



The Highlands Voice

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

Volume 53 No. 7 July, 2020

U.S. Supreme Court Allows Atlantic Coast Pipeline to Cross Appalachian Trail

By John McFerrin

The United States Supreme Court has reversed the Court of Appeals for the Fourth Circuit and held that the United States Forest Service was within its authority to allow the Atlantic Coast Pipeline to cross the Appalachian Trail.

The dispute focused on the Appalachian Trail. The Trail itself runs from Maine to Georgia. On its way, it passes through the George Washington National Forest. There it is in the proposed pathway of the Atlantic Coast Pipeline. If built, the Pipeline would have to cross the Trail somewhere.

Everybody agrees that the Pipeline would have to get approval from somebody to cross the Trail. This case was about who has authority to give that permission. The United States Forest Service, which administers the George Washington National Forest, thought that it had authority to grant that permission. The United States Court of Appeals for the Fourth Circuit disagreed. It ruled that the Forest Service did not have that authority. It ruled that the Trail is under the control of the National Park Service and that, because of this, the Forest Service has no authority to give permission to cross.

One way to look at this case is that it is just a case of statutory interpretation: did Congress give the Forest Service the authority to give permission to cross the Trail? One statute creates the National Forests and says how land in the National Forest may be used.

Another creates the National Park system and says how lands within its jurisdiction may be used. A third gives the right to grant rights of way to different agencies and gives those agencies the authority to grant rights of way across lands they control. The Supreme Court had the task of figuring out how all these statutes fit together.

In the Court's view, the case turns on whether there is a distinction between the Appalachian Trail and the Forest Service land upon which it is located. If Congress gave control over the Trail to the Park Service, does that mean that it also gave control of the land upon which it is located. Or did the Forest Service keep all that is below the surface, including where the Atlantic Coast Pipeline would cross?

Even is the whole discussion sounds at times as if they are warming up for a discussion of how many angels can dance on the head of a pin, the bottom line is that the Forest Service has the power to authorize crossing of the Appalachian Trail by the Atlantic Coast Pipeline. One barrier to construction has now fallen.

This does not mean that it will necessarily be built. The Southern Environmental Law Center responded to the decision by channeling its inner Yogi Berra, pointing out the legal and financial difficulties that remain. A slightly shortened version of its statement appears on page 3.

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Thoughts from our President

By Larry Thomas

Summer has arrived and Mother Nature continues to show off her amazing splendor throughout the highlands. As one travels throughout the mountains the trees have leafed out and wildlife is everywhere. It is fantastic to see the flowers blooming and wildlife mothers (birds and animals) taking care of their young. Certainly, it makes us forget that we are living in a new, very strange world of isolation because of the COVID-19, if only for a little while, as we are enjoying the splendor all around us. Hopefully, the Coronavirus has not affected you or your family members.

Land and Water Conservation Fund and the Great American Outdoors Act

The Land and Water Conservation Fund (LWCF) was established by Congress in 1964 to fulfill a bipartisan commitment to safeguard our natural areas, water resources and cultural heritage, and to provide recreation opportunities to all Americans. Unfortunately, the LWCF was allowed to expire on September 30, 2019.

As reported in prior *Highlands Voice* articles, West Virginia Highlands Conservancy (WVHC), as a part of the West Virginians for Public Lands (WVPL) has been working with other groups to get Congress to permanently authorize and permanently fund LWCF.

Congressional action has already permanently authorized Land and Water Conservation Fund; now it will no longer be required to be renewed from time to time, as it has been since it was created. Legislation has now been entered to provide the permanent funding that we are seeking.

The Great American Outdoors Act (GAOA) is historic bipartisan legislation that permanently and fully funds the Land and Water Conservation Fund. The GAOA ensures that the LWCF will receive full program funding each year without going through a drawn-out appropriations process which often leaves it underfunded; it is designed to provide funding for recreation and conservation projects on local, state, and federal public lands. These investments will lead to job creations and bolstering of the outdoor recreation economy throughout West Virginia. To date, LWCF has provided over \$241 million to support over 500 projects across the Mountain State.

Not only does the Great American Outdoors Act invest in the Land and Water Conservation Fund, it addresses the \$12 billion maintenance backlog plaguing our nation's public lands. The Act provides desperately needed funding to repair infrastructure like roads, trails, recreation sites, bridges, buildings, and water systems.

On June 17, the Senate voted in favor of GAOA, giving our wild and wonderful public lands a real boost. Now, the bipartisan Act has moved to the House for consideration.

It is time to help our nation's economy recover from these turbulent times. That is why we need our members in the House to support and vote for the Great American Outdoors Act ensuring permanent investment in the lands that make America great. To help ensure that outcome, we are asking that you, our members, call your member in the House and ask for their support and vote for GAOA. This is critical time for LWCF, and they need to hear our voices.

West Virginia House members and their telephone numbers are:

Alex Mooney (202) 225-2711

Carol Miller (202) 225-3452

David McKinley (202) 225-4172

It would also be great to thank both of our West Virginia Senators for their efforts in getting this important legislation passed in the Senate. Please take a minute and give them a call.

Joe Manchin, III (202) 224-3954

Shelley Moore Capito (202) 224-6472

Allegheny-Blue Ridge Alliance Construction Surveillance Initiative and Conservation Hub Programs

During June, work continued on both of the Allegheny-Blue Ridge Alliance (ABRA) projects. The core of the Construction Surveillance Initiative program is a network of volunteers from communities affected by the Atlantic Coast Pipeline (ACP) in West Virginia and Virginia. The program also involves technical and regulatory monitoring dimensions to help identify and analyze possible construction violations and actions and report them to appropriate regulatory authorities. Even with the current lull in the construction of the ACP, monitoring of the project still continues.

The Conservation Hub (Hub) is a project that will focus on reviewing and assessing land management and development proposals (beyond the current pipeline projects that are the principal focus of ABRA's efforts) affecting the central Appalachian Highlands and adjoining areas. The intent of the Hub mapping systems is to overcome systemic limitations that regularly undermine public participation in permit review and thwart implementation of environmental regulations and policy. Those limitations could include lack of access to critical, but ever-changing project plans and impact analysis, consideration of individual projects or project components in isolation, and the general absence of an orderly and transparent regulatory process. The Hub advisory committee is currently reviewing several proposed projects for possible approval.

Monongahela National Forest Project Reviews

The WVHC Public Lands Committee continues to review current projects in the Mon that have been reported in past issues of *The Highlands Voice* and will continue to do so. The committee and other organizations have become aware of another project called the Gauley Healthy Forest Restoration Project. The project is adjacent to, and east of Richwood and extends eastward to the Cranberry Mountain Nature Center.

<https://www.fs.usda.gov/project/?project=57335&exp=overview>

It appears that the Forest Service is planning to categorically exclude this project from the usual NEPA review, which means no public comment, so it may be difficult to find out what is going on. The committee and other organizations are trying to get information to review about the project.

Please, everyone, stay safe during this continued coronavirus situation. We still need to follow the precautions recommended by the Centers for Disease Control and Prevention along with local health and safety guidance. I am seeing many individuals traveling to the mountains, I assume to get away from it all. Maybe I will see you on the mountains.

It ain't over 'til it's over

Atlantic Coast Pipeline problems persist despite Supreme Court decision

From the Southern Environmental Law Center

"While today's decision was not what we hoped for, it addresses only one of the many problems faced by the Atlantic Coast Pipeline. This is not a viable project. It is still missing many required authorizations, including the Forest Service permit at issue in today's case, and the D.C. Circuit Court of Appeals will soon consider the mounting evidence that we never needed this pipeline to supply power. It's time for these developers to move on and reinvest the billions of dollars planned for this boondoggle into the renewable energy that Virginia and North Carolina customers want and deserve," said DJ Gerken, Southern Environmental Law Center Program Director.

The Supreme Court's decision comes at the same time that the purported need for the Atlantic Coast Pipeline, proposed in 2014, is receiving renewed scrutiny, as states are steering their energy economies away from fossil fuels. In March, Dominion Energy told Virginia regulators that the build out of new gas-fired power plants is no longer "viable" in the state, and the Virginia Clean Economy Act signed into law in April requires that the utility shut down all of its existing gas plants by 2045. North Carolina's Clean Energy Plan calls for a reduction in greenhouse gas emissions from power plants of 70% over 2005 levels by 2030 and total carbon neutrality by 2050.

"It's been six years since this pipeline was proposed, we didn't need it then and we certainly don't need it now," said Dick Brooks of the Cowpasture River Preservation. "Today's decision doesn't change the fact that Dominion chose a risky route through protected federal lands, steep mountains, and vulnerable communities."

"This pipeline is putting our farmlands, our water and the livelihood of Virginians in jeopardy," said Nancy Sorrells with Alliance for the Shenandoah Valley, "And all for a pipeline that isn't even in the public interest of Virginians."

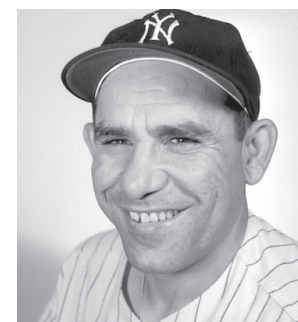
Meanwhile, the exorbitant price tag for the Atlantic Coast Pipeline continues to climb because of Dominion's insistence on a harmful and risky route. Under these circumstances and at a time when the region is moving rapidly to 100% renewable energy, it's unreasonable to expect customers to pay for this obsolete \$8 billion fracked gas pipeline.

"With the ACP still lacking 8 permits, this decision is just plugging just one hole on a sinking ship," said Kelly Martin, Director of the Sierra Club's Beyond Dirty Fuels Campaign. "Nothing in today's ruling changes the fact that the fracked gas Atlantic Coast Pipeline is a dirty, dangerous threat to our health, climate and communities, and nothing about the ruling changes our intention to fight it. From the day the ACP was proposed, the smart investment for Dominion and Duke would have been clean, renewable energy sources, and with the project billions of dollars over budget, that's even more true today. Despite this ruling on one narrow question, economics, common sense, and public opinion are still squarely against the ACP."

Among the permits in question for the Atlantic Coast Pipeline are:

- Endangered Species Act permit (Biological Opinion) from the U.S. Fish and Wildlife Service
- Special use permit and right-of-way grant from the U.S. Forest Service
- Right-of-way permit from the National Park Service
- Virginia air pollution permit for the Union Hill compressor station
- Four Clean Water Act authorizations from the Corps of Engineers for Pennsylvania, West Virginia, Virginia, and North Carolina

The Atlantic Coast Pipeline's central permit from the Federal Energy Regulatory Commission is under review in the D.C. Circuit Court of Appeals, and arguments are expected later this year. The case will determine if FERC correctly determined that the Atlantic Coast Pipeline was needed to fuel gas-fired power plants when it approved the project in 2017.



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.

Environmental Protection Agency Limits States' Rights

By John McFerrin

For activities which cross or result in a discharge into streams and wetlands, builders must have a permit pursuant to the Clean Water Act. Even if the permit is issued by a federal agency, federal agencies cannot authorize projects in a state unless that state certifies (called a 401 Certification) that the project will not violate state water quality standards.

Now the Environmental Protection Agency has issued a new rule which restricts the authority of the states to restrict activities which will occur in those states.

For an explanation of the changes, we turn to an opinion piece published in *The Hill* by Jim Murphy:

The new rule undermines states and tribes authorities to protect their waters in the several key ways.

First, the rule restricts the period of time that states and tribes have to analyze proposed projects. It gives the federal agencies wide latitude to put tight time limits on states or tribes to examine complex issues. It gives states no longer than a year to make a decision and in many cases it will be much less time.

Paired with this, the rule changes effectively allows the applicant - the pipeline company or the mining firm, for example - to determine when the clock starts ticking. This will incentivize applicants to provide as little information as they can get away with and then start the process, requiring the states and tribes to spend their limited time trying to gather the information they need. If the state or tribe can't act in time, certification authority is waived and the applicant can move ahead regardless of state or tribal concerns.

The rule also thumbs its nose at two Supreme Court decisions, seeking to effectively overturn them. First, the rule limits the scope of review to projects that result in discharges from "point sources." However, the Supreme Court's unanimous 2006 opinion, *S.D. Warren v Maine*, found that state and tribal authority to review projects that affect water quality is broader than that.

This has real world impact. Some projects, like dams, affect water quality downstream, but are not considered "point sources" under the law. The Supreme Court has said dam relicensing is subject to state and tribal review even though they are not point sources. In 2018, Maryland certified the relicensing of a major hydropower dam but required the operator to address pollution issues and to manage the dam in a way that allows migrating fish easier access to spawning areas upstream. But the new rule could block states from reviewing major projects like dam relicensing.

The rule also takes a swipe at a 1994 Supreme Court decision, *PUD No. 1 v. Washington*, where Justice O'Connor's majority opinion found that the Clean Water Act allows states and tribes to place limits or conditions on the entire proposed activity associated with constructing the dam, mine, pipeline or other project, not just the materials that would be intentionally dumped in the water.

The new rule limits the scope of review so that states and tribes cannot look at the ways the overall operation

of an activity like a pipeline or mine or dam could pollute or degrade waters. This could undercut states' abilities to make sure a dam is operated in a way that provides enough water for fish or pipeline measures to protect communities against oil spills. In the case of the Millennium Bulk Coal terminal, under the new rule, Washington State likely could not have considered the impacts of increased ship traffic on salmon. For an open-pit mine, the state or tribe might not be able to consider the impacts of toxic dust or runoff on water quality.

Finally, the rule gives federal agencies the power to effectively overrule or ignore state or tribal decisions they disagree with. This is an expansion of federal power that clearly defies the intent of the Clean Water Act.

Rules do not just spring from the forehead of some bureaucrat for no reason. Something has to motivate them. In this case, New York and Oregon had used the authority granted by Section 401 to block pipelines. Washington State had used the authority to block a coal export terminal. States' rights are fine until they interfere with something the EPA wants to do.

While the changes may make a difference in some states, in West Virginia it may not make any difference. When a Clean Water Act certification for the Mountain Valley Pipeline were being considered in late 2017, West Virginia waived its right to make comments or place restrictions upon it to protect West Virginia's waters. (*The Highlands Voice*, December 2017). At the time Department of Environmental Protection Secretary Austin Caperton said, "We feel very comfortable that this pipeline can be installed in an environmentally sound manner and that the environmental impacts ultimately will be zero." The next month West Virginia punted again on the Atlantic Coast Pipeline. (*The Highlands Voice*, January, 2018).

Virginia was not as compliant as was West Virginia. It actually did a review of the permit for the Atlantic Coast Pipeline and included some conditions in some parts of the project.

Note: Jim Murphy is senior counsel for the National Wildlife Federation's Climate and Energy Program. He is also an assistant professor of law at Vermont Law School and the director of the law school's Environmental Advocacy Clinic, which represents the Federation.

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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.

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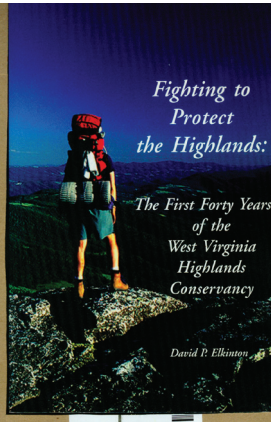
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Filling out the form, etc. is, of course, the old school way of doing things. If you prefer, just email the information to Dave Saville at WVHC50@gmail.com.

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.

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More Threats (and a little hope) for the Migratory Bird Treaty Act

By John McFerrin

The April, 2020, issue of *The Highlands Voice* included a story about threats to the Migratory Bird Treaty Act. Those threats continue to grind ahead, putting the effectiveness of the Act in serious jeopardy. In the midst of the gloom, there is some hope that Congress will step in and save the Act.

Background

For a century, the Migratory Bird Treaty Act has been one of the main protections for birds of all kind. Historically, it has protected birds from intentional killing, situations in which someone had the killing of a bird as their goal. That was once an important part of the Act's work; at the time it was passed birds such as the Snowy Egret were being hunted to extinction for their feathers.

In addition to protecting birds from intentional killing, the Act also protected birds when someone's actions or inactions resulted in their deaths or harm. The most visible recent example of this is the Deepwater Horizon oil spill. The company did not set out with the intention of killing birds. It just conducted its operation in a way that killed over one million birds. As a result of the Migratory Bird Treaty Act it had to pay over \$64 million in penalties.

That was then; this is now. In 2017, the United States Fish and Wildlife Service (a part of the United States Department of the Interior) decided that it and all its predecessors for the past century had been misinterpreting the Act. It issued an opinion saying that the Migratory Bird Treaty Act only prohibited intentional killing of birds in situations where the goal of the activity was killing birds. When the goal was something else and the birds just happened to be killed in the process, the Act did not prohibit that.

Opinions don't last; regulations do. The 2017 Opinion would guide the enforcement of the Act only so long as the current administration was in charge. A different administration could issue a new opinion, saying that the Act had been correctly interpreted all along and that both intentional and incidental killing were prohibited. To make the policy permanent, it needs to be in a regulation which would be difficult to change.

We are now in the midst of the process of promulgating the regulation. The Fish and Wildlife Service has issued a draft regulation and received public comments on it.

What's happening now

The National Environmental Policy Act requires that the Department consider the environmental impact of its major actions, including the proposed regulation. It has prepared a draft Environmental Impact Statement, evaluating the impact of its proposed regulation on the environment.

The draft is now available for public comment. As designed, making the draft available for public comment makes it possible for the public to point out things the Department of the Interior overlooked, places where the analysis was faulty, etc. The Department could then use the suggestions to improve the product and, in turn, have its decision making guided by the improved Environment Impact Statement.

In practice, commenters may well get the standard, government issue, thank-you-for-your-participation, we-are-going-to-do-what-we-always-wanted-to-do response.

In the draft Environmental Impact Statement for this Migratory Bird Treaty Act regulation, the Department of the Interior considers

three alternatives. One alternative is doing nothing. Although this alternative is nominally considered in every Environmental Impact Statement, it is almost never, if ever, picked. If agencies wanted to do nothing, they would have done nothing. They don't do rulemaking just to end up doing nothing.

This leaves two choices: (1) implement a regulation making clear that the Migratory Bird Treaty Act protects all migratory birds from both intentionally killing and killing which is incidental to some other activity not specifically designed to kill birds (the historical interpretation of the Act); and (2) implement a regulation saying that the Act only protects birds from intentional killing where the killing is the goal of the activity (the 2017 interpretation of the Act).

In evaluating the effects of these two choices, the Fish and Wildlife Service concluded that choosing the second one would result in "increased bird mortality." This would happen because "fewer entities would likely implement best practices." Choosing the first one would, on the other hand, result in more entities who would "likely implement best practices to avoid the threat of enforcement." The draft Environmental Impact Statement predicts a "decrease in bird mortality compared" under this alternative.

The term "best practices" (the ones that would decrease under the Fish and Wildlife Service's proposal) is a general term that covers a variety of practices that industries have developed over the years to protect birds. For example, communication towers have been shown to reduce mortality by about 70 percent by changing to flashing lights and removing guy wires. For oil pits, bird mortality can be virtually eliminated if netting is installed and maintained. These, and many others for many industries, are the kind of practices which the regulation proposed by the Fish and Wildlife Service would diminish.

The draft EIS also predicts some secondary environmental benefits from steps that reduce bird mortality. Actions that protect birds can also benefit entire ecosystems.

The draft EIS also concludes that the change that the Fish and Wildlife Service wants to make would result in lower costs to industry.

A little bit of hope

There is a bill pending in Congress (H.R. 5552: Migratory Bird Protection Act of 2020) which would undo the activities of the Fish and Wildlife Service that diminished the Migratory Bird Treaty Act. It would make clear that the Act prohibits not just purposeful actions to kill birds. It would prohibit actions in which the bird deaths result incidentally from other activities which do not have killing birds as their primary goal. It would, in other words, restore the historic interpretation of the Act.

While Congressional interest in guiding the Fish and Wildlife Service back to its past is encouraging, this is only a "little" bit of good news because the bill faces an uphill climb. It has 77 co-sponsors (none from West Virginia); there is no corresponding legislation moving through the Senate. It was introduced in January, 2020, and has been assigned to a committee but the committee has taken no action.

Changes Coming to the National Forests

By John McFerrin

Many, many years ago a coal operator in eastern Kentucky was quoted as saying, “Green? You want green, we’ll just take all the money we’re going to make on this and pin it to the highwall.” At another time and place, not quite so long ago, we had Forest Service managers who appeared to understand their mandate as “getting the cut out.”

That was then; this is now. We are all environmentalists now. The law is different. We now have the National Environmental Policy Act, that grand look before you leap statute which requires that the federal government consider the environmental consequences before it takes any major action. If the attitudes of long ago coal operators and managers still exist, they now come dressed as concerns about efficiency, a prospering community, etc.

The Secretary of the United States Department of Agriculture, which oversees the National Forests, recently issued a directive on Forest policy to the Chief of the Forest Service. According to the press release that announced the directive, it will provide “direction that will serve as a blueprint to help modernize the agency’s systems and approaches to ensure national forests and grasslands continue to meet the needs of the American people.” The press release also notes that under the current administration the Forest Service has sold more timber than it has in 22 years.

In his directive, the Secretary directed the Forest Service to “focus resources on activities that support the productive use of these lands to deliver goods and services efficiently and effectively to meet the needs of our citizens.” Under the directive, the Forest Service will:

- streamline processes and identify new opportunities to increase America’s energy dominance and reduce reliance on foreign countries for critical minerals;
- modernize management practices and reduce regulatory burdens to promote active management on Forest Service lands to support and protect rural communities, critical watersheds, and species habitat; and
- expedite broadband development on Forest Service lands to increase internet connectivity in rural America.

The directive recognizes the requirements of the National Environmental Policy Act and the Forest Service’s obligation to consider the environmental consequences of its decisions, including what projects it approves. The directive says that the Forest Service will

- set time and page limits on the completion of environmental documents, including categorical exclusions, environmental assessments, and environmental impact statements;
- streamline policy to ensure environmental reviews focus on analysis that is required by law and regulation;
- work across the government to initiate the development of policies for alternative procedures to streamline consultation processes and environmental reviews; and expedite compliance with State Historic Preservation Offices for vegetation management and facility and infrastructure improvements

The language is sufficiently vague and bureaucratic that it is difficult to know exactly what it means in practice. We all want efficiency, whether in our energy efficient cars or in pitchers getting the ball to the plate with little wasted motion. When coupled with

impositions of time and page length limits on environmental review, however, streamlined starts to look more like a euphemism for rushed and incomplete.

The Forest Service is a big organization. It makes hundreds if not thousands of decisions each year. Whether the new directive makes a difference depends upon how its guidance is applied to each of those decisions. The Forest Service may perform careful and complete environmental reviews of proposed projects. It may carefully consider the effects of energy development or timber cutting in the National Forest and make prudent decisions on such requests.

Or we may be headed back to the old days of getting the cut out.

Delay for the Atlantic Coast Pipeline

Dominion Energy and Duke Energy, co-owners of the Atlantic Coast Pipeline, have asked federal regulators for a two year extension. They now say the 600 mile pipeline will not be completed until 2022.

The developers originally projected construction would be completed in 2019. Multiple legal challenges and permitting issues have added to the delays, as well as the price tag: \$8 billion, up 60% from the initial estimate of \$5 billion. Most of that cost will be passed on to ratepayers.

The Federal Energy Regulatory Commission could legally grant the time extension if it determines the delays are the result of “good cause.” Based on its previous decisions, FERC will likely approve the request.



Tiny Tax Tip

The Coronavirus Aid, Relief and Economic Security (CARES) Act allows taxpayers to deduct up to \$300 (\$600 for couples) in charitable donations from their taxable income whether or not they itemize deductions. In ordinary times, charitable deductions are only available to those who itemize. For 2020 and only 2020, taxpayers who do not itemize will be able to deduct charitable donations up to these limits. Taxpayers will be able to claim the deduction on their tax forms for tax year 2020.

West Virginia Rivers Coalition and Trout Unlimited Report on Pipelines

By John McFerrin

West Virginia, Virginia, and North Carolina are thick with rivers and streams. More and more, they are (or are proposed to be) thick with pipelines. If the pipelines and the waterways are ever to coexist (whether this is feasible is still up in the air), there will be stream crossings. The Atlantic Coast Pipeline and the Mountain Valley Pipeline propose over 2600 proposed stream crossings in West Virginia, Virginia, and North Carolina.

Each of these crossings presents a threat to a waterway. Because of the threat to the waterway, each of these crossings must be permitted by, in this situation, the United States Army Corps of Engineers. Because there are so many crossings, and still some questions about whether the pipelines can make all those crossings without violating laws controlling water quality, there has been litigation.

All this can start heads spinning. To help make sense of it all, the West Virginia Rivers Coalition and Trout Unlimited have published a report *Reducing Impacts of Pipelines Crossing Rivers and Streams*.

The *Report* describes (with very helpful pictures and diagrams) the different methods for crossing streams (drilling under, damming or partially damming, etc.) as well as the advantages and disadvantages of each. It describes what can go wrong with the crossings and offers some examples of places where crossings have gone wrong.

There is even a summary of the permitting status of these pipelines. There have been a lot of twists and turns on the road to having these pipelines permitted and they are not there yet. The *Report* provides a summary of the pipelines' current status in the permitting process.

To see the *Report*, go to <https://wvivers.org/wp-content/uploads/2020/06/streamcrossingreport.pdf>.

Thinking about the Economics of Petrochemicals

By John McFerrin

One of the clichés of our public policy has long been that we have to “balance” the environmental and social costs of coal, oil, and gas extraction with the benefits to our economy. For pretty much forever, our public policy has assumed that coal is so important to our economy that we should put up with a great deal of environmental and social cost in order to assure that the industry prospers.

As coal begins to fade away, we are applying the same analysis to gas production and use. Sure, drilling for gas has an environmental cost. So does using it as the basis for a petrochemical manufacturing industry. At the same time, the reasoning goes, it is of such enormous economic benefit that we are obliged to put up with the substantial environmental cost. The only job of policy makers is to decide how to balance the economic benefit with the environmental cost.

But what if the assumptions are not true? What if there is really no economic benefit? What if we look at the economic side of the balance and find nothing? What if pursuing and trying to develop a petrochemical industry is waste of time?

This is the question that a group of economists and academics have raised in a joint letter to the Governors of West Virginia, Ohio, and Pennsylvania. Is the development of a petrochemical manufacturing industry an economic benefit to those states?

The letters writers have concluded that that petrochemical manufacturing is not a viable business that will revitalize Western Pennsylvania, West Virginia, and Southeast Ohio. They point to the cancellation of the ASCENT cracker plant in Wood County, West Virginia, the inability of the proposed Appalachian Storage Hub to attract investors, the failure by China to follow through on an announced investment of \$84 billion in regional petrochemical projects, and the recent indefinite postponement of a final investment decision on an ethane cracker plant proposed for Belmont County, Ohio.

In addition, the writers of the letter raise questions about the competition that products from petrochemical manufacturing facilities in Pennsylvania would face. Production of petrochemicals elsewhere in the United States and in China is increasing and is expected to increase even more. This would tend to make production from Pennsylvania facilities less competitive.

The writers suggest that, instead of pursuing petrochemical plants, the states devote their efforts to industries such as the clean energy economy - electric vehicles, energy storage, wind power, solar power, and energy efficiency -- which already employs more than 175,000 workers in Ohio, Pennsylvania, and West Virginia, three quarters of them in manufacturing and construction.

The writers: Wilfrid Csaplar, Jr. PhD, Professor of Economics at Bethany College; Nicholas Muller, PhD, Associate Professor of Economics, Engineering, and Public Policy at Carnegie Mellon University; Mark Partridge, PhD, Professor, Swank Chair in Rural-Urban Policy at the Ohio State University; and John B. Russo, EdD, Founder and former Director of the Center for Working-Class Studies at Youngstown State University; James Van Nostrand, Professor and Director of the Center for Energy and Sustainable Development at the West Virginia University College of Law; Amanda Weinstein, Associate Professor of Economics at the University of Akron; John Hanger, former Pennsylvania Secretary of Environmental Protection; and Ted Boettner, Executive Director of the West Virginia Center on Budget and Policy.



Revelations

There is a white skein
of fungus
fast enveloping
in its many tendriled way
the bone dry
gnarled
shattered shard
of decaying log
I always mark
along the berm
of my daily treading

The sense of things
not in place one day
and coming into being
the next
is surely
a bewilderment

Like in the same hour
the Jackhammering
woodpecker
somewhere echoing
in the newly leafing in
trees

Or later on,
the riveting repeating scritch
of an unknown
single bit of
bird
concealed
in the wiry impervious
bush

And, yes,
the russet wisp of
of a thrush
bulleting
across the grassy space
where my body
is easing down
for a time
from its days
of data jam weariness,
that, too

And the east drifting river
over there
making a wholly fresh
claim on me today,
now a richer thick
and abyssal green

Never the same,
never the same

Oh
I couldn't do much better
than to live in,
than to revel in,
these unrestrained revelations
for a while

By Jack Slocomb

A Fond Remembrance

For some while I've considered jotting down stories from those early days of organizing West Virginia Highlands Conservancy -- often around the table in Pittsburgh Climbers' rented shack in Onego.

It was a simple place, with outdoor, um, facilities, furnished with whatever was left over from a dozen members' homes and some things Jean Rodman found in resale shops. In spite of its humble environment, it was a cracker barrel for supporters of this prospective environmental preserve and on weekends you'd never know the folks gathered there included physicists, chemists, D.C. lawyers, engineers and a handful of artists, etc.

Victor Schmidt and I were a year short of being wed when WVHC was established but we'd been exploring West Virginia trails and caves for five years together, along with other friends from both Pittsburgh Climbers and Carnegie Tech Explorers Club. We were there when Jean Rodman brought all the necessary stuff for dying Easter eggs and she coined that color when all the dyes were mixed together as "Fuskus." Seemed so right.....

I remember bringing out my guitar one evening and slowly breaking into folk songs as people began to tire from the day's planning for this new organization. There must have been no expectation that this girl in blue jeans and T-shirt actually had any inclination to entertain because the room went silent but for my singing. And I looked around to watch a bunch of very weary planners relax and enjoy that moment. There seemed to be so many ways to contribute to the burgeoning conservation organization.

My heart always had been in both the exploration and protection of West Virginia. My father was born in Clarksburg. His grandparents were among founders of Moundsville. And older WVHC members will remember Dad's cousin, Sam Shaw, publisher of Moundsville Echo. So my feet always had been grounded a bit in "Mountain Mama."

I am eighty years old now and hiking has become more of a task than a pleasure but oh, how I miss it! When I do manage to visit West Virginia, it is with deepfelt gratitude for all those who gave so much to the keeping of its many, many natural treasures.

Sincerely
Marjorie L. Schmidt

Note: This came to us through the West Virginia Highlands Conservancy Facebook page.



The Good Gets Better

The April, 2020, issue of *The Highlands Voice* celebrated the passage of Senate Bill 583. It 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.

Now we are moving forward, toward seeing the benefits of that bill realized. Appalachian power has issued a Request for Proposals to build its first large solar array in West Virginia.

The bill allows both of West Virginia's major utilities to build 200 MW of solar, 50 MW at a time. The project announced today will be Appalachian Power's first 50-MW array. It will increase solar capacity in West Virginia to five times what it is now.

One of the goals of the bill was to make West Virginia more attractive to certain types of companies. Many employers won't come to West Virginia unless they have access to large amounts of renewable electricity. Once this solar project is built in 2022, this obstacle will be removed and businesses with renewable electricity targets can site their operations here, bringing jobs to West Virginia.

According to the request for proposals, the solar array must be in West Virginia and on land previously used in electric generation, industrial, manufacturing or mining operations to include brownfields, closed landfills, hazardous waste sites, former industrial sites, and former mining sites. This will put degraded land back into use.

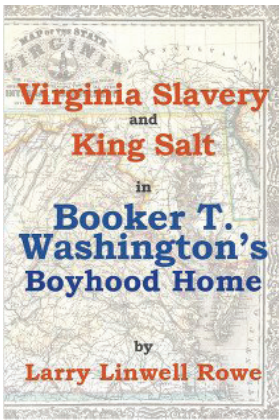
Senate Bill 583 was originated by Delegate Evan Hansen and received bi-partisan support.

Special Discount for WVHC Members

Larry Rowe of Malden, WV, is offering his book *Virginia Slavery and King Salt in Booker T. Washington's Boyhood Home* at a special rate for West Virginia Highlands Conservancy members. Its regular retail price is \$29.95. He is offering it to WVHC members for \$8.00.

A prominent educator, author, orator and advisor, Booker T. Washington has become a favorite son of West Virginia. He was born in Virginia, and his family moved to Malden during his youth, where he first attended school. In the book, Mr. Rowe tells the story of Washington's boyhood heroes and how he observed them start a black middle-class community in Malden during the first generation after the abolition of slavery.

To take advantage of this offer, call Mr. Rowe at 304-925-1333 or 800-542-6079. Mention that you are a WVHC member for the special rate.



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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.

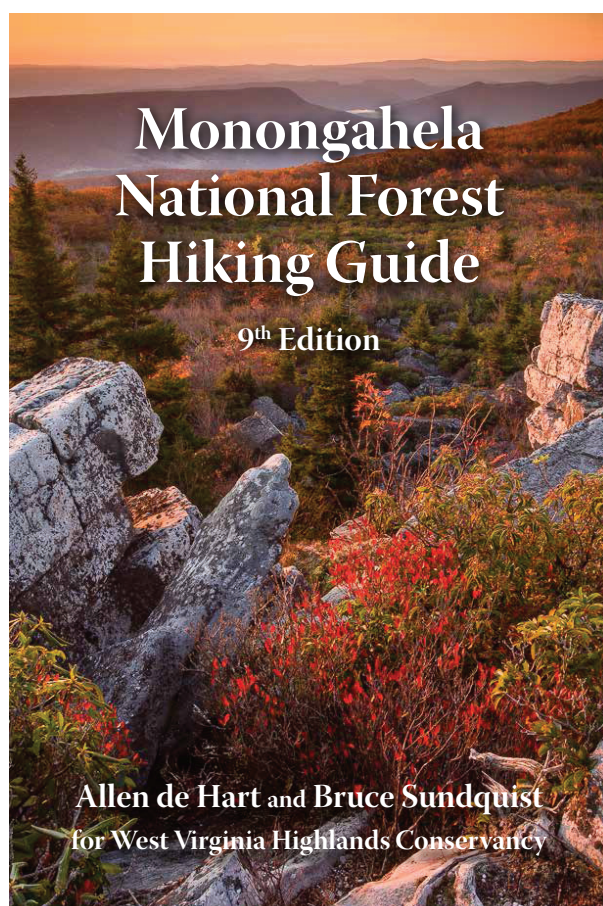
**Send \$18.95 plus \$3.00 shipping to:
West Virginia Highlands Conservancy**

P.O. Box 306

Charleston, WV 25321

OR

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



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. 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.)



HIGHLANDS CONSERVANCY BOUTIQUE



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

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

The same items are also available at our on-line store: www.wvhighlands.org

T- SHIRTS

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



HATS FOR SALE

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

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

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