



# The Highlands Voice

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

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## “Finish It!” – But How?

By Hugh Rogers

“Corridor H—Finish It!” say the faded blue stickers on more than a few trucks around here. The stickers are old but the message still lives. In June, Senator Joe Manchin introduced the “Finish the ADHS Act”. ADHS stands for Appalachian Development Highway System, a sixty-year-old concept whose time may have come for the last time.

In August, the Senator’s bill was folded into the \$1.2 trillion infrastructure bill passed by the Senate. The eleven states in the ADHS would receive \$1.25 billion through that channel—their largest infusion of funding in more than a decade. (Senator Byrd, chief patron of the ADHS, died in 2010.) West Virginia’s share, all earmarked for Corridor H, is \$195 million. Only Alabama got more.

As we speculate how much highway that would buy, keep in mind that Parsons-to-Davis, though it gets more attention, is not the only piece left undone. 6.8 miles from Wardensville to the Virginia state line is the missing link on the east.



**Corridor H construction between Kerens and Parsons**

The Settlement Agreement we signed in *Corridor H Alternatives et al. v. Slater* (2000) put off construction there for twenty years to give Wardensville time, plus some funding, to adapt to a bypass. It’s a town, like Davis and Thomas on the other yet-to-be-built segment, that relies on visitors’ business. Now contractors are busy in the area updating old studies of wildlife, wetlands, and cultural resources. The Division of Highways (DOH) 2020 status report predicted design would begin late this year, construction in 2027, and completion by the end of 2030. Total cost: \$189 million.

Parsons-to-Davis was delayed while the DOH studied alternative routes that would avoid Blackwater Canyon and its historic district. This was the most complicated part of the Agreement. In the end, we had to agree to disagree. The DOH retained the option to revert to the original alignment, and we retained the right to go back to court if they did.

**(More on p. 3)**

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## Thoughts from our President

By Larry Thomas

September is here and once again we will see the spectacular annual transformation of the mountains to the vibrant shades of orange, yellow, and red. It is very interesting to read what causes the transformation at <https://pss.uvm.edu/ppp/articles/fallleaves.html>. For many this is their favorite time of year.

Once again, I want to extend my thanks to our members and supporters whose continued support allows us to promote, encourage and work for the conservation, appreciation, and ecologic integrity of the natural mountain landscape, the highlands of West Virginia. The issues are coming at us with lightning speed, and it is important we always remain alert.

### **Dolly Sods Wilderness Stewards Project**

The Dolly Sods Wilderness Stewards program continues to roll along, as we start the very busy fall season, where visitation to our highlands will skyrocket and the already overcrowding at Dolly Sods is projected to accelerate. See the article in this month's Highlands Voice for an update of the project.

### **Dolly Sods Wilderness Leave No Trace Hot Spot**

The Monongahela National Forest (MNF) has filed an application for designation of the Dolly Sods Wilderness as a Leave No Trace Hot Spot. The Hot Spot Program identifies areas suffering from severe human-related impacts that can thrive again with Leave No Trace solutions. Each location receives a unique, site-specific blend of programs aimed at a healthy and sustainable recovery.

Since 2010, Leave No Trace has conducted over 100 Hot Spots in national parks and forests, state parks, city parks and more. Nomination would bring even more resources to expand upon the education plan, the reach of the trailhead stewards' program, and generally improve conditions in Dolly Sods over time.

In the application the MNF identified their three biggest concerns for the Dolly Sods Wilderness: vegetation/tree impacts, camping impacts, and oversized groups. As a key stakeholder, WVHC provided a letter of support for the nomination stating WVHC was one of the advocates resulting in the original congressional designation of Dolly Sods Wilderness under the Eastern Wilderness Areas Act of 1974, as well as the Dolly Sods expansion in 2009 and our long term interested preservation of Dolly Sods Wilderness.

### **Monongahela National Forest Proposed Greenbrier Southeast Project**

WVHC filed comments on the proposed Greenbrier Southeast project on May 15, 2020. An update on the project was received August 31 stating:

The Monongahela National Forest of the US Forest Service (USFS) completed our Section 7 consultation with the US Fish and Wildlife Service (USFWS) on the Greenbrier Southeast project. This consultation satisfies requirements under the Endangered Species Act. This message is being sent to parties/groups interested in threatened, endangered, and sensitive species related to the Greenbrier Southeast project, and is being sent on behalf of Jack Tribble, the District Ranger on the Greenbrier Ranger District of the Monongahela National Forest.

The Greenbrier Southeast draft environmental assessment was released for public comment in April 2020. Several commenters requested receipt of a draft Biological Assessment (BA) to supplement the summary of impacts to threatened and endangered species contained in the draft environmental assessment. At that time, the BA was awaiting internal review and the USFS had not submitted the document to USFWS. Though the USFS did not expect any changes to the BA, the agency wanted to release to the public the same version that USFWS would ultimately receive and consult upon. The USFS submitted the BA to the USFWS in March 2021, resulting in multiple conversations between the two agencies. The USFWS issued a Biological Opinion (BO) in August 2021, concurring with the USFS determinations.

Design feature "GSE-4" was included in the environmental assessment for post-decisional botany surveys for threatened, endangered, and sensitive species. Since release of the draft environmental assessment, all botany surveys have been completed. This design feature has been amended in the Biological Assessment to reflect those completed surveys. It will also be reflected in the final environmental assessment and decision notice/finding of no significant impact, expected for release in Fall 2021. The completion of botany surveys constitutes the only change (besides minor editing and formatting) made to the Greenbrier Southeast BA from April 2020 to the version submitted to USFWS in March 2021; therefore, the determinations and rationale in the submitted Biological Assessment reflect those in the draft environmental assessment of April 2020.

Documentation relating to threatened, endangered, and sensitive species have been posted on the project webpage for your review (under the "Analysis" tab: <https://www.fs.usda.gov/project/?project=55797>).

### **The 32<sup>nd</sup> Annual Leaf Peepers Festival**

Although the Run for It 5k/2k has moved to being virtual, WVHC will have a table at the 32nd Annual Leaf Peepers Festival in Davis, WV, on Saturday, September 25 from 10:00 AM – 5:00 PM. Tabling will be held in the parking lot across from Davis Fire Hall. Stop by and say hello to our new Program Director, Cory Chase, and our Dolly Sods Wilderness Steward leader (and local photographer extraordinaire), Dave Johnston! We will have WVHC stickers, books, and signup information for the Dolly Sods Stewards Program, amongst other things. Hoping to see you there.

*The Charleston Gazette* has reported that Covid-19 cases are on a pace to break the prior pandemic record. Please, everyone, be careful and stay safe during this coronavirus situation as these times are certainly unprecedented.

## More about Corridor H (Continued from p. 1)

Those studies were not fruitless. Public sentiment is coalescing around one alternative that would bypass Thomas on the west and north, joining the completed section just outside Davis. It would save the Canyon's historic and natural features and preserve both towns' charm as they grow. Those who have been impatient to "finish it!" realize that if the DOH persists in pushing the original route, the highway would be delayed more years by litigation.

Currently, anticipated dates for design, construction, and completion to Davis are each four years later than the Wardensville segment—that is, 2025, 2031, and 2034. It will be longer (9.2 miles for the "preferred alternative") and more difficult. DOH predicts it will cost \$38 million per mile, exceeding the Wardensville to Virginia figure by more than \$10 million per mile. Estimated total cost is \$350 million.

While those sections wait, construction is underway from Kerens to Parsons. Another chunk of funding will be required to complete that before the highway can begin to climb Great North Mountain to the Virginia state line or Backbone Mountain toward Davis.

Altogether, Kerens-Parsons, Parsons-Davis, and Wardensville-Virginia add up to 31 miles. The estimated "total remaining cost to complete" them is \$1.1 billion.

When Senator Byrd chaired the Appropriations Committee, many West Virginians got the impression he'd been given a magic wand to wave at the U.S. Treasury. He did his best to disabuse them. "No one appreciates how hard it is to get that money for our state," he said. For instance, he explained how funding for long-term projects, doled out year by year, requires approval in annual appropriations legislation. Initial commitments must be defended down the road.

This background may relieve readers who saw news of an apparent windfall for the Corridor. The threat to Davis, Thomas, and Blackwater Canyon is not imminent, though it remains real. The DOH still intends to build a huge bridge over the Coketon area and run the four-lane directly between the two towns.

As it updates old environmental studies, the DOH has promised to account for "changes in the project area." Taking that seriously, and respecting the Canyon's importance, would lead the agency to pick the better route. Blowing them off, as it did in the mid-90's, would have legal consequences—again.

## Save the date!!!

### Fall Review and Annual Meeting on Saturday and Sunday, October 30 and 31, 2021

The theme of this year's Fall Review is Climate Change. Although plans are preliminary, on Saturday we hope and expect to have speakers to talk about:

- energy policy,
- our work with the Conservation Hub and
- Dolly Sods Stewards Program, and
- keynote speaker and author Katie Fallon, who will talk about climate and birds

Sunday will begin with the Annual Meeting of the West Virginia Highlands Conservancy. We will elect five at-large members of the Board of Directors for a two-year term as well as officers for a two-year term.

We have a nominating committee of Cindy Rank, Jeff Witten, and Randy Kesling who will propose a list of nominees for Board seats and offices. If you know of someone (including yourself) who would make a good Board member or officer please contact one of them. Contact information is on page 10. Nominations will also be accepted from the floor at the annual meeting.

Immediately after the Annual Meeting will be the quarterly Board meeting.

Details of times and of how to join the virtual meeting will be in next month's *The Highlands Voice*.

## Antennas on Hanging Rock

By Cynthia Ellis

### Where Do They Go?

“Have a nice trip!” That’s a silly something that we birders would sometimes call out to migrating raptors in September as we watched them zip, soar, or glide past us at the Hanging Rock Raptor Observatory in Monroe County. And if visitors asked where the birds DID go, we answered to the best of our ability, based on knowledge gleaned from current research.

Now, directly at this hawk watch site, the precise migratory routes of hawks, eagles, falcons and much more can be tracked through radio telemetry along with the addition of an array of antennas on the roof of the “tower” building that sits at 3812’ atop the rocky outcroppings of Peters Mountain.

Earlier this summer, a crew of volunteers and WV Department of Natural Resources personnel schlepped the materials, including ladders, up and up the steep one-mile trail to the top. Pieces were assembled and mounted to an area near the rooftop. Along with a second antenna site at the Ohio River Islands National Wildlife Refuge, the Monroe site is ready to gather important information about the movement of a host of migratory creatures.

Mack Frantz, a zoologist with the West Virginia Department of Natural Resource’s Wildlife Diversity Programs, helped with the installation and has offered more details. Some of us with very long memories will recall that we have met Mack Frantz. He and Laura Farwell spoke to us about the effects of fracking on songbirds at a combined meeting of West Virginia Highlands Conservancy and the West Virginia Environmental Council a number of years ago.

He noted that the sites in our state are part of the “Motus” program. A website for the effort states that “The **Motus** Wildlife

Tracking System (Motus) is an international collaborative research network that uses coordinated automated radio telemetry to facilitate research and education on the ecology and conservation of migratory animals.” Frantz also explains that the research hopes to find migratory PATTERNS for species of greatest conservation need in regard to our state wildlife action plan. Each radio tag sends out an individually identifiable pulse which could determine regional movements and could also guide habitat conservation.

This tracking is not limited to birds of prey. Any critter that has happened to be tagged can be followed. Monarch butterflies can be part of this program, as well as bats. WV DNR has used radio telemetry in recent years to track bears, deer, elk, wild turkey, musky, and a variety of smaller wildlife.

The installation of these antennas is a fascinating project with great potential. The photos

on the Hanging Rock Facebook page can transport a reader to a glorious mountain spot with a 360° view, and a WV DNR video will show you more. Links are below.

Have a nice trip!

<https://www.facebook.com/Hanging-Rock-Raptor-Observatory-146135922074805/photos/pcb.4198998846788472/4198998710121819>.

[\(42\) WVDNR installs migratory animal tracking system at Hanging Rock – YouTube](#)



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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.

# Wilderness Stewards Gird for Fall, Solitude Monitoring

Dave Johnston

Fall is the busiest part of the busy season in the West Virginia highlands, and Dolly Sods is always at the center of the storm. People come from far and wide to take in the vast fields of scarlet blueberry and huckleberry leaves amidst the boulders of Bear Rocks. Many venture into the backcountry to enjoy the colorful ferns, hardwoods and grasses contrasting with evergreen spruce and pine.

With this increased visitation comes impact, even from those versed in backcountry etiquette and Leave No Trace principles, but especially from casual visitors who may not be familiar with the special concept of wilderness and may unwittingly (or in some cases, carelessly) contribute more than their share to the interference in natural processes. More than any other season, fall leaves a mark on Dolly Sods.

Dolly Sods Wilderness Stewards will be at the trailheads too, greeting visitors, assessing their level of experience, and delivering messages about care for the wilderness. We are likely to be busy, and we would like to cover more trailheads for a greater part of these heavily trafficked weekends. To do this, we will need more volunteers. You can be part of the team that is taking on the challenge of addressing the issues confronting Dolly Sods. Please consider joining the Dolly Sods Wilderness Stewards. For more information about the program and to sign up, go to <https://wvhighlands.org/dolly-sods-wilderness-stewards/>.

## Solitude Monitoring

Also on the agenda for the Wilderness Stewards this fall is a solitude monitoring project, in conjunction with the Southern Appalachian Wilderness Stewards (SAWS). An “outstanding opportunity for solitude” is one of the defining characteristics of wilderness highlighted in the Wilderness Act of 1964. In order to effectively manage a designated wilderness area, the land management agency such as the Forest Service needs to periodically assess the degree of solitude afforded by the area.

This is particularly significant in heavily visited wilderness areas such as Dolly Sods. While we all have the intuitive impression that “it’s crowded”, solitude monitoring can be used to quantify the experience of a visitor so it can be compared against established standards, and changes or trends detected over time. It can also show how different zones within the wilderness provide greater or lesser opportunities for solitude. The agency can then use the data

to make management decisions to maintain or improve the solitude experience.

In solitude monitoring, volunteers walk certain trails on designated routes and record information about “encounters” with other hikers or groups. Data such as the time and location, number of people in the other party, and their apparent agenda (day hiker or backpacker) will be recorded using standardized criteria and reporting forms. Similar information is gathered for encounters with campers at campsites.

For this survey, three routes have been selected that represent zones considered to have Very High, High, and Moderate usage within Dolly Sods. Each of the routes will be about five miles long and can be hiked in two to three hours. Each route will be surveyed twice on weekdays, and twice on weekend days. Wilderness Stewards will hike in pairs. The routes do not need to be covered simultaneously, so each team can do their survey on a day that is convenient for them. It is not necessary for the same team to do all the surveys on each route. In fact, a volunteer may be able to survey on just one day, which is fine – every contribution to this project is greatly appreciated. There are no qualifications needed to participate, other than the ability to hike about five miles and record data according to the standard protocol.

The surveying will be done from late September through mid-October. A training will be conducted by Southern Appalachian Wilderness Stewards on September 4, with a possibility for a second date later in the month. More information will be sent to the volunteers as plans for the training and the surveying develop.

This is the first backcountry monitoring project for the Wilderness Stewards, but future projects are planned to take an inventory of other conditions, such as the location and characteristics of campsites and trail conditions.

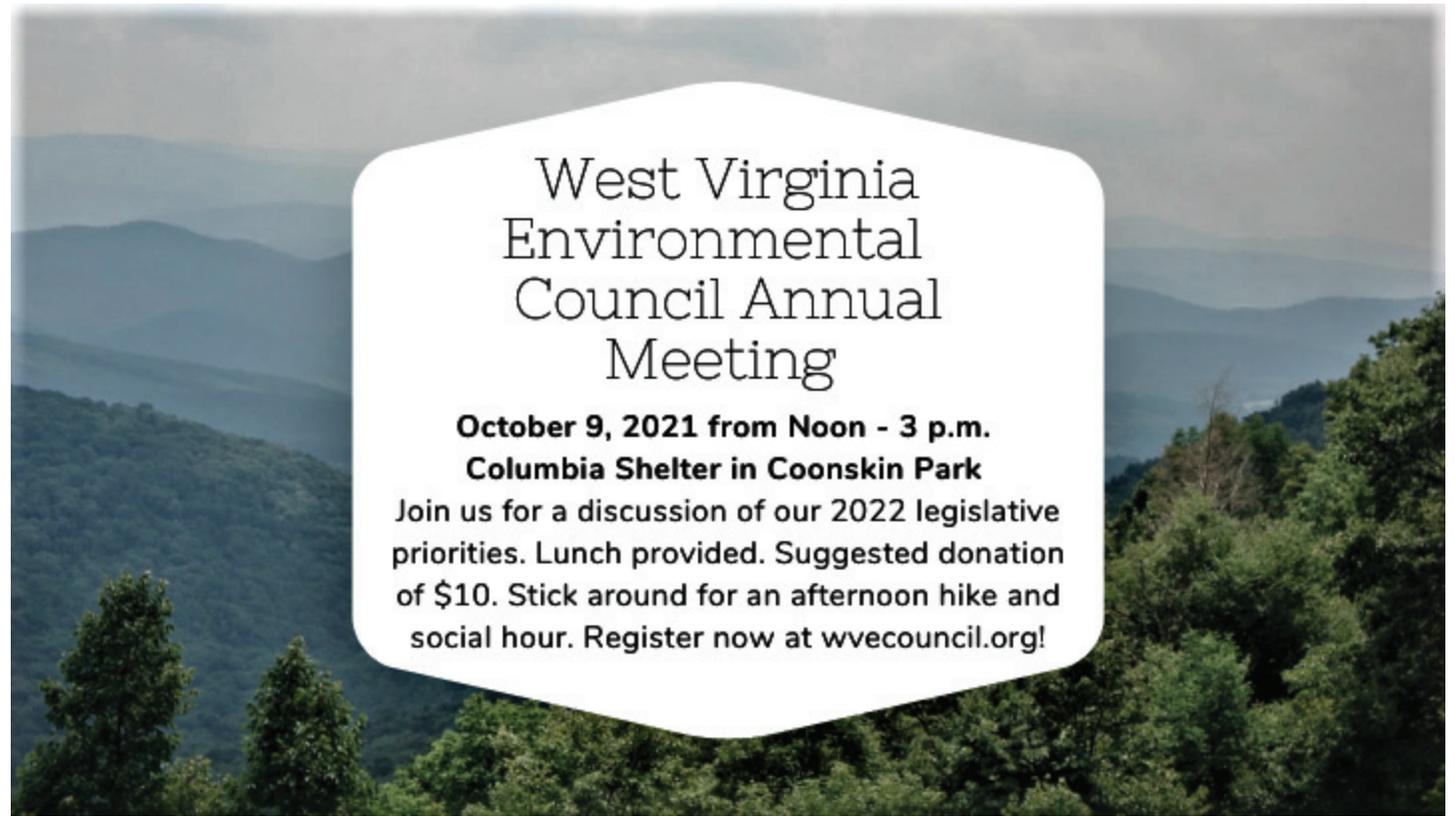
If you would like to participate in the solitude monitoring, go to <https://wvhighlands.org/dolly-sods-wilderness-stewards/> and sign up for the Dolly Sods Wilderness Stewards. On the signup form, check “Periodic backcountry campsite inventory”, as well as any other activities you might be interested in, and submit the form. If you have any questions, feel free to write me at [dollysodsstewards@gmail.com](mailto:dollysodsstewards@gmail.com).

## 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.



## West Virginia Environmental Council Annual Meeting

**October 9, 2021 from Noon - 3 p.m.**

**Columbia Shelter in Coonskin Park**

Join us for a discussion of our 2022 legislative priorities. Lunch provided. Suggested donation of \$10. Stick around for an afternoon hike and social hour. Register now at [wvecouncil.org](http://wvecouncil.org)!

## WV DEP Environmental Advocate's Office Town Hall

**September 16, 2021 at 5:30 - 7:00 p.m.**

The public is invited to attend the second in a series of town halls with the WV DEP's Environmental Advocate's office hosted by the WV Environmental Council.

The event is free but registration is required. Attendees are welcome to bring a question or concern, or to just attend the discussion.

**Register at [wvecouncil.org](http://wvecouncil.org).**



**Join Now !!!**

Name \_\_\_\_\_

Address \_\_\_\_\_

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

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

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

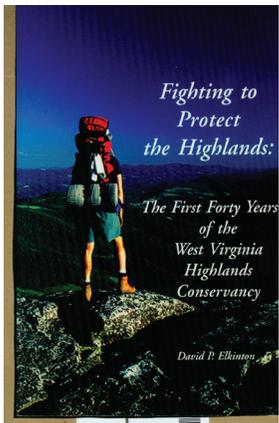
Mail to West Virginia Highlands Conservancy, P. O. Box 306, Charleston, WV 25321

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

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

**GET A GREAT HISTORY BOOK**

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



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

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

To order your copy for \$15.95, plus \$3.00 shipping, visit the Conservancy's website, [wvhighlands.org](http://wvhighlands.org), where payment is accepted by credit card and PayPal. Or write: WVHC, PO Box 306, Charleston, WV 25321. Proceeds support the Conservancy's ongoing environmental projects.

**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.

## MVP – Many Voices Protest

By Cindy Rank

Developers (Dominion) of the previously canceled Atlantic Coast Pipeline (ACP) are currently considering how to reclaim the abandoned areas of its now defunct plans for its giant gas pipeline that would have run through WV, VA and North Carolina – i.e., whether or not to leave the already-buried pipe in the ground, to leave or clear away the trees already cut down along portions of the right-of-way, and to work with landowners to decide what to do about easements [the Highlands Voice, August 2021].

On a somewhat parallel path a bit to the south Equitrans Midstream continues its quest for permit approval of the Mountain Valley Pipeline (MVP) – the big 42” pipeline planned to run nearly 200 miles from Wetzel County through Harrison, Doddridge, Lewis, Braxton, Webster, Nicholas, Fayette, Greenbrier, Summers and Monroe in West Virginia and on through 6 Virginia counties for another 107 miles.

Having received fines for water quality violations of nearly \$600,000 in WV (so far) and over \$2 Million in VA, as well as being denied an extension into North Carolina and facing legal challenges by concerned citizens at every turn, one wonders what is keeping this monster afloat.

But that is a question and discussion for another time.

The focus of this update is to explain where things stand with the water permitting puzzle that has kept MVP at bay so far. Steep slopes, heavy rains, sediment flows, and ill-conceived stream crossings continue to plague the project as the various agencies chime in with requirements specific to each of their individual programs.

Federal Energy Regulatory Commission (FERC)

Before FERC can approve the overall plan for MVP, the company needs a permit from the United States Army Corps of Engineers (Corps) to cross streams and wetlands. MVP had hoped that its hundreds of stream crossings could qualify for approval under what is called a Nationwide Permit. This is a one size fits all approach to permitting all stream or wetlands crossings. MVP ran into difficulties with this approach (see *The Highlands Voice*, May, 2020; June, 2020; October, 2020; December, 2020; January, 2021; April, 2021, June, 2021)

and has since decided, instead, to propose different construction methods to tunnel under the streams. This revised approach is what FERC has been examining.

On August 13, 2021 FERC staff issued an Environmental Assessment (EA) which concluded that although MVP's change in construction methods would result in more emissions and more noise, the impacts would be temporary, short-term, and 'not significant.'

Should the EA stand, it would allow for FERC approval of the MVP project once Equitrans was given its 404 permit authorization from the Corps. Comments on the Assessment are due September 13<sup>th</sup>. Needless to say, there will be many.

HOWEVER, AS MENTIONED, MVP must first obtain that 404 Clean Water Act permit for crossing streams and wetlands from the Army Corps of Engineers.

U.S. Army Corps of Engineers (Corps)

While the Corps of Engineers is authorized to make a decision to approve a 404 permit, the Environmental Protection Agency (EPA) reviews the permit application and can make recommendations. The Corps must also entertain comments from the public, and receive the blessing of the state via its 401 Certification process to ensure the project will not violate state water quality standards or special conditions the state requires. This certification also requires public input.

In a letter to the Corps dated May 27, 2021 (and obtained via a Freedom of Information request by Appalachian Mountain Advocates - Appalmad) EPA recommended the permit be denied – at least in its current form.

The EPA set forth its concerns in detail and drew the following conclusion:

“... it appears that the project, as proposed, may not comply with the [404b1] Guidelines. It is not apparent that all impacts have been minimized nor is it evident that the direct, secondary, and cumulative impacts have been thoroughly evaluated and mitigated so that the proposed project will not cause or contribute to significant degradation of the waters of the United States.

...EPA recommends modifications to the permit application and project be undertaken to address the detailed comments identified in the attached enclosures. EPA

also requests the opportunity to meet with the Corps and others to work collaboratively to address EPA comments. At this time EPA recommends that the permit not be issued until modifications described in the attachment, including the recommended special conditions, have been addressed and incorporated into the project.”

It remains to be seen how the developers of the Mountain Valley Pipeline and the Corps of Engineers respond. [The Highlands Voice, August, 2021]

State 401 Certification

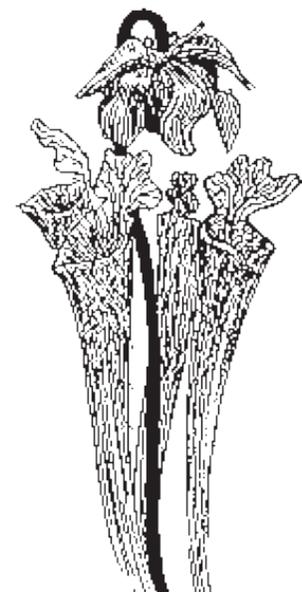
Virginia has just issued a draft water quality certification for the pipeline indicating the Virginia Department of Environmental Quality (VADEQ) is reasonably assured that the permit will not violate applicable water quality standards or contribute significant impairment of state waters in the 107 miles of the pipeline that crosses Virginia.

Public comments will be received until October 27<sup>th</sup>. Final decision is due December 31, 2021.

West Virginia received comments on its proposed 401 Certification on June 22, 2021 and the final decision is expected November 29<sup>th</sup>.

In each of these stages WV Highlands Conservancy joined several state groups in comments submitted by WV Rivers Coalition and with a number of regional groups in more legally focused lengthy comments submitted by Appalmad.

So, there we have it. The pieces of the puzzle are out on the table. It remains to be seen just how, or if, they will all fit together and just what the final picture might be.



# Coal mine Special Reclamation--What problem? Where?

Cindy Rank

If there ever was a robust program on paper that was more like swiss cheese in practice, look no further than the West Virginia coal mine bonding program.

Untold numbers of articles in *the Highlands Voice* over the years have explained West Virginia Highlands Conservancy's (WVHC) role in multiple attempts to plead with, cajole, and finally sue the state regulatory agency – now WV Department of Environmental Protection (WVDEP) – to responsibly oversee coal mining in West Virginia.

Whether it was John McFerrin or John Purbaugh, Don Gasper or Don Garvin, Julian Martin or James Tawney, or a plethora of other WVHC members and allies in sister organizations and friendly public interest lawyers and experts who did the commenting and pleading, the regulatory agencies and state legislature often had nothing but a deaf ear to offer. Court orders are headed, but even then, implementing legally dictated actions seem to slip and slide this way and that.

Among the many issues we've often challenged administratively and legally is the program established to guarantee reclamation of mine sites by having companies post a bond. The bonds are supposed to be backed up by the West Virginia's Special Reclamation Fund (SRF) which pays the cost of reclamation when bonds are inadequate. The difficulty is that the SRF is also underfunded, leaving a real question of how mines will be reclaimed.

It was apparent from the get-go in the early 1980s that the alternative coal mine bonding program proposed by West Virginia and approved by the Office of Surface Mining Reclamation and Enforcement (OSMRE) was potentially fraught with holes. The ensuing 40 years have been a

roller coaster ride of citizen legal challenges to the program and equivocal responses by the state resulting in short-sighted audits, numerous insufficient efforts to increase bond amounts or tweak the bond pool, and an overall political lack of will to do anything substantial enough to bring the program into full compliance with federal law – leaving the citizens of the state to shoulder the burden of water pollution and unproductive previously mined land.

Our most recent challenge to the inadequacy of the bond fund was spurred by WVDEP's own admission that the bond program was in jeopardy.

Last year, WVDEP admitted to the crisis, and took the unprecedented step of asking a state court to place a failing mine operator into receivership to help manage what is left of the company's assets. Among the justifications given to the court by WVDEP was the potential failure of one of the state's primary surety bond providers and the need to avoid exhausting the state's emergency "Special Reclamation Fund".

We reminded WVDEP and Office of Surface Mining Reclamation and Enforcement that federal law requires any such significant event impacting the regulatory program be reported to the federal OSMRE for a ruling about any possible amendment needed to fulfill the requirements of federal law.

In December 2020 WVDEP sent a letter to OSMRE but failed to take any action to shore up the fund. The Office of Surface Mining didn't do anything either beyond saying it would review the situation with WVDEP.

Forty years of fecklessness leading to a crisis seemed to warrant something stronger than talking about it. In May 2021 WV Highlands Conservancy joined Sierra

Club and the Ohio Valley Environmental Coalition in legal action to force the agencies to do more.

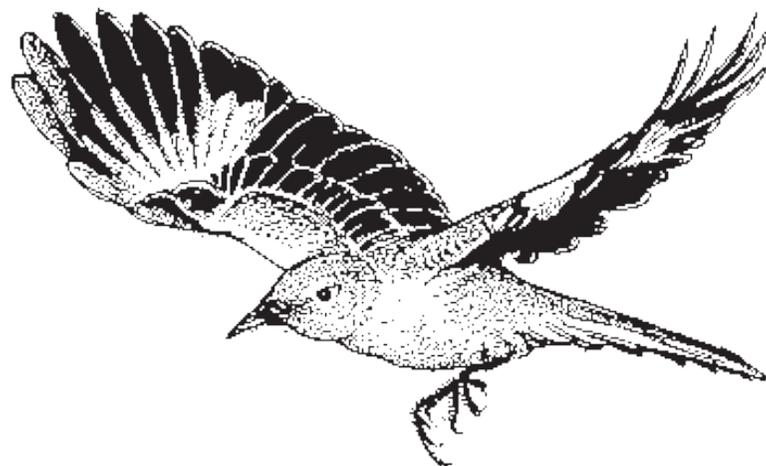
On August 24<sup>th</sup> 2021, in response to the lawsuit, OSMRE announced its formal determination that yes, West Virginia is violating the federal Surface Mining Act and must amend its regulatory program to ensure the state is accurately assessing reclamation costs and ensuring that adequate funds are available to clean up newly abandoned mines.

60 days and counting for the state response.

In addition to citing the lawsuit and its joint review of the state program since WVDEP's December 2020 letter, OSMRE stated that deficiencies noted in its 2002 approval of the state's financial assurance program haven't been fully addressed. As if it needed more proof, OSMRE also referred to a June 7, 2021 WV Legislative Audit that takes to task WVDEP's Division of Mining and Reclamation's Surface Coal Mining and Reclamation Bonding Program by highlighting some 11 significant issues with the bond program.

I'll not recite all those issues here, but suffice it to say that this witness to most if not all of the developments mentioned was sufficiently gob smacked to see everything laid out in great detail by an arm of a legislature that for years has been frozen in its tracks when changes to the fund have been recommended.

For the policy wonks among you, or for general nighttime sleep inducing reading, or for winter time reading sure to warm the cockles of your heart (i.e., make your blood boil), I recommended the legislative audit and WVDEP's response at: [http://www.wvlegislature.gov/legisdocs/reports/agency/PA/PA\\_2021\\_722.pdf](http://www.wvlegislature.gov/legisdocs/reports/agency/PA/PA_2021_722.pdf)



## Dogs, Birds, Bats, and the Shoenfeld Estimator

By John McFerrin

For various reasons operators of industrial wind turbines seek to know the number of birds and bats that are killed by the turbines. Some studies are done as part of academic research; some are done to meet some regulatory or permitting requirement; some are done as part of studies to make the turbines less harmful to birds and bats.

Such studies typically involve a researcher going to the base of the wind turbine and walking around the base of the turbine in ever larger circles, collecting bird and bat carcasses. These are then sorted by species, counted, and catalogued. The result is the first step in determining how many birds or bats perished.

The difficulty is that the number of carcasses recovered is never equal to the number of birds or bats that perished. It is inevitable that some will fall in tall weeds and never be discovered by researchers. Some will be carried away by scavengers. There will always be fewer found than actually died.

This is where the Shoenfeld Estimator comes in. It is a mathematical technique in which one can take the number of bird and bat carcasses recovered and, using the Estimator, accurately estimate the number of birds and bats actually killed.

While few may recognize the Shoenfeld Estimator, many will recognize the name of its inventor, former West Virginia Highlands Conservancy Board member Peter Shoenfeld. He invented it in 2004 as part of our advocacy around the Backbone Mountain wind farm. It is now widely accepted by academics and consultants who want to know how many birds or bats perished at an industrial wind turbine.

Now there is a new development that may require some adjustments of the Shoenfeld Estimator: dogs.

Dogs are now being used to find the carcasses of bats and birds killed by industrial wind turbines. What was once a long day of drudgery for human researchers is now a game of fetch for specially trained dogs.

Anyone who has ever played fetch with a dog until their arm was about to drop off knows the canine temperament necessary for this job. Even though they get to work for an hour and then rest for an hour, it still takes enormous energy to find and retrieve bats and birds. For dogs with the right temperament, it is a great job, playing fetch to their heart's content.

It turns out that dogs are incredibly good at patrolling windfarms and finding dead birds and bats. There are estimates of their effectiveness that range as high as 96%, many times better than human researchers.

*The Atlantic* had a story about this. If you want to read more, go to <https://www.theatlantic.com/science/archive/2021/07/bat-dogs-wind-turbines/619482/>. There was no mention of the adjustments that may have to be made to the Shoenfeld Estimator.

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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.

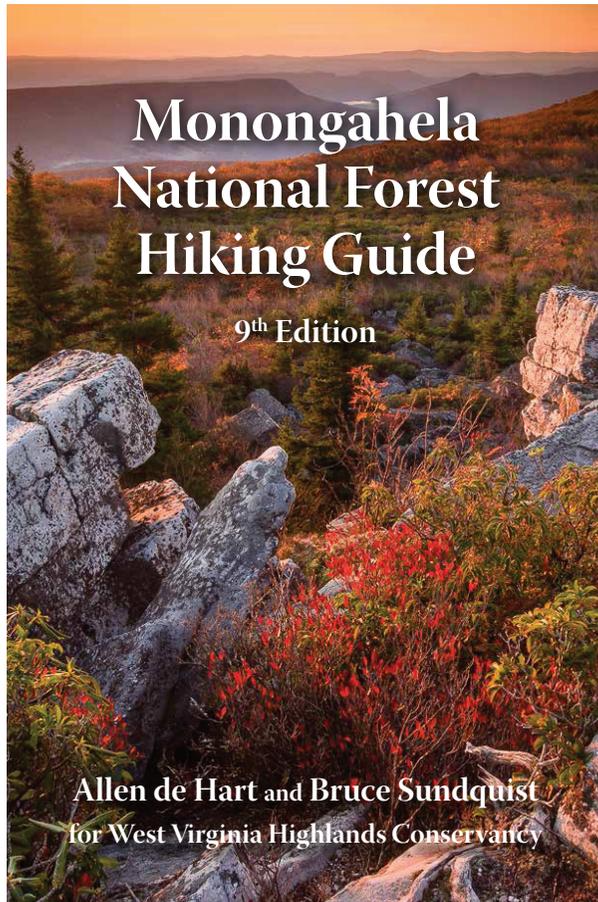
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[www.wvhighlands.org](http://www.wvhighlands.org)**



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

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

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

### BUMPER STICKERS

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



WEST VIRGINIA HIGHLANDS CONSERVANCY, PO BOX 306, CHARLESTON, WV 25321-0306 • [www.wvhighlands.org](http://www.wvhighlands.org)

# HIGHLANDS CONSERVANCY BOUTIQUE



- ▶ The baby shirts are certified organic cotton and are offered in one infant and several toddler sizes and an infant onesie. Slogan is “I ♥ Mountains Save One for Me!” Onesie [18 mo.]---\$25, Infant tee [18 mo.]---\$20, Toddler tee, 2T,3T,4T, 5/6---\$20
- ▶ Soft pima cotton adult polo shirts are a handsome earthtone light brown and feature the spruce tree logo. Sizes M-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 cap comes in stone or red.. The front of the cap has I ♥ MOUNTAINS. The heart is red. The red 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