



# *The Highlands Voice*

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

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December, 2020

## **Bluestone Mine Gets Its Comeuppance**

By Cindy Rank

First a quick reminder about our actions with regard to Bluestone Coal violations at its Red Fox mine in McDowell County. (Bluestone is a subsidiary of the Justice Group, which is controlled by the family of West Virginia Governor Jim Justice.)

On June 4, 2019 West Virginia Highlands Conservancy (WVHC) joined the Ohio Valley Environmental Coalition (OVEC), Sierra Club and Appalachian Voices in sending a Notice of Intent (NOI) to sue if after 60 days Bluestone Coal Company did nothing to address its selenium pollution of tributary streams to Dry Fork of the Tug Fork River.

The July 2019 Voice includes a brief article about this NOI and several other NOIs sent to a variety of coal companies guilty of similar violations in different watersheds.

Then reprinted in the September 2019 Voice was an article from the Charleston Gazette-Mail by Kate Mishkin about the actual

complaint that was filed on August 6, 2019 asserting Bluestone was in violation of both its Clean Water Act Permit (NPDES) and its Surface Mine Permit.

Bluestone's response to Kate's questions at that time was predictable: *"This is a frivolous lawsuit brought by activist organizations who ultimately want to close West Virginia coal mines and put miners out of work."*

Fortunately, the Southern District Court in Bluefield wasn't so easily swayed and on June 3<sup>rd</sup> of this year the Judge denied Bluestone's motion to dismiss and held that our case against the Justice group could proceed. Then in July the court ordered that yes, indeed, the company should be held liable for violations of both the Clean Water Act and Surface Mine Act permits.

Since July our legal team led by Mike Becher of Appalachian Mountain Advocates (APPALMAD) has been working with lawyers

**(More on p. 3)**

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## Thoughts from our President

By Larry Thomas

As we move into December, the Covid19 pandemic of 2020 continues to radically change our lives, certainly making us fully aware of the vast treasures that our West Virginia highlands have to offer and why it is so critically important that we continue our fight to preserve and protect the highlands for future generations. During this extremely unusual year, the Board and committees have continued the hard work of “Fighting to Protect the Highlands” as we have for over 53 years in spite of the issues that the pandemic has thrown at us.

Thousands of individuals have flocked to our highlands this year to escape that which the invisible, global pandemic has brought to their everyday lives. I have personally traveled to key destinations throughout the highlands to observe the reported overcrowding. Certainly the increased use of our public lands exhibits how essential it is for us to increase our efforts in the fight and win the war against those who want to destroy the environment and destroy the natural, scenic and historic areas within the West Virginia highlands.

The Conservancy’s accomplishments in the course of the considerably important battles to preserve the highlands during our 53+ years of existence have served the highlands well, but so much more remains to be accomplished as we move into the future. We are proud of our continued efforts and achievements during 2020, in spite of the restrictions caused by the pandemic, as witnessed through the great articles/stories that are published each month in *The Highlands Voice*. Committees are working hard on continuing issues, some that we have been working on for years, as well as identifying new issues that are threats to the future of the highlands.

### **Update: the Spotted Lanternfly Has Been Found in West Virginia**

As reported in prior issues of *The Highlands Voice*, the United States Department of Agriculture (USDA) and the West Virginia Department of Agriculture (WVDA) have confirmed the presence of the new, invasive insect, the Spotted Lanternfly, in West Virginia.

On October 30, 2019, a small population of Spotted Lanternfly was detected in the Bunker Hill area of Berkeley County, West Virginia. A current release stated that on August 20, 2020 a population of about 100 spotted lanternflies were discovered near Interstate 81 in Inwood, approximately 2 miles from the sighting location last year. Sightings have now been in Mineral and Berkeley counties. After immediate action with insecticide to kill the insects and herbicide to kill the host tree, tree-of-heaven, a noticeable reduction in the insects was discovered. Once established the insect is known to feed on over a 100 species of plants in North America.

Why the alarm? Simple, the Spotted Lanternfly can devastate crops such as grapes, peaches, plums, cherries and hops along with our hardwood forests that are now at particular risk because the Spotted Lanternfly has arrived.

If you suspect that you have found a Spotted Lanternfly, take a photo before trying to kill the insect as they can jump very far and disappear quickly and email the photo to [bugbuster@wvda](mailto:bugbuster@wvda) or call (304) 558-2212.

### **Public Lands Committee Recommends Scoping Comments for the 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).

On March 20, 2020 the West Virginia Highlands Conservancy submitted scoping comments on the proposed Project. Since the initial scoping, several changes were made to the proposed action, including changes to the acres of treatment, and the creation of a project-specific Forest Plan amendment related to the West Virginia Northern Flying Squirrel. In addition, activities proposed in the Gauley Mountain Inventoried Roadless Area (IRA) were specifically identified. Changes to the proposed action were the result of additional field analysis, updated GIS mapping information, and comments and recommendations received from the public. Because of these changes to the proposed action, the Forest Service provided this additional opportunity for comments on the Upper Elk Project. The Public Lands Committee has reviewed the additional details about the project and changes to the proposed action and submitted additional scoping comments and further stating that our comments submitted in March are still valid and must be addressed.

### **Central Appalachia Spruce Restoration Initiative (CASRI) Conference “Measuring Restoration Success”**

Several members of the Board attended CASRI’s 2020 “Measuring Restoration Success” conference which focused on quantitative and qualitative measures of success for restoration of the red spruce-northern hardwood ecosystem in Central Appalachia. Decades of boots-on-the-ground restoration actions and associated research and monitoring has resulted in quantifiable success stories and lessons learned, all of which provide important knowledge to inform future actions and approaches. The conference gathered managers, practitioners, scientists, and leaders in the field to discuss the latest research findings, problem-solve common management challenges, and network to advance new and emerging partnerships. Strong partnerships enable the network to continue to advance landscape resilience and connectivity of red spruce forests across the region. Plantings have now exceeded 1,000,000 trees.

The West Virginia Highlands Conservancy helped establish and is an active collaborator with CASRI. Visit the [CASRI website https://wvhighlands.org/red-spruce-restoration/](https://wvhighlands.org/red-spruce-restoration/) for more information about the red spruce ecosystem, its ecology, history, research, news and events.

For decades, West Virginia Highlands Conservancy has worked with partners and supporters to protect the incredibly important highlands of West Virginia. It is increasingly difficult to keep up, as lots of good and potentially concerning information surfaces every day.

Wishing everyone a wonderful and safe holiday season.

## Bluestone Coal Settlement (Continued from p. 1)

for Bluestone, the US Justice Department and West Virginia Department of Environmental Protection who in the interim had taken action against Bluestone for years of violations of the Red Fox permit and administrative requirements.

As long drawn out and often convoluted as some of our litigation can be, including this one, the current case against the Bluestone Red Fox permit is about to wind down. An agreement between all parties has been reached and the final papers should be filed with the court as this issue of the Voice goes to press the first week of December.

First and foremost, Bluestone is to fix the selenium problem, to draw up a compliance plan and enact it within a time certain of 12 months when permit limits for selenium are to be achieved.

Also, as part of this settlement agreement \$270,000 will be paid to WV Land Trust for an environmental mitigation project in the Tug Fork River area.

The Mitigation Project is intended to protect and preserve ecologically sensitive wetlands and floodplains along the Tug River. These areas will serve as critical natural buffers, protected from development and mining through either purchase or easement, to improve nutrient and sediment flows, water temperatures, aquatic and terrestrial habitat and improve the quality of life and aesthetics along the Tug River. Included in the plan is development along a Tug River Water Trail that will provide a recreational corridor as well as watershed protection in the Tug River watershed.

Referenced as well in the Consent Decree/Settlement Agreement is the promise of \$30,000 civil penalty to be paid to the US Justice Department to settle charges covering the Red Fox mine violations which were part of an earlier, larger Justice Department settlement involving several mines in VA and WV. An amount of \$125,000 (the maximum allowed by WV law) is to be paid to WVDEP as required under a WVDEP compliance agreement agreed to in September 2020.

As usual in our settlement agreements, the Court will retain jurisdiction over the terms included in this settlement for the purpose of resolving disputes arising under the Decree, enforcing the terms of the Decree, or entering orders modifying the Decree.



### 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.

### 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.

*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).

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.

# Mining Reclamation: Who Gets Stuck?

By John McFerrin

The United States District Court for the Southern District of West Virginia has refused to dismiss an action by the West Virginia Highlands Conservancy, the Sierra Club, and the Ohio Valley Environmental Coalition that alleges that the West Virginia Department of Environmental Protection failed to notify the federal Office of Surface Mining of changes in the system that West Virginia uses to pay for the reclamation of mines whose owners or operators can't or won't do so.

In isolation, this sounds technical and boring. Technical and boring as it sounds it is important because it is another chapter in an ongoing effort to answer this question: now that the coal industry is declining, how are we to pay for the environmental messes left behind?

## How is the coal industry regulated

The federal Surface Coal Mining and Reclamation Act establishes standards for all parts of coal mining, including mining practices, reclamation once the mine is over, and a bonding system for paying for

any reclamation that is not completed.

States have the option of either sitting back and letting the federal Office of Surface Mining regulate mining in their state or coming up with their own regulatory program. West Virginia chose to enact its own program and, in 1981, it was approved by the Office of Surface Mining as being as effective as the federal program. Once this happens, the Office of Surface Mining is just supposed to provide oversight, making sure that West Virginia is carrying out its regulatory program.

The duty that is relevant in this case is that West Virginia has an obligation to tell the Office of Surface Mining when it makes a change in its program. This makes it possible for the Office of Surface Mining to provide proper oversight.

## What happened here

The story really starts decades ago when West Virginia adopted a policy of requiring inadequate performance bonds and not making sure that its Special Reclamation Fund was properly funded.

See the accompanying Background story for more about that.

The more immediate start was in March, 2020, when the West Virginia Department of Environmental Protection determined that it had to do something about ERP Environmental Inc.'s operations. Its concerns were justified. At the time ERP had over one hundred mining permits issued by the Department of Environmental Protection. It had laid off all of its employees. Since 2015 the Department had issued has issued 160 notices of violation against ERP, 118 failure to abate cessation orders, and 41 orders to show cause why relevant ERP permits should not be revoked. This is all according to evidence presented by the Department. For a little more insight into how ERP got into this mess, see the story "Bonding: Are the chickens finally coming home to roost?" in the May, 2020, issue of *The Highlands Voice*.

**(More on the next page)**

## Background

**Note before you read: The accompanying story is only the latest chapter in a controversy that has been going on since dinosaurs roamed the earth, more or less. For decades the West Virginia Highlands Conservancy has been saying that the system West Virginia uses to assure that coal mines are reclaimed is inadequate. *The Highlands Voice* has had several stories describing the system. If you already know how it works, skip this story.**

The 1977 Surface Mining Control and Reclamation Act (SMCRA) included provisions that required companies to post a bond sufficient to complete reclamation if the company couldn't or wouldn't meet reclamation obligations.

West Virginia met this requirement through an 'alternative bonding system.' Under this system, companies would post a flat per acre fee which was designed to be relatively low. The bonds were always designed to be inadequate to do the reclamation. At least in theory, these inadequate bonds would be sufficient because West Virginia had its Special Reclamation Fund. All coal companies would pay into this fund based upon the tons of coal they produced. If a company went under or disappeared, the Department of Environmental Protection could forfeit the inadequate bond and then take whatever it needed from the Special Reclamation Fund to pay the rest of the cost of reclamation.

For example, consider a company that had posted a \$5,000 per acre bond, disappeared and left unfinished reclamation work that would take \$8,000 per acre. The Department of Environmental Protection would forfeit the \$5,000 per acre bond and then take the additional \$3,000 per acre from the Special Reclamation Fund.

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

The Department of Environmental Protection has made it possible for the Special Reclamation Fund to limp along using various techniques. Sometimes it would do inadequate or incomplete reclamation. Occasionally it would stretch out the Fund's obligations by pretending that a mine was only temporarily idle instead of deserted and ready for reclamation, paid for by the Fund. Mostly they kept their fingers crossed that they wouldn't have to make several large payments from the Fund at the same time.

The spectre that has always hung over the Special Reclamation Fund is the possibility that a big operation will fail and the Fund will have to reclaim several large mines. So long as the mines the Department of Environmental Protection was reclaiming were small, it could juggle its obligations, delay some reclamation, etc. and keep the Fund going. If big mines started to go belly up, no amount of juggling could cover the Fund's insolvency.

Now that is happening. The accompanying story is about the Department of Environmental Protection's actions to deal with a large mining company going belly up and whether those actions are adequate.

## More on Mine Reclamation (Continued from previous page)

Fixing this mess would not be cheap. The Department estimated that it would take \$230 million to do the reclamation. In theory, at least, this sum could be paid by the performance bonds that ERP had posted. If that was not enough, the Special Reclamation Fund would pick up the rest.

Unfortunately, the bonding and Special Reclamation Fund only work in theory. ERP only had \$115 million in bonds.

In the Department's judgment, forfeiting all \$115 million in bonds all at once might overwhelm the insurers who issued them. Imposing the remaining liability on the Special Reclamation Fund would swamp the Fund. Even if the Fund had enough money (which it doesn't) it doesn't have the staff or resources to oversee a reclamation operation of this size.

This left the Department with a difficulty: huge reclamation responsibilities, not enough money, and a system that was supposed to take care of such a situation incapable of doing so. It responded by asking a court to appoint a receiver to take over ERP's operations and do what it could to spend money and clean up ERP's mess.

This is where the West Virginia Highlands Conservancy, the Sierra Club, and the Ohio Valley Environmental Coalition come in. West Virginia's mine regulatory program was approved the federal Office of Surface Mining. The way the groups saw it, this new approach to funding reclamation was not at all what the Office of Surface Mining approved. West Virginia has an obligation to tell the Office of Surface Mining when it made a change to its program,

something it had not done. For more background, leading up to the decision that is the focus of this story, see the August, 2020, issue of *The Highlands Voice*.

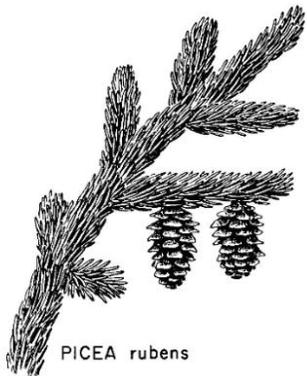
The groups sued the West Virginia Department of Environmental Protection, seeking to require that it inform the Office of Surface Mining of this change in its regulatory program. Formally informing the Office of Surface Mining would probably result in its participation in the overall effort to fix this problem. The Department responded by moving to dismiss, arguing for various technical reasons that the suit was improper.

In what just happened, the District Court denied the motion to dismiss. This means that the suit can go forward and the parties can delve more deeply into the problems with the Special Reclamation Fund.

This is not like some courtroom dramas where there is a decision, things are resolved, everybody cheers, and that's that. We are barely past the opening credits in a drama tentatively entitled *How Do We Make Up for Years of Neglect of the Financial Obligations of the Mining Industry and Who Will Be Left Holding the Bag if We Don't?* Most disaster movies have short, punchy titles: *Twister, Armageddon, Contagion, San Andreas, Titanic...* If this drama is ever to make it to the big screen it will need a better title.

Punchy title or not, this drama will continue to play out. Stay tuned.

### Red Spruce Seedlings Available for Spring 2021



The West Virginia Highlands Conservancy currently has a limited number of Red Spruce seedlings available for Spring 2021. Quality container-grown seedlings, grown from seeds collected in the West Virginia Highlands for forest restoration and research purposes.

When we have a surplus, we make them available to the public. All proceeds support our Red Spruce Ecosystem restoration efforts.

Quantities Limited

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West Virginia Highlands Conservancy, PO Box 306, Charleston, WV 25321. Specify source preference.

For more information contact: Dave Saville at [david.saville12@gmail.com](mailto:david.saville12@gmail.com)

To learn more about the Red Spruce Ecosystem, and our efforts to restore it, visit; [www.restoredspruce.org](http://www.restoredspruce.org)

If you cannot use any spruce seedlings, consider donating.



## An Irruption of Grosbeaks

By Cindy Ellis

We have been longing to see them for years...and they're back! Those wildly handsome northern songbirds called Evening Grosbeaks have recently been seen this season in many parts of West Virginia. Their bold coloring of gold, black, and white and their greedy behavior at feeders are unmistakable.

It may be that "absence makes the heart grow fonder" and that seems true for these birds. They have a history of visiting us somewhat routinely in winters long past, but that has not been true in the last thirty years. Nor was it so before the mid-1940's. But from then, until the early 1980's, Evening Grosbeaks regularly appeared in our state. Dr. George A. Hall, in his book "West Virginia Birds" remarked on their biennial and then annual appearances in those decades. He also commented on their feeding preferences; sunflower seeds at feeders, and the seeds of box elders, but he reported that the birds could also be found in higher elevation locations where those seeds were lacking.

Food is the reason we see them. These birds breed in some western and northern states and in boreal Canada. When food sources there are diminished, an "irruption" of birds from colder regions may make their way south. Food in low numbers this year could include cone crops of spruce, aspen, ash and birch---these have been afflicted by spruce budworm.

The movements of flocks of Evening Grosbeaks can be highly erratic. As of the date of this writing---November 27---there had been observations of the birds in 33 West Virginia counties, beginning on October 26. But some sightings have been of flocks of 50 to 80, while other reports have noted only 1 or 2 birds. Hall noted that those birds that arrive early in September or October may then travel farther south.

One interesting sidenote about these birds is in their name. In the very early days of bird study, these were unknown to searchers here in the East. Audubon never saw one. So, later, when one happened to stray beyond the Mississippi, it was a novelty. In the times before the availability of binoculars, the method of close study was to "collect" [shoot] the bird and make a specimen. The young



Photo by Barb Sargeant

person who brought in this bird had happened to see it toward dusk. An assumption was made—and thus the bird became "Evening" Grosbeak.

Our current happy experience with the flashy visitors here in West Virginia was heralded by an influx of several other "northern" species, notably Pine Siskins. Birders here become hopeful when siskins swarm the feeder. "Maybe this will be an irruption year!" is what we wish. Scores of us began seeing siskins as summer departed. They even were observed migrating at night...something that is usual in other birds but not in them, and has only ever been recorded once before.

As for me, I've stepped over to the windows quite a few times while typing, but the flighty grosbeaks have not come to my county yet. Meanwhile, birders like me are savoring the seasonal prospects. We're dreaming of Evening Grosbeaks and more! Bring on the Crossbills and Red Polls! We do most assuredly welcome all winter avian visitors to the Mountain State!



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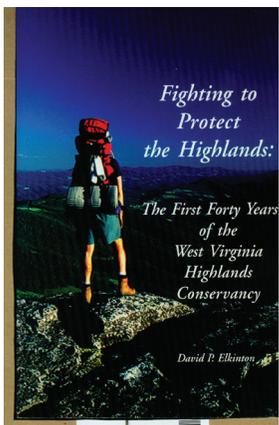
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**GET A GREAT HISTORY BOOK**

For the first time, a comprehensive history of West Virginia's most influential activist environmental organization. Author Dave Elkinton, the Conservancy's third president, and a twenty-year board member, not only traces the major issues that have occupied the Conservancy's energy, but profiles more than twenty of its volunteer leaders.



From the cover by photographer Jonathan Jessup to the 48-page index, this book will appeal both to Conservancy members and friends and to anyone interested in the story of how West Virginia's mountains have been protected against the forces of over-development, mismanagement by government, and even greed.

518 pages, 6x9, color cover, published by Pocahontas Press

To order your copy for \$15.95, plus \$3.00 shipping, visit the Conservancy's website, [wvhighlands.org](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.

**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.

**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.

**Is that even a thing?****Reusing Waste Water from Gas Wells?**

By John McFerrin

In recent years there has been a movement toward what is called “water reuse.” The idea is that with the possibilities of drought and general water shortages, we need to start considering, as a source of useable water, the water that is now considered wastewater. The result of this thinking would be a set of practices and technologies that will impact drinking water, energy, agriculture and industry throughout the nation. This approach seeks to convert a community’s own waste stream into a valuable resource. Under this idea, there would no longer be such a thing as “wastewater.” There is only water that is wasted.

The ideas come together in the United States Environmental Protection Agency’s Water Reuse Action Plan (WRAP). The Plan is not a regulation or a permit or anything that allows anybody to do anything or tells anybody they can’t do something. Instead, it is the EPA’s effort to get companies, municipalities, citizens, etc. talking about this approach, sharing ideas, developing the technology, training the workers who would carry out the ideas, etc.

The Environmental Protection Agency published a draft WRAP in 2019, accepted comments, and then published a final version in early 2020. It is designed to be an ongoing process, with periodic updates and examinations of how the interested community is progressing toward water reuse. *Scientific American* had a blog post explaining the idea and giving examples of places it has been tried. Reading it is a whole lot easier than slogging through the actual Plan. <https://blogs.scientificamerican.com/observations/the-epa-says-we-need-to-reuse-wastewater/>.

One prolific user of water in West Virginia is the oil and gas drilling industry. Those of us who live in areas where there is active drilling have seen the lines of water trucks delivering water to the well site. Nationally, water use per well can be anywhere from about 1.5 million gallons to about 16 million gallons, according to the United States Geological Survey. Much of this water comes from freshwater sources.

In fracking, the fresh water is mixed with chemical additives. When it is pumped down the well it can pick up, among other things, bromide, calcium, chloride, magnesium, sulfate, and radioactive

**How this Story Came About**

Shortly before the November, 2020, issue of *The Highlands Voice* was ready to go, long time member Marion Harless spotted a story in another publication which contained this paragraph:

Another of the many directives for the new interagency is implementing a water reuse plan. Oil and gas companies have supported one aspect of the plan that could allow them to dispose of briny, often chemical-laden oilfield wastewater on crops or in aquifers.

With the possible exception of “Touchdown, Pitt!”, there is no phrase that will rile West Virginians more than “dispose of briny, often chemical-laden oilfield wastewater on crops or in aquifers.” Unfortunately, the story did not elaborate. This sent us on a quest to find out what was going on.

The news event that sparked the story was an Executive Order from the President. The Executive Order, in a nutshell, creates what it calls a Water Policy Committee (to be known as the Water Subcabinet), co-chaired by the Secretary of the Interior and the Administrator of the Environmental Protection Agency. Through the actions of a host of agencies, the United States government makes an extraordinary amount of water policy. The Water Subcabinet is supposed to coordinate the activities of all these agencies who are setting water policy. The Executive Order names several agencies and several initiatives that agencies are supposed to be working on that the Water Subcabinet is supposed to coordinate.

One of the initiatives is the Water Resources Action Plan (that’s WRAP, to those seeking to increase their acronym vocabulary). It is an initiative by the Environmental Protection Agency which seeks ways to take water which is now disposed of as waste water and put it to productive use.

One big source of waste water is the oil and gas industry. Because of this, the WRAP (see how that new acronym vocabulary is coming in handy) addresses how oil and gas waste water might be put to productive use. The short answer is that it can’t, at least not with the current state of our knowledge. The accompanying story explains more.

materials. Once it is used for fracking, it is too dirty to be returned to fresh water sources. Some of it is collected and used to frack additional wells. For what cannot be reused, the industry’s disposal method of choice is to inject it into deep wells for disposal.

To someone committed to the idea of water reuse, the oil and gas industry is an anathema. It takes perfectly clean and useable water, pollutes it, and then disposes of it deep underground. It permanently disappears from the water cycle, never again to quench a thirst, support a fish, or do anything useful.

Because such a result is what the Water Reuse Action Plan wants to avoid, the Plan addresses it. To the planners’

**(More on the next page)**

## More about Reusing Gas Well Water (Continued from previous page)

disappointment, it does not yet have a way to solve the problems that oil and gas wastewater presents.

The overall tone of the WRAP is one of congenial cooperation. It is supposed to be different entities who have a common interest in stretching our water supply by finding ways to turn what are now waste streams into useful sources of water. On wastewater from oil and gas, the spirit of cooperation fell apart. Some commenters thought it was possible, although they were vague on exactly how we would do it. Some thought it was impossible and could never be made possible. Still others thought that it might be possible but it would take a lot more research to even begin to figure out how to do it.

One big barrier to turning wastewater into something we could use is that, right

now, we don't know what is in it. Fracking fluid is a mixture of mostly fresh water and chemical additives. The additives differ from company to company and well to well. Companies often consider their formula proprietary so it is not easy to know what is in the fluid. In the course of fracking the water picks up different naturally occurring materials. When we do not know what is in the water, we cannot know how, or even if, we can clean it and what kind of tests we would have to use to determine if it was clean enough for use.

The Water Reuse Action Plan is supposed to be an ongoing process. As things move ahead the participants may be able to solve the problems of what is in the water and how to test and treat it. As part of the ongoing process, in May, 2020, the EPA published a summary of wastewater

management practices for the oil and gas industry. It pointed out that there was some limited reuse of oil and gas wastewater in arid western states where water is at a premium. These practices faced the same technical problems of not knowing what is in the water that are present in the rest of the country. As things stand now, however, there remain no widespread solutions to those problems.

Even if everyone who participates in the WRAP were to agree that reuse of oil and gas wastewater is possible, that does not mean that such reuse would happen. The conclusions of the Plan would have to make their way into regulations and permitting standards before there would be any reuse of oil and gas wastewater.

## Construction Stopped on Mountain Valley Pipeline (at least temporarily)

By John McFerrin

The United States Court of Appeals for the Fourth Circuit has granted a stay of the actions of the United States Army Corps of Engineers in its approvals of stream and wetland crossings by the Mountain Valley Pipeline. This means that construction on stream crossings has to stop until the appeal is decided.

### Previously on *As the Mountain Valley Pipeline Turns*

As planned, the Mountain Valley Pipeline would have to cross 591 streams or wetlands in West Virginia. Each requires approval from the United States Army Corps of Engineers. The developers can either get each crossing approved individually or qualify them all for approval under a nationwide general permit issued by the Corps of Engineers for categories of similar crossings. The Mountain Valley Pipeline has chosen to try to qualify under the general permit, known as Nationwide Permit 12 (NWP 12).

In April, 2020, a federal court in Montana ruled that the general permit, known as NWP 12, was void because it was issued improperly. Because of this, the pipeline company in Montana could not rely upon it.

Groups in West Virginia (including the West Virginia Highlands Conservancy) asserted that the same rule should apply in West Virginia to the Mountain Valley Pipeline. Meanwhile, up in Washington, the United States Supreme Court issued a stay of the Montana court's ruling. The ruling remained in effect in the Montana case but does not apply in the rest of the country until after the Montana case is finally resolved. More about this in the October, 2020, issue of *The Highlands Voice*.

In late September, 2020, the Corps of Engineers approved the Mountain Valley Pipeline's stream crossings, using the general permit, NWP 12. Several citizen groups (including the West Virginia Highlands Conservancy) appealed that decision to the United States Court of Appeals for the Fourth Circuit.

### What Happened

The Court of Appeals for the Fourth Circuit has not yet decided the case. It has, however, stopped construction on stream crossings while the case is pending.

### A West Virginia Wrinkle

The controversy about the Mountain Valley Pipeline and its stream crossings is not just about its reliance upon a nationwide permit that was improperly issued. There is something else.

Even though a nationwide permit is issued by the Corps of Engineers for the whole country, states can add extra requirements (called conditions) to the permit as it applies in their state. When Nationwide Permit 12 was reissued in 2017, West Virginia added some conditions. The conditions that are relevant here have to do with steps that developers have to take when crossing more substantial rivers or streams, streams where construction might take longer. The groups contend that the Mountain Valley Pipeline is in violation of those conditions.

### A Wrinkle on the Wrinkle

The nationwide permits that the Corps of Engineers previously issued for the whole country are in the process of being renewed. At renewal, the states have an opportunity to add or take away conditions that they had previously imposed upon the permits. West Virginia is proposing to eliminate many of the conditions it had previously imposed on NWP 12, including the condition that is relevant in the Mountain Valley Pipeline case. Its position is that conditions are fine in the abstract but not when they prevent somebody from doing something they wanted to do.

Eliminating the conditions is just a proposal. The West Virginia Department of Environmental Protection has asked for public comments on the proposal. It may or may not become final.

The West Virginia Highlands Conservancy has opposed eliminating the conditions, as has the West Virginia Rivers Coalition, among others.

## On the River Once

By Jack Slocomb

I remember the river going by  
muddy and slow  
and the moths flickering away lifetimes  
under the light of the lamp  
and you and I out on the porch  
drinking warm beer,  
watching the river going by  
muddy and slow

I was on the porch swing  
with one leg rocking it  
back and back again  
in an easy arch  
like a cradle on rusty chains,  
and you were leaning on the railing,  
marking your measured hours of open air  
behind a burnt bit of cigarette,  
your coal miner's face lit up by it

There are memories that belong to this river:  
upstream at Woody's camp  
on an ancient Sunday of an afternoon,  
I remember the sycamores and sunlight  
and everyone we know playing horseshoes  
and having supper  
and me standing in the shallows  
on the water's far side  
with my feet sunk into the sand and silt  
heaving a rubber ball to you  
and you trying to catch it,  
lunging up like a heron  
in a splash of wings

Do you recall the reckonings I recall?  
All trails and tributaries  
and mountains learning me their language,  
all the awakening world  
which could never be lost?

"You know this river's gettin' dirtier and dirtier,"  
you said  
"There used to be sand enough for swimmin';  
and the fishin',  
the fishin' isn't near half as good  
as it once was here."

And you sat steady and still and silent,  
watching the river running by,  
then opened up another beer  
and sipped in the cicada-humming air

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# Mistletoe: Holiday Matchmaker and Year-Round Parasite

By Katherine McFerrin

Mistletoe is the symbol for romance during the winter holidays. The classic mistletoe, imagined with its snowy white berries and thin green leaves, is not native to the United States. Rather, it's the European mistletoe, *Viscum album*, which is found across Europe and parts of southern and western Asia. Similar to European mistletoe but with slightly smaller berries and shorter and rounder leaves is the American mistletoe, *Phoradendron leucarpum*. These two species are the most commonly harvested mistletoe for the winter holidays. However, beyond the love and longing associated with mistletoe and its festive appearance, mistletoe's most alluring quality is its biology; mistletoe is parasitic.

"Mistletoe" encompasses all the parasitic plants within the order Santalales which are about 1300 species worldwide. To be more specific, these plants are hemiparasitic which means they are only partially parasitic as opposed to holoparasitic plants that are completely parasitic. Since mistletoe has chlorophyll which is required for photosynthesis, it is able to get some of its energy for the sun. Thus, mistletoe is not completely reliant on another host for its energy. The energy mistletoe gets from the sun isn't enough though, so it must get the rest of its energy from its host.

Mistletoe's hosts are trees that the seeds happen to fall on after dispersal. Mistletoe does have specific host trees that they favor, but the species it favors is determined by the species of mistletoe. For example, European mistletoe is often found on large, deciduous trees such as oak. Dwarf mistletoe, a variety found in the western United States, grows on pines, firs



*Viscum album*

and hemlock trees. Once established on the host tree's branches, the mistletoe seeds begin to germinate meaning the seeds start to sprout. They develop haustoria which are root-like structures that perforate the tree's bark into the xylem, the part of the tree that transports water and raw nutrients from the roots to the leaves. The mistletoe siphons off some of the tree's water and nutrients for its own use and energy production. This process does hurt the host tree by taking away some of its essential resources and reducing the ability for the branch to grow. If there is a significant amount of mistletoe covering a tree's branches, the tree can die.



**Great Purple Hairstreak**

The mistletoe, however, doesn't just bring death. It brings life to the ecosystem. Squirrels and many birds such as Flycatchers, Bluebirds, Robins, Grouse, Mourning Doves, Evening Grosbeaks and Pigeons eat the mistletoe berries. With a conveniently close food supply, these creatures make their home nestled within the bushy growth of mistletoe between the tree branches.

Raptors such as Cooper's Hawks and Spotted Owls sometimes nest within dead host trees. Chipmunks, deer and elk also eat the leaves and berries. Even a species of moth, *Celypha woodiana*, known as the "marble mistletoe moth" lays its eggs on European mistletoe. In the United States, the Great Purple Hairstreak butterfly feeds on American mistletoe and lays its eggs on the plant which is the main food source for the newly hatched caterpillars.

Within the plant world, mistletoe isn't just an enemy. Juniper often grows near mistletoe so that the birds attracted to the mistletoe berries might also eat the juniper berries. These birds and animals that

eat the mistletoe, in turn, help propagate the cycle of mistletoe growth and habitat formation by unknowingly dispersing seeds that are stuck on their fur or by eating the berries and defecating the seeds onto new trees. Unlike most mistletoe that relies on birds and animals to spread its seeds, the previously mentioned dwarf mistletoe disperses seeds on its own by exploding. As its berries grow, they fill with water until the increasing pressure causes the berries to burst. This sends the seeds flying through the air at speeds up to 60 mph to land on trees 15-40 feet away.

Because so many creatures and plants depend on the mistletoe, mistletoe is a keystone species meaning that it plays an important role in its ecosystem. Thinking back to the winter holidays, just as the tradition of hanging mistletoe brings people together, in nature too, mistletoe brings together many creatures and plants.

**Katherine McFerrin is a junior at Carleton College in Northfield, Minnesota, where she enjoys cross country skiing and running across snow covered trails. She studies biology with an interest in molecular biology and zoonotic diseases. She is currently socially distancing with her family in Morgantown, WV, where she is on winter break.**



## A Good Poem: The Blackwater

By Jack Slocomb

I think I first saw the Blackwater Canyon and falls when I was nine years old. That's when I was living in Buckhannon, West Virginia, and my family and a small herd of their bridge club friends decided serendipitously to drive up to Blackwater Falls for Sunday lunch. This happened quite a bit with those folks- always a whim that would result in a caravan headed off to God-only-knows-where. People used to do things like that a lot in those days.

I remember this trip mostly in images and sensations. We ate at the Blackwater Lodge at a big round table with a scenic view of the canyon. I recall something that was very tasty that seemed to be associated with the view, as though I were ingesting the scenery. Ever since then there is always a fleeting hint of that tempting flavor on my lips when I am roaming around the canyon. Funny, I think maybe it was crinkle cut french fries.

Anyway, after walking back up from the falls, I have a consciousness of people straggling a few at a time out onto a rock somewhere which seemed to project itself over the chasm. My father held my hand, I believe. My gestalt of that moment is of a late spring day and everywhere the canyon was clean swept, clear, and the plunging timbered slopes on the other side and the brindled gray rock faces seemed almost lucent, ready to jump out at me. In the far distance, specks of turkey vultures heaved and rode up on swells of wind which appeared to billow from the guts of the canyon. And there was a pervasive, ineffable silence over everything and an inviting, unsearchable emptiness which enveloped even the hissing Blackwater River below.

In another place, on a June morning about four decades ago, the legendary walker, Colin Fletcher, stood on the lip of the Grand Canyon many months before he decided to take his first cautious step down into his solo "walk through time". He wrote later of this split second of first encounter that he "...heard the silence; felt it like something solid, face to face. A silence in which the squawk of a Blue Jay was sacrilege. A silence so profound that the whole colossal chaos of rock and space and color seemed to have sunk beneath it and to lie there cut off, timeless." I think that it was the same thing for him as it was for me at the Blackwater on that day when I was nine years old: a geography you settle down into, almost without realizing it, which after a while becomes a permanent expansion of your boundaries.

This silence was Fletcher's most loyal companion throughout his whole journey along the mid-escarpment of the canyon, from one end to the other.<sup>1</sup> I doubt that I will ever match Colin Fletcher's feat. But I did walk the old road through the Black Water Gorge for the first time a number of years back along with a bunch of other travelers and a very well informed leader. I took in the easy going observations he made along the way about the geology, biota, and cultural history (the beehive of coke ovens at the beginning were especially fascinating), like a hungry, hibernation starved bear. We passed by Pendleton Creek and other cascades tumbling end over end from the upper layers of the canyon. We lazed around by one of the falls and gorged on the lunch prepared by a local Italian eatery called *Siranni's*. We had juicy, irreverent trail conversations, and I had a very searching parley with a young woman from Washington, D.C.,

a computer programmer, who was seriously writing nature literature, bringing a balance to her information age career. And, of course, there was the ever present background rush of the Blackwater through the woods, which every now and then came into view when the trail sidled up to it.

For me, that walk was a real decent happiness, as poet Robert Creeley would say.

I have poked around the canyon backpacking and cross country skiing and hurrying down for a look at the falls for more years than I care to admit. But I had never hiked *through* the canyon. This was a first, and it completed a larger picture of the canyon's environs for me, and I promised myself to return to the trail many times in the future.

Now although I am pretty sure that I will always fall far short of achieving the off the charts high of Fletcher's Grand Canyon penetration, I think, as I have suggested, that I can pretty nearly match his experience when it comes to rim gazing around the Blackwater. You name it. Lindy Point, the lawn in back of the Lodge, and any number of jutting overhangs around the perimeter of the canyon where you can work your way out to. Places where I have plopped down my buttocks for a discourse with the everlasting hush there.

Now here is one way I have found that I can really get the canyon into my system: I pick out a crag with a hearty outlook. I stroll out there very early in the morning or late in the evening to avoid too many gawkers and lens clickers and anyone else who might think that I've done gone 'roun the bend. I bring along my Taos leather drum. I carry it carefully and respectfully. I find a place on the rocks where it looks like I can root myself and then settle myself down. I light my smudge stick and wave the smoke over my body and over the drum. I begin with the heartbeat rhythm. daDah... daDah... daDah... daDah. Subdued and steady and slow and always in time. I send it out into the gape and space below me where the river threads its way along like a thin dark vein. I keep the beat. I get louder, and the echo of the drum resonates everywhere until it is the very heartbeat of the canyon that I hear- nothing else. I and the canyon and the drum are of one throb, one rise and fall.

I shift in an instant to the eagle beat. DahDahDahDahDahDahDahDahDah! in rapid staccato. Then I am lifting, floating over the deep fissure, staring down into the beaconing depths, spiraling into the center of millions years of history.

Now I segue to the lodge on the back lawn where I was chatting one time with some folks before going in for dinner. We were taking in the canyon from the corners of our eyes. Beyond us, above the clearing, vortices of insects, probably midges, suddenly hovered, pulsing in the glint of the sunset, being sliced clean though by squadrons of swallows. The shimmering bugs seemed to be rising on drafts right up out of the abyssal yawn of the darkening canyon.

The whole place was ripe then with eternal, untethered longings.

Blackwater Canyon is a thing midway in the cosmos. At least on a par with, or perhaps a bit more heady than other eastern cuts

<sup>1</sup> Read all about it in *The Man Who Walked Through Time* by Colin Fletcher. Alfred A. Knopf. New York. 1968

## Blackwater (Continued from previous page)

like, say, the Cheat River Canyon, the New River Gorge, Pine River Canyon, and Ausable Chasm. It is not the aforementioned Grand Canyon, but what makes the Blackwater Canyon unique, I have always thought, is an indefinable quality, which at the same time, defines it. And that is that it is a domain of upwelling. There are certain terrains which seem to emanate this rush of spirit and energy from the core. Historically, people have always recognized these special provinces of animate contact. And the Blackwater Canyon is one of them, I believe. It is palpable feeling, a balance point on the earth, an *Axis Mundi*, around which we somehow must keep whirling to know that we are alive.

It is a vital organ.

In addition to the outstanding recreational, economic, and biospheric benefits that are accrued at the Blackwater, I think that there is a more encompassing intangible framework which contains all of this – and is perhaps the unconscious drive which keeps so many people coming back to it - and that is the pure mythic draw of this place.

One of the functions of myth is to keep us grounded, in check, to remind us not to take the gifts of the planet for granted. Because it seems that the human brain, after the invention of tool use, has taken on some real runaway habits, causing all sorts trouble. Without a publicly declared reverence for places like the Blackwater, without leaping into their mysterious spaces, we seem to become Sorcerer's Apprentices, letting things go amok on the earth in short order.

We need beacons. And what better place in the country than in West Virginia where the opposite poles of profiteering individualism and community bond with the meaning of geography and place are so starkly contrasted. That's why it's so important to protect the Blackwater, to assure the ongoing *mythos* of this canyon, this domain, this work of art of water and wind, this testing place of raw, unbridled wills, this dialogue with forever. .

And this brings me finally to a coda. Specifically, to Robert Frost. In a lecture he once wryly observed that, "It would be the utmost of ambition is to lodge a few poems where they will be hard to get rid of."

I believe the Blackwater is such a poem.

And it is damned hard to get rid of.



Cerulean Warbler by Frode Jacobsen

## One Step Closer to Imperiling Migratory Birds

By John McFerrin

The outgoing administration has taken one step closer to a major policy change that would imperil migratory birds.

### 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.

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 that killed migratory birds, even when killing the birds was not the specific goal of the activity, was also prohibited.

In 2017 the new administration set out to change this. In late 2017 a lawyer for the Department of the Interior issued an opinion which said that the Act only prohibited killing of migratory birds if the killing was the purpose of the activity. If the birds just happened to get in the way of another activity, that was just their bad luck. The Act did not protect them. Under the new interpretation, taking a gun and blazing away at migratory birds would still be illegal. If an oil company left its waste pit uncovered and migratory birds landed there and died, the Act was irrelevant.

Legal opinions can change; regulations can change also but the process is much more difficult. In March, 2020, the Department of the Interior proposed a regulation that would put in place the interpretation that the Act only protected birds from intentional killing. For more about this, see the April, 2020, issue of *The Highlands Voice*.

### What just happened

The road to a new regulation can be a long one. The day after Thanksgiving the Fish and Wildlife Service (a branch of the Department of the Interior) issued a final Environment Impact Statement. In it, it recommended that the Department adopt the less protective rule, the one that restricts the Migratory Bird Treaty Act to intentional killings.

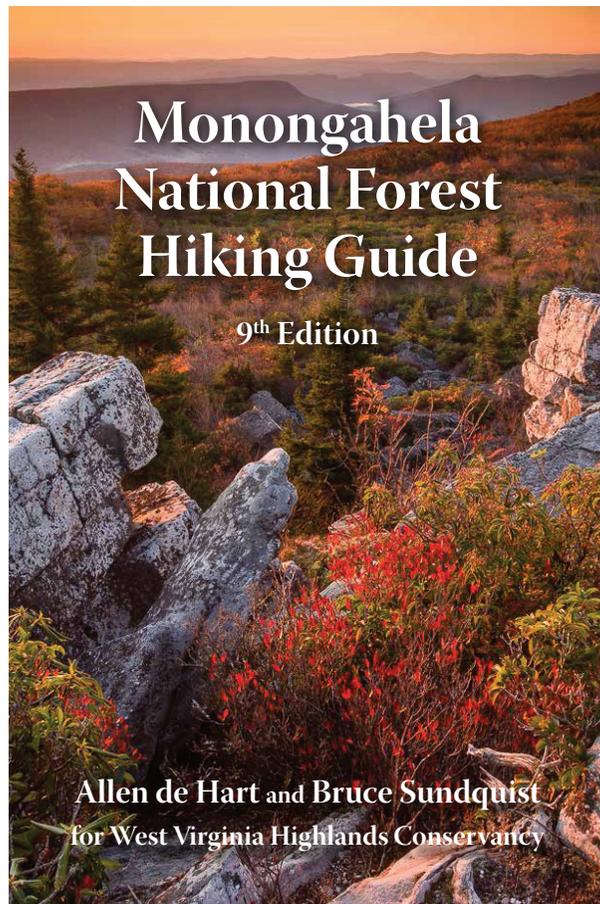
This is the final step on the road to a new regulation. It clears the way for a new regulation locking in the new interpretation by the end of December.

A new administration could change the regulation, returning to the historical interpretation of the Act. That the regulation became final makes such a change much more difficult and time consuming.

A major beneficiary of the new interpretation is the oil industry. Its drilling pits are not designed to kill birds but, left uncovered, they can incidentally do so.

## Mon National Forest Hiking Guide

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



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

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

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

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

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

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# Update on Stormwater Permit in Jefferson County

By Dr. Christine Wimer President Jefferson County Foundation

In our September article, we discussed in brief the Department of Environmental Protection's use of Unilateral Enforcement Orders to allow entities to sidestep the requirements of the Clean Water Act. We wanted to update you on these important issues.

In February of 2019, when the Department of Environmental Protection released a new Construction Stormwater General Permit (Statewide Umbrella Permit), two industry groups appealed the permit. These groups settled with the DEP prior to a hearing. The Environmental Quality Board (EQB) approved the settlement and a stay allowing covered entities to operate under the previous—now expired—2012 permit.

The draft permit that came out of the settlement was a fairly egregious example of back sliding, and as such, the Environmental Protection Agency rejected it until the DEP addressed the issues. The EPA also specifically objected to the DEP allowing entities to work under the 2012 permit conditions for any further time as this permit had expired and been replaced. In January of 2020, the DEP notified the EPA that it would not be resubmitting the draft permit and would instead go back to using the original 2019 permit.

Instead, in March 2020, the DEP issued more than 730 unilateral enforcement orders. Unlike normal enforcement orders that require entities to comply with statutes and regulations, these orders allowed entities to operate construction projects without a permit at all and under the expired 2012 permit conditions. This was in direct opposition to what the EPA had directed the DEP to do. This is in violation of the Clean Water Act and beyond the authority of the DEP.

The city of Charles Town in Jefferson County started construction in late February 2020 on the super sewer to Rockwool (new insulation plant) without a valid stormwater permit. Rather than requiring Charles Town to obtain a valid Construction Stormwater Permit, on March 2 the DEP issued a unilateral enforcement order allowing Charles Town to continue work without a permit at all. The order required Charles Town to comply with the 2012 permit condition. Unfortunately, these permit conditions are less protective, especially in karst, because the 2019 permit requires a karst mitigation plan and the 2012 permit has no such requirement. On March 16, the DEP issued 696 more unilateral enforcement orders followed by several more in the coming days.

Jefferson County Foundation appealed the first of these Orders—Order 9080 to Charles Town—in April of 2020. Find the appeal here <https://www.jeffersoncountyfoundation.org/wp-content/uploads/2020/04/Jefferson-County-Foundation-Inc-v-WVDEP-Notice-of-Appeal-4-1-2020.pdf>

Unfortunately, due to COVID-19, the process was elongated. A motion for stay by the Foundation was rejected by the EQB. Discovery proceeded over the next several months.

In July, 15 groups across three states affected by West Virginia watershed (including the Highlands Conservancy) joined Jefferson County Foundation in sending a letter to the EPA. The letter informed the EPA of this issue and demanded that the EPA investigate and take action. Although Recent Freedom of Information Act (FOIA) returns that show the EPA was working on just that, the Foundation has not received a response yet. We are

currently working on following up. Check out the letter here <https://www.jeffersoncountyfoundation.org/wp-content/uploads/2020/11/Letter-to-EPA-about-WVDEP-CWA-violations-with-regard-to-Construction-Stormwater-1.pdf>

And the exhibits <https://www.jeffersoncountyfoundation.org/wp-content/uploads/2020/11/Exhibits-for-Letter-to-EPA-about-DEP-Irregularities-fnl-1.pdf>

The EQB appeal of Order 9080 was supposed to go to evidentiary hearing in mid-October. However, two weeks before the hearing, the interveners in the case—the entity being allowed to operate its construction of the super sewer to Rockwool without a valid stormwater permit— argued the case should be dismissed because it recently obtained a permit despite having completed nearly the entire sewer line without a permit.

The EQB dismissed the case. This leaves the residents of Jefferson County with several miles of sewer line that was constructed under less protective conditions and the residents of the whole state with a DEP now seemingly empowered to ignore the clear direction of the EPA and side step the Clean Water Act when convenient.

We can not stand for this. On Wednesday, November 25, 2020, Jefferson County Foundation filed an appeal of this decision in Kanawha County Circuit Court. Read the appeal here <https://www.jeffersoncountyfoundation.org/wp-content/uploads/2020/11/JCF-Appeal-in-Kanawha-County-Circuit-Court-11252020.pdf>

We will keep you posted on the progress of this important case and the EPA response. . Please check out the Jefferson County Foundation website and if you are able support our effort to protect the natural resources of WV.



# 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