

as much as the rest of Central Appalachia under the high emission scenario.

## Precipitation

The high emission scenario in a US Forest Service report projects a modest increase in total precipitation in the Central Appalachian area. However, the projection shows a change in when precipitation occurs with slight increases in fall, winter and spring, and a significant decrease in rain in the summer months (-4.1 inches, a 48-percent decrease) by the end of the century. The reduction in rain in the summer may lead to greater and more severe droughts. This scenario also projects an increase in intense precipitation with an additional 2 to 4 more days of heavy (greater than 3 inches) precipitation. The low emission scenario projects a greater increase in precipitation (2 inches a year) by the end of the century. Since warmer atmosphere holds more moisture, the West Virginia highlands may experience more intense storms resulting in flooding as occurred in 2016 in Clendenin, White Sulphur Springs and Richwood, and Harman in 2019.

## Impact of increasing temperatures on the highlands forest

With the projected increases in temperature, the period between the last spring frost and the first fall frost has increased and is expected to increase further. The longer growing season will allow trees and other vegetation to grow more and as a result sequester more carbon, a positive aspect of climate change. However, increases in temperature will change the

nature of the highlands forest. Some tree species such as red spruce and balsam fir are the most vulnerable to increases in temperature, while oak, hickory, and pine have a greater tolerance to heat and drought. We may see a change in the composition of the forest in the Highlands. Additionally, warmer temperatures and longer frost-free periods will be beneficial to pests such as the hemlock wooly adelgid, emerald ash borer, the southern pine beetle, and deer ticks. And warmer temperatures will allow invasive species such as kudzu to extend their range farther north.

## Impact of increasing temperatures on cold-water fisheries

According to the Friends of Blackwater's Allegheny Highlands Climate Change Impact Initiative, stream temperatures in the Allegheny Highlands have steadily increased over the past forty years as a result of global warming and land-use patterns (fewer trout streams shaded by trees). These temperatures pose a severe threat to stream ecology and biodiversity. Today, Eastern Brook Trout are gone from a third of their former homes in Appalachia's cold-water streams. The Virginia Climate Modeling and Species Vulnerability Assessment projects that under a high-emission greenhouse gas scenario, suitable habitat for brook trout will disappear from the Highlands in this century.

If we are to avoid the worst impacts of climate change, we need to take meaningful action. And even in the face of coronavirus, we need to begin to take action now.

## More about Bats (Continued from previous page)

an abundance of insects and habitats such as woodlands, wetlands or caves that they prefer to roost in. Their essential role in an ecosystem outweighs their unfortunately high hospitality for hosting infectious diseases (unfortunate for the humans- fortunate for the pathogens).

While knowing the exact origins of COVID-19 doesn't necessarily help with treating infected people or finding a vaccine, it does draw attention to the interconnectedness of humans and animals within the ecosystem of the world. It's also a reminder of our Darwinian roots. Sharing common ancestors, animals and humans are linked together in sickness and in health. Knowing that animals play such a big role in transmitting diseases to humans highlights

the importance of giving the animals the respect they are entitled to whether it be applauding their intriguing immune systems or simply giving them the space they deserve. After all, we humans may be better off for doing just that.

**Katherine McFerrin is a sophomore at Carleton College in Northfield, Minne-sota, where she enjoys cross country skiing and running across snow covered trails. She studies biology with an interest in molecular biology, zoonotic diseases, and learning words such as chiropterophily. She is currently socially distancing with her family in Morgantown, WV, as she completes this trimester online.**

# WV Legislature- the Good and Not So Good of It

By Frank Young, WV E-Council Legislative Committee Chair

The West Virginia state legislature adjourned in mid-March, just as the COVID-19 anxiety was cranking up--thus exchanging one social plague for another. We herein report on the outcome of certain bills.

## VICTORY!

It was down to the wire, but we did it! At 11:30 PM on Saturday night (the last day of the 2020 legislature), the WV Legislature listened to our messages and passed [Senate Concurrent Resolution 46](#), which initiates a statewide study to identify toxic PFAS (perfluoroalkyl and polyfluoroalkyl) chemicals in our drinking water. PFAS include the chemical C8 introduced into the Wood County area's drinking water by Dupont's manufacture of its Teflon products.

As time was running out, the Speaker of the House acknowledged that several delegates were asking about the [study resolution](#) (thanks to many citizens' calls to their legislators) and he paused other actions to bring it up for a vote. This was a hard won victory and every citizen lobbyist deserves the credit.

Throughout the course of the legislative session citizen advocates sent 19,000 messages to members of the Legislature demanding they take steps to keep West Virginians safe from dangerous PFAS toxins. PFAS, which are man-made chemicals, are sometimes called toxic "forever chemicals" because they do not break down and they accumulate in the environment. The primary exposure pathway is through drinking water. They are a very real and very serious threat to our health. Right now, the City of Martinsburg's Big Springs Water Plant water well is closed due to PFAS contamination and an exposure assessment by federal agencies is underway.

So what's next for the PFAS study? The plan outlined in SCR 46 requires the West Virginia Department of Environmental Protection and the West Virginia Department of Health & Human Resources to work together to sample raw or untreated water near public drinking water intakes across the state for the presence of PFAS. Starting in 2021, the agencies must report the study findings to the legislature on a semi-annual basis. The data collected during the study will help public health and environmental

protection agencies determine the next steps to protect us from PFAS.

## Another Victory!

Senate Bill 583 would further the development of renewable energy resources by allowing the state's utility companies to "plan, design, construct, purchase, own and operate" and recover certain costs of developing renewable generation and energy storage facilities through a program overseen by the Public Service Commission of West Virginia.

## Other "good" bills that passed and were signed by governor:

SB35 – Limiting civil penalty for littering conviction to \$2000. This bill passed, which we considered "good" because local law enforcement feedback was that law was not being enforced because of high penalties. Note: this did not affect fines for littering, just the civil penalties.

SB120- Establishing priorities for expenditures for plugging abandoned gas or oil wells.

SB589- Creating Critical Needs / Failing Systems Sub Account- provides loans or grants to certain failing public water systems

HB4088-Disposition of funds from certain oil and natural gas wells due to unknown or un-locatable interest owners;

SB690- Permitting certain special purpose vehicles on highways. This bill was terrible when first announced, then changed entirely to NOT allow off road vehicles on public lands;

**[HB 4217 – Authorizing the DEP to promulgate legislative rules.](#)** This is the West Virginia Department of Environmental Protection rules bundle. It includes provisions for hazardous waste, remediation, air quality, and compensation for landowners impacted by mining-caused subsidence. Once the governor signs the bill it will head to the EPA and Office of Surface Mining and Reclamation for approval.

**Good bills that did not pass:** did not Pass:

**SB611- Power Purchase Agreements bill** would have allowed third-party ownership of renewable and alternative energy (including rooftop solar) generating facilities

**[HB 4787 – Updated Penalties for Water Quality Violations.](#)** This bill would have taken steps to deter polluters from breaking the law by allowing the WVDEP to increase penalties for repeated water quality violations on larger linear projects (like pipelines).

**[HB3049–ImprovingDissemination of Boiled Water Advisories.](#)** When drinking water is unsafe the public needs to know quickly. This bill requires water utilities to make customers aware of boiled water advisories through a text and voice alert system. Unfortunately, even though it passed both houses unanimously, the bill appeared to fall through the cracks and failed to get completed in the final days of the session.

**[HB 4574 – Creation of Just Transition Office.](#)** The legislation would have created the Just Transition Office to help communities affected by the decline of coal rebuild their economies and diversify their economic base. It passed the House unanimously, but the Senate failed to act on it.

**[SB 840 – Creating statutory fee for modifying permits issued by DEP Office of Oil and Gas.](#)** This bill would have enacted a fee for modifications to oil and gas permits. This bill was critical to solving the very serious budgetary deficits affecting the WVDEP Office of Oil & Gas. It passed the Senate, but died in the House Judiciary Committee [Read more here.](#)

**[HJR25 – Environmental Rights Amendment.](#)** This resolution would have secured West Virginian's rights to clean water, pure air, and a healthy environment.

**[HB 4079 – Altering the definition of an aboveground storage tank.](#)** This bill would have exempted certain tanks used by the oil and gas industry closest to public drinking water intakes from the Aboveground Storage Tank Act.

**[HB 4542 / SB 679 – Clean Drinking Water Act of 2020.](#)** This bill would have comprehensively addressed the risks posed by PFAS.

**[HB 4816 – Protecting the State's Waters from Coal Company Bankruptcies.](#)** This bill would have eliminated self-bonding by coal companies.

(More on the next page)

## The Rest of the Legislative News (continued from page 14)

### Bad Bills that passed:

**SB793**-Reduced B&O taxes imposed on certain coal-fired electric generating units;

**SB810**- Implementing federal Affordable Clean Energy rule;

**HB4221**-Natural Gas Liquids Economic Development Act; more tax breaks for natural gas liquid collectors and transporters.

**HB4439**-Clarifying the method for calculating the amount of severance tax attributable to the increase in coal production

**HB4615— Anti-Protest Bill.** The “West Virginia Critical Infrastructure Protection Act” raises criminal and civil penalties for trespassing, actual damage and tampering, and conspiracy to peacefully protest near “critical infrastructure” like natural gas pipelines. While the final bill that passed is less extreme than the introduced version, this is still a serious encroachment on acts of civil disobedience.

### Bad at first, but then only half bad bill that got passed:

**HB4645**-Southern West Virginia Lake Development Study Commission Act; WVEC got this bill amended to put two scientists on the study commission - a hydrologist and ecologist.

## Groups Support Critical Habitat for Endangered Crayfish

In February, 2020, *The Highlands Voice* had a story about the proposal by the United States Fish and Wildlife Service to designate critical habitat for the Big Sandy crayfish (*Cambarus callainus*) and the Guyandotte River crayfish (*Cambarus veteranus*).

The Big Sandy crayfish is federally listed as a threatened species and currently lives in specific watersheds of Virginia, West Virginia, and Kentucky. The Guyandotte River crayfish is federally listed as an endangered species and currently lives in specific portions of two streams in West Virginia.

The critical habitat rule proposed to designate a total of 362 stream miles as occupied critical habitat for the Big Sandy crayfish in Kentucky, Virginia and West Virginia. These streams are located in Martin and Pike counties, Kentucky; Buchanan, Dickenson, and Wise counties, Virginia; and McDowell, Mingo, and Wayne counties, West Virginia. For the Guyandotte River crayfish, the critical habitat rule also proposes to designate approximately 41 stream miles as occupied critical habitat in Wyoming County, West Virginia, and 42 stream miles as unoccupied critical habitat in Logan County, West Virginia.

Because the Big Sandy Crayfish and the Guyandotte Crayfish are protected under the Endangered Species Act, it would already be unlawful to kill them with or without this designation. This designation of critical habitat would mean that a federal agency may not undertake, fund, or allow activity that would destroy or adversely modify critical habitat. If, for example, if a proposed mine or other activity were in the vicinity of a critical habitat, any agency considering issuing a permit would have to avoid adversely modifying the habitat. When faced with possible habitat destruction, the agency involved would be required to consult the Fish and Wildlife Service about the actions they are considering carrying out, funding, or authorizing.

Since then, there has been one development. The West Virginia Highlands Conservancy has joined in with several other groups in making comments in support of the proposed rule. Prepared with the help of the Center for Biological Diversity, the comments contained extensive technical information that would support the rule. The main message of the comments was, “Way to go, Fish and Wildlife Service! We’re with you on this one!”

### Wisps of Clouds

By George E. Beetham Jr.

Wisps of clouds ride on the wind  
Scatter and then assemble again  
Storm on the mountain rain for the land  
Water to nourish both creature and plant  
Sun fills the sky over the plain  
Vapor then rises to form clouds again

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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.

*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](http://www.wvhighlands.org).

# HIGHLANDS CONSERVANCY BOUTIQUE



- ▶ The baby shirts are certified organic cotton and are offered in one infant and several toddler sizes and an infant onesie. Slogan is "I ♥ Mountains Save One for Me!" Onesie [18 mo.]---\$25, Infant tee [18 mo.]---\$20, Toddler tee, 2T,3T,4T, 5/6---\$20
- ▶ Soft pima cotton adult polo shirts are a handsome earthtone light brown and feature the spruce tree logo. Sizes S-XL [Shirts run large for stated size.] \$ 25.00, 2XL \$26.50

To order by mail [WV residents add 6 % sales tax] make check payable to West Virginia Highlands Conservancy and send to West Virginia Highlands Conservancy, Online Store, PO Box 306, Charleston, WV 25321-0306

**The same items are also available at our on-line store: [www.wvhighlands.org](http://www.wvhighlands.org)**

## T- SHIRTS

White, heavy cotton T-shirts with the **I ♥ Mountains** slogan on the front. The lettering is blue and the heart is red. "West Virginia Highlands Conservancy" in smaller blue letters is included below the slogan. Short sleeve in sizes: S, M, L, XL, and XXL. Long sleeve in sizes S, M, L, and XL. **Short sleeve** model is \$18 by mail; **long sleeve** is \$22. West Virginia residents add 6% sales tax. Send sizes wanted and check payable to West Virginia Highlands Conservancy ATTEN: Online Store, WVHC, P.O. Box 306, Charleston, WV 25321-0306.



## HATS FOR SALE

We have West Virginia Highlands Conservancy baseball style caps for sale as well as I ♥ Mountains caps.

The WVHC cap is beige with green woven into the twill and the pre-curved visor is light green. The front of the cap has West Virginia Highlands Conservancy logo and the words West Virginia Highlands Conservancy on the front and I (heart) Mountains on the back. It is soft twill, unstructured, low profile, sewn eyelets, cloth strap with tri-glide buckle closure.

The I ♥ Mountains The colors are stone, black and red.. The front of the cap has I ♥ 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