

West Virginia Highlands Conservancy  
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# The Highlands Voice

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## Landmark Settlement Reached on Conductivity Pollution from Surface Coal Mines

By John McFerrin

The West Virginia Highlands Conservancy, the Ohio Valley Environmental Coalition, and the Sierra Club have reached a first of its kind settlement agreement with Alpha Natural Resources that requires the company to ensure its pollution discharges from four mountaintop removal coal mines meet key clean water protections. The agreement includes enforceable conditions and timelines that the groups say will eventually require the company to install state of the art technology to treat harmful conductivity pollution.

### What is conductivity

Conductivity is a measure of the ability of water to pass an electrical current. Totally pure water is a poor conductor of electricity. Generally speaking, the more inorganic dissolved solids such as chloride, nitrate, sulfate, and phosphate anions (ions that carry a negative charge) or sodium, magnesium, calcium, iron, and aluminum cations (ions that carry a positive charge) that are present in the water, the more easily the water can conduct electric current.

Thus, if we measure the conductivity and it is high, it tells us that there are a lot of these and other substances dissolved in the water. While it does not identify individual substances, the conductivity reading gives an overall reading of the concentrations of substances in the water.

Conductivity is useful as a general measure of stream water quality. Each stream tends to have a relatively constant range of conductivity that, once established, can be used as a baseline for comparison with regular conductivity measurements. Significant changes in conductivity could then be an indicator that a discharge or some other source of pollution has entered a stream.

Research has shown that high conductivity can make a stream inhospitable to aquatic life, making the stream biologically impaired.

### What the settlement requires

The mines at issue are operated by Alpha subsidiaries Elk Run Coal Company in Boone County and Alex Energy in Nicholas County, WV. Although today's settlement

agreement allows the company to attempt to meet Clean Water Act protections by improving the health of the harmed streams, it also includes firm trigger mechanisms that will require the installation and operation of pollution treatment technology to reduce conductivity pollution down to the level the Environmental Protection Agency has determined is safe for aquatic life: 300 µS/cm. The settlement also requires Alpha to retire the only remaining dragline in Central Appalachia not already subject to a retirement agreement.

### Why the settlement is important

The original goal (and one still contained in the Act) of the Clean Water Act was the eventual elimination of polluting discharges to the waters of the United States. While this goal remains in the Act, as things have developed over the past thirty years the system has evolved into one of permitting. Companies get permits which allow them to discharge small amounts of pollution. Those permits are supposed to

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## Ramblin' the Ridges

By Cynthia D. Ellis

# Sheep, Goats, and Waterbugs

As we are now into the New Year, the Chinese New Year approaches. This year, 2015, is designated as the Year of the Sheep, or also, the Year of the Goat.

Sheep are known to stick together



in tight groups. Goats are known to sometimes go after what they want in an aggressive way. Perhaps the West Virginia Highlands Conservancy will be like one or both in 2015.

Like sheep and goats, we stuck together and pursued objectives in 2104. We did these [and other] things:

- co-sponsored a Water Forum
- co-sponsored the 3rd Wellness & Water Conference
- with CASRI partners, planted 75,000 spruce trees
- helped get a mine air shaft relocated near Tygart Lake
- assisted Taylor Countians with water monitoring near longwall mines
- distributed, to public libraries statewide, copies of a children's book about mountaintop removal mining
- completed the preparation work for a legislative bill regarding siting of grid-ready wind turbine facilities [although bill did not get not submitted]
- continued efforts to resolve status of the historic Blair Mountain
- provided information and support regarding the surface mine by Kanawha State Forest
- sent a comment letter urging no pipeline through the Monongahela National Forest

The primary "other thing" we did

was write and publish "The Highlands Voice." Through The Voice, we offered information and updates on:

- wind turbine dangers to eagles
- efforts urging the Office of Surface Mining to take over mining regulation in WV
- the process of shale gas drilling, and the efforts to regulate drill cuttings
- efforts to regulate selenium deposits, regulate coal ash, and enforce stream Buffer Zones
- the storage tank act after the Elk River water crisis in January
- environmental matters in the WV Legislature
- the Export-Import Bank's failure to comply with NEPA
- mountain preservation, near the WV border, in Virginia
- the Birthplace of Rivers

And we shared some memorable poems.

We realize that many of our projects remain ongoing. They might even still require work in 2106. We will have unmet



goals and needs. For one thing, sheep and goats need clean water to get through their years, and we do too. In 2015, as the year before, and probably quite a long while, a unified goal can remain--- clean water. It already figures in more than half of our issues. Indeed, that was a seminal issue for the West Virginia Highlands Conservancy. Many of our founders loved the mountain

activities they found on the streams and rivers here...and they resolved to join together to protect the lands and waters from harm.

A watery side note, digressing wildly, is that here, in this part of Appalachia, "Whirligig beetles are often found skating together in large groups and have a special adaptation for living on the water's surface. Each eye is divided into two widely separated parts, one of which remains above the surface of the water and the other below the surface." [from "A Natural History of the Central Appalachians" by Steven L. Stephenson]

We may have to be more like water-borne beetles than grass-fed grazers. We have to keep our eyes up, and down...and on the side [issues] too.

We can do that. Because we always have your support, we can do that.

Best Wishes for strong strides toward a clean environment, clean water, and preservation of the mountains in the New Year!

## Mining Case Settled (Continued from p. 1)

allow only enough pollution that, even after it is added, the stream will still be fishable, swimmable, etc. Only in the recent past (and largely in response to litigation by citizens, including the West Virginia Highlands Conservancy) have regulators done much beyond measuring and limiting polluting discharges into streams.

This settlement is a step beyond that. It recognizes that there can be a variety of pollutants entering streams beyond those being measured and controlled by regulators. Taken together, these pollutants can be measured by measuring conductivity. The settlement is a step toward having the pollution that is measured by conductivity controlled and eliminated.

## Board Meeting Coming Up

On Sunday, January 25, from 9:30 a.m.--2:30 p.m., the Board of the West Virginia Highlands Conservancy will hold its quarterly meeting. It will be at the office of the WVU Kanawha County Extension Services, 4700 MacCorkle Ave. SE., Charleston.

One of the highlights of the festivities will be the presentation by LeJay Graffious of his photo essay featuring photos of the Dolly Sods area of Canaan Valley. The presentation will be at about 1:00 p.m.

Members are welcome to join us for the presentation or any or all of the board meeting. It has been our practice to allow members to participate in discussions, etc. at the board meeting although only board members may make motions or vote.



A small part of LeJay's presentation



## Old Hemlock Property Goes on National Registry

George Bird Evans's and Kay Evans's home and grounds have been accepted on the National Registry of Historic Places. Even though the deed of the property is dated 1782 and probably reflects the time period when the log home was built, the committee honored George's contributions to American Life during the 1939 to 1972 period of his Life when he worked as an artist for *Cosmopolitan Magazine* and the US Navy, recorded his hunting experiences in his journals which became the basis of numerous articles and later his *Upland Shooting Life* book, wrote their mystery novels and developed of the Old Hemlock line of English Setters. Kudos to AmeriCorps member and WVU Public History masters graduate and friend of Old Hemlock, Eliza Newland, for her tireless effort and expertise organizing and writing the application.

The property is managed by the Old Hemlock Foundation and, more specifically, by West Virginia Highlands Conservancy board member LeJay Graffious. It has graciously hosted board meetings in the past.

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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.

# Some Questions for Dominion About the Pipeline

By John McFerrin

As reported previously (pretty much every issue of The Highlands Voice since June, 2014) Dominion Resources is planning a \$4 billion interstate natural gas pipeline that would run from central West Virginia to power plants in North Carolina. On the way it would pass through parts of the George Washington National Forest and the Monongahela National Forest.

The West Virginia Highlands Conservancy has been actively working on this issue both as an organization and as part of Dominion Pipeline Monitoring Coalition and the Allegheny-Blue Ridge Alliance. Part of the opposition has been visceral: “OMG, they want to put a monster pipeline through the national forest! They can’t do that!”

Beneath this initial reaction, however, there are some specific questions that those concerned about the pipeline have. In a recent letter to Bob Burnley, Rick Webb Coordinator, Dominion Pipeline Monitoring Coalition, set out some of those questions. Mr. Burnley is consulting for Dominion with the intent, in his words, to make the Atlantic Coast Pipeline as environmentally responsible as possible. He is also serving as a sort of liaison to the conservation community.

Here are the questions:

## **(1) Consideration of alternatives**

Why hasn’t Dominion considered an alternate route that would avoid the Allegheny Highlands and the George Washington and Monongahela National Forests? The alternatives report submitted to the Federal Energy Regulatory Commission describes and dismisses a “western alternative” that would still cross the Allegheny Highlands and both national forests. The report also describes and dismisses “system alternatives” that involve use of other existing or proposed pipelines. The report, however, does not consider a separate pipeline along a southern route, which, like the proposed Mountain Valley and Appalachian Connector pipelines, would avoid the Allegheny Highlands and cross substantially less national forest than the currently proposed ACP route.

The possibility of co-locating the ACP with one of the currently proposed southern routes has been raised by FERC. The following is from an article in yesterday’s Roanoke Times:

Paul Friedman, FERC’s environmental project manager for the Mountain Valley Pipeline, is participating in open houses this week. . . Friedman said Tuesday that FERC is “very interested” in considering whether the Mountain Valley Pipeline and the Atlantic Coast Pipeline, proposed by Dominion and partners, might ultimately be able to share a single corridor — an alternative he said would obviously lessen the projects’ environmental effects. . . “We don’t know if it’s possible because we haven’t studied it yet,” Friedman said. . . He was not aware of the Appalachian Connector Pipeline, a pipeline proposed by Williams that has not yet entered the pre-filing process.

## **(2) Identification of existing Dominion pipeline projects**

Can Dominion provide information concerning its existing gas pipeline transmission system in Virginia, West Virginia, and Pennsylvania? We would like to have a listing and description of all pipelines for which construction is pending, underway, or completed. We would also like to have identifying permit numbers and GIS coverages for each of the pipelines. This information would be used in our “case study” program, which allows us to examine real-world regulatory program implementation.

## **(3) Prevention of slope failure**

Can Dominion provide documents that describe company policy and protocols for preventing slope failure or earthen slippage for pipeline construction in steep terrain? We are interested in the identification of factors associated with potential slope failure and in the identification of methods used to avoid slope failure.

Dominion is subject to a Consent Order issued by the WV Department of Environmental Protection (Order No. 8078, 10/01/14), which requires a geotechnical analysis and preparation of a report that describes the causes of historical pipeline right-of-way failures. The order also requires that Dominion develop a company policy for avoiding such problems at future pipeline projects. We would like to know in

advance, and in detail, how Dominion plans to meet this requirement. We would also like to know if Dominion intends to apply this policy to the ACP and future pipeline projects in Virginia, West Virginia, and elsewhere.

Can Dominion explain the process, including the schedule and details of permitting, whereby construction of the ACP project will comply with erosion and sediment control and stormwater management programs in both Virginia and West Virginia? We seek an open and transparent process, with timely access to applications and site plans and a meaningful opportunity for public review and input to the regulatory agencies.

## **(4) Erosion and sediment control and stormwater management**

Some specific questions:

- Can Dominion explain the distribution of authority among regulatory agencies with respect to erosion and sediment control and stormwater management requirements? That is, which rules apply to pipeline construction, and whose authority takes precedence?
- Will Dominion prepare site-specific erosion and sediment control and stormwater management plans for ACP construction, and what information will be provided with such plans? Will Dominion submit such plans to FERC, the Forest Service, state environmental agencies, and county governments? When will such plans be submitted, and can Dominion provide public access to these plans prior to regulatory authority approval in order to allow public review and input?

- Does Dominion intend to seek variances from regulatory requirements related to erosion and sediment control and stormwater management? For example, Dominion and other pipeline construction companies commonly request approval to exceed regulatory limitations on the length of open trench allowed at any given time. Strict adherence to this limitation will be critical for runoff control and slope stability on steep mountainsides.

- Can Dominion provide prompt public access to inspection reports related to erosion and sediment control, stormwater management, and stream and wetland

**(More on the next page)**

## More Questions About the Pipeline (Continued from previous page)

crossing? Our concern is that much of the inspection program will be conducted by Dominion staff or contractors rather than the regulatory authorities, and that inspection reports will be inaccessible to the public.

### (5) Damage to water supplies

Can Dominion provide details concerning responsibility for damage to water supplies due to pipeline construction and operation?

Some specific questions:

- What type of well and spring water monitoring program does Dominion plan to conduct? What water quality parameters will be measured and on what schedule?

- How will well and spring water quantity be monitored?

- How will Dominion's well and spring water monitoring program account for seasonal and year-to-year variation in water quality and quantity?

- Will spring and well water supply data be made available to property owners and regulatory authorities —and on what schedule?

- Is it Dominion's position that only those wells and springs within 150 feet or less of pipeline construction are at sufficient risk to warrant monitoring?

- Does Dominion recognize that due to hydrologic connectivity in karst landscape, construction activity can affect water supplies that are miles away?

- What is the specific standard of proof or evidence that Dominion will require before it accepts responsibility for damage to the quality or quantity of water supplies?

- Can Dominion provide guidance concerning the type and costs of baseline and continuing data collection necessary to conclusively determine if damages to water supplies are due to pipeline construction?

- Would Dominion be willing to pay for monitoring of wells and springs that are farther than 150 feet from the pipeline construction corridor?

- In the event that Dominion accepts responsibility for damage to water supplies, how will Dominion compensate land and water supply owners?

- Would Dominion support establishment of an independent board to rule on liability for damages to water supplies and other property values?

### (6) Damage to streams and aquatic systems

Can Dominion provide details concerning its plans to assess and monitor the physical and biological condition of streams and wetlands that will be crossed or potentially subject to impact from pipeline right-of-way clearing, construction activity, access roads, and staging areas? Can Dominion also provide details concerning its plans to assess and monitor the physical and biological condition of aquatic systems associated with karst?

Some specific questions:

- What water quality parameters will be measured, by what methods, on what schedule, and at what locations?

- How will water quantity or discharge be monitored, by what methods, on what schedule, and at what locations?

- How will Dominion assess and document the physical and habitat structure of surface and subsurface water channels and flow paths?

- What methods will Dominion use to evaluate construction-related changes in rainfall-runoff ratios or changes in the magnitude, frequency, and duration of peak flows?

- How will Dominion assess and document baseline status and conditions for surface and subsurface aquatic biological communities and monitor construction-related changes?

- Will Dominion make all stream and aquatic system data and assessments available to regulatory authorities and the public —and on what schedule?

- Can Dominion identify the specific thresholds or objective changes in water quality, quantity, physical and habitat structure, and biological community status that constitute regulatory violations?

- Does Dominion have, and will it share, company protocols and criteria for response to water resource degradation associated with its construction activities?

### Game Over?

The November, 2014, issue of *The Highlands Voice* contained a story about what the story referred to as an increased level of scrutiny for Dominion Resources' proposed Atlantic Coast Pipeline that would cross the central Appalachian Mountain region. That article, and similar ones that appeared elsewhere, resulted in the observation in the industry press that if the opponents were talking about monitoring it then the construction must be a foregone conclusion, that its opponents were already assuming it would be built.

This produced various reactions:

*It ain't over 'til it's over—Yogi Berra*

*We shall fight on the beaches, we shall fight on the landing grounds, we shall fight in the fields and in the streets, we shall fight in the hills; we shall never surrender.—Winston Churchill*

*No, we certainly do not think it's a foregone conclusion that the pipeline will be built. My view is that Dominion, its investors, and its contractors will only pursue this project if they can count on the relaxed implementation of environmental laws that they have grown used to. Our job is to make it clear that the "business-as-usual" model does not apply. Rick Webb, West Virginia Highlands Conservancy Board member and coordinator for the Dominion Pipeline Monitoring Coalition*

# Birthplace of Rivers National Monument: Looking back at 2014

By Mike Costello

Over the past year, West Virginians got a first-hand glimpse of what can go wrong when water sources are left unprotected. If a silver lining emerged from Freedom Industries spill near Charleston, it was an increased awareness of the vulnerability of streams we depend on for drinking water. This led to inspiring citizen action and tangible change at the state legislature, as well as the launch of new initiatives to highlight the importance of water quality to all West Virginians. Similarly, throughout the year we saw the aftermath of the water crisis translate into an outpouring of support for stronger protection of headwaters beginning in the Monongahela National Forest.

The Birthplace of Rivers National Monument initiative -- a campaign to permanently protect a special landscape on the Monongahela where six rivers begin -- garnered significant momentum in 2014, due in no small part to the infamous water crisis. While the immediate effects of the chemical spill were limited to nine counties served by West Virginia American Water's Elk River intake, the lasting impact was felt throughout the state, and the incident taught all of us some valuable lessons about the source of our cherished waters. Community leaders, business owners, sportsmen, and West Virginians of many other backgrounds rallied behind monument designation as a proactive way to protect headwaters of statewide importance *before* threats arise.

The Birthplace of Rivers area, especially the waterways that begin there, means so much to all West Virginians. The Cranberry and Williams Rivers are where so many of us grew up fishing. The Cherry and Greenbrier Rivers provide drinking water for communities such as Richwood and Lewisburg. The Gauley provides world-class whitewater rafting, and 140 miles upstream from the site of the chemical spill, the Elk River begins as a clean, pure trickle, quickly becoming a trout-rich mountain stream.

Federal public lands are increasingly threatened, and without a doubt, Congress will pass a multitude of measures in 2015 to expedite industrial development in National Forests, stifle public input in management decisions and roll back environmental protections intended to protect water quality. The streams in the Birthplace of Rivers area deserve the protection a national monument can provide, and West Virginia deserves the honor of being recognized as a headwaters state, a place where our citizens value pristine headwaters and strive to set them aside for future generations.

It wasn't long after the chemical spill that it became clear how an unfortunate disaster in the Kanawha Valley highlighted all water quality efforts, including the Birthplace of Rivers campaign. In an April editorial, The Charleston Gazette said:

*"The ugly 2014 Elk River Crisis that tainted the drinking water of 300,000 West Virginians in nine counties spurred headlines around the world – and spotlighted the need to protect the purity of Mountain State streams.*

*Current efforts to create a Birthplace of Rivers National Monument in the state's highlands might underscore the value of clean tributaries, as well as enhance West Virginia's status as a mountain recreation refuge."*

Outside perception that water throughout West Virginia was bad made businesses and tourism officials concerned about the future of an outdoor recreation industry in a place called "Wild and Wonderful". Nearly 200 businesses have signed on to support monument designation as a way to protect and promote outdoor recreation opportunities. A national monument is a strong signal of quality, and as the only state in the East with the distinction of having a wildlands national monument, West Virginia would certainly set itself apart as a quality outdoor destination. There's more than just perception at stake, however. Business owners know that without stronger protection, the Birthplace of Rivers area – already an important economic driver – may not always be such a sustainable asset for the local and statewide recreation-based economy. In a joint op-ed, the owners of Fayetteville's Water Stone Outdoors, Kenny Parker, Maura Kistler and Gene Kistler, told readers what a national monument means to businesses throughout West Virginia:

*"Preserving a special area of the Monongahela National Forest as the Birthplace of Rivers National Monument would be a major step toward ensuring a strong recreation economy, providing clean drinking water, and restoring our image. The Birthplace of Rivers National Monument would send a message that West Virginia still has some of the best water in the nation, and our mountain streams deserve to be recognized on a national scale.*

*As was the case with outside perception after the chemical spill, what happens in one part of the state impacts*

*everyone. Special wild places contribute to the quality of life for all of us, and the positive impacts of a Birthplace of Rivers National Monument would reach far beyond local communities, benefiting all of us in West Virginia."*

In many ways, the Birthplace of Rivers initiative brought out the best of West Virginia's collaborative spirit in 2014, even among groups that often find themselves on opposing sides of land use debates. It was an encouraging reminder that public lands truly are America's common ground, and that water is a unifying factor that brings West Virginians together.

As the campaign moves forward, recent activity in other states should be encouraging to West Virginians. The Forest Service stepped up its involvement in creating national monuments in 2014, working towards similar designations that protect vast landscapes while ensuring access for all current recreational uses, and providing a stronger guarantee that stakeholders, local communities and the general public will always get to have a say in future management of the area. California's San Gabriel Mountains National Monument was established as part of the Angeles National Forest last fall, and two additional USFS monuments -- Colorado's Browns Canyon and California's Berryessa/Snow Mountains -- seem to be primed for designation at the beginning of this year.

What's in store for 2015? From bad bills in Congress to construction of gas pipelines, we're sure to see threats to the Monongahela increase. But we'll also see West Virginians continue their push to protect our headwaters, grow our tourism economy and honor our rich outdoor heritage. Behind a strong grassroots effort, support for the Birthplace of Rivers National Monument initiative will continue to grow, and as additional monuments are created across the country, we'll make sure our nation's leaders are paying close attention to this historic opportunity for the Mountain State.

We hope you'll get involved! Visit [birthplaceofrivers.org](http://birthplaceofrivers.org) to add your voice of support!

**Join Now !!!**

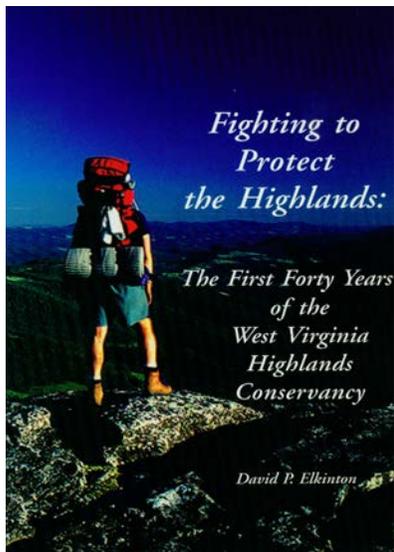
Name _____	<b>Membership categories</b> (circle one)			
	Individual	Family	Org.	
Address _____	Senior	\$15		
	Student	\$15		
	Introductory	\$15		
	Other	\$15		
City _____ State _____ Zip _____	Regular	\$25	\$35	\$50
	Associate	\$50	\$75	\$100
Phone _____ Email _____	Sustaining	\$100	\$150	\$200
	Patron	\$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**

**GREAT HISTORY BOOK NOW AVAILABLE**

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.



Learn about how the Conservancy stopped road building in Otter Creek, how a Corps of Engineers wetland permit denial saved Canaan Valley, and why Judge Haden restricted mountaintop removal mining. Also read Sayre Rodman's account of the first running of the Gauley, how college students helped save the Cranberry Wilderness, and why the highlands are under threat as never before.

With a foreword by former congressman Ken Hechler, the book's chapters follow the battle for wilderness preservation, efforts to stop many proposed dams and protect free-flowing rivers, the 25-year struggle to save the Canaan Valley, how the Corridor H highway was successfully re-routed around key environmental landmarks, and concluding with the current controversy over wind farm development. One-third of the text tells the story of the Conservancy's never-ending fight to control the abuses of coal mining, especially mountaintop removal mining. The final chapter examines what makes this small, volunteer-driven organization so successful.

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 \$14.95, plus \$3.00 shipping, visit the Conservancy's website, 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.

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Although *Fighting to Protect the Highlands, the First 40 Years of the West Virginia Highlands Conservancy* normally sells for \$14.95 plus \$3.00 postage. We are offering it as a premium to new members. New members receive it free with membership.

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**VOICE AVAILABLE ELECTRONICALLY**

The Highlands Voice is now available for electronic delivery. You may, of course, continue to receive the paper copy. Unless you request otherwise, you will continue to receive it in paper form. If, however, you would prefer to receive it electronically instead of the paper copy please contact Beth Little at [blittle@citynet.net](mailto:blittle@citynet.net). With electronic delivery, you will receive a link to a pdf of the Voice several days before the paper copy would have arrived. The electronic Voice is in color rather than in black and white as the paper version is.

The more things change...

## Highlights Of The Public Hearing Of The Governor's Task Force On Mountaintop Removal

In 1998 Governor Cecil Underwood appointed the Governor's Task Force on Mountaintop Removal to consider any problems resulting from mountaintop removal mining. It held public hearings around the state, including one on August 3, 1998. The hearing included forty eight speakers. Here are some of the highlights, most of which are as true today as they were in 1998:

*"I'm here not because I was an activist or an environmentalist but because I am a mother."* Logan County resident

*"Mountaintop removal leaves land that is useable, appealing, and environmentally sound."* Coal industry lobbyist

*"During the Legislature the coal industry lobbyists threatened the jobs of the Delegates. Think what they could do to somebody like me."* Logan County resident

*"People are not here because they have nothing better to do than complain about mining. We're here because there is a serious problem."* Mingo County resident

*"We should have some way to take care of damage caused by blasting."* Logan County coal operator

*"Dealing with a state's poverty by selling off its mountains is like dealing with a family's poverty by selling off a couple of sisters."* Calhoun County resident

*"Spoil materials can improve the streams they are dumped into."* Coal company surveyor

*"If it's not extreme to take the tops off the mountains, why is it extreme to say leave it alone?"* Lincoln County resident

*"It's interesting that there has not been a single person who is not employed in the coal industry who spoke in favor of mountaintop removal."* Kanawha County resident

### 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.

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Would West Virginia ever take the hint?

## New York Bans Fracking

By Beth Little

By now most readers of *The Highlands VOice* will have heard that New York has banned fracking.

Actually, the conclusion of the NY State Department of Health is that “Until the science provides sufficient information to determine the level of risk to public health from High Volume Horizontal Fracturing (HVHF) to all New Yorkers and whether the risks can be adequately managed, HVHF should not proceed in New York State.” The NY DOH conducted a public health review of scientific literature, made field visits and talked with health and environmental authorities in states with HVHF activity. Rather than a guarantee of absolute safety, they required sufficient information to understand what the likely public health risks will be; and they found that, currently, that information is insufficient. [http://www.health.ny.gov/press/reports/docs/high\\_volume\\_hydraulic\\_fracturing.pdf](http://www.health.ny.gov/press/reports/docs/high_volume_hydraulic_fracturing.pdf)

The areas they reviewed were human exposure to and health outcomes from:

1. contaminants in air or water;
2. naturally occurring radiological materials that result from HVHF activities; and
3. the effects of HVHF operations such as truck traffic, noise, and social changes on communities.

I was particularly glad to see the third item, because even if they do everything right, and there is no water contamination, no spills or accidents, and no toxic air emissions; there are still the trucks. When fracking comes, it isn't just one well; it's a field of wells. And each well needs hundreds of trucks - large 18 wheeler diesel trucks - coming and going 24 hours a day, 7 days a week, for months and months, extending into years. This means thousands of these trucks in a gas development area. In a rural area of small towns, winding roads, farms and forests, this is a nightmare for residents.

Then there is the additional impact of the lights and noise, which also goes on 24 hours a day, 7 days a week.

And finally there is the influx of transient work crews.

In their **Major Findings**, the NY DOH found **community impacts** associated

with boom-town economic effects such as increased vehicle traffic, road damage, noise, odor complaints, increased demand for housing and medical care, and stress. They cited numerous historical examples of the negative impact of rapid and concentrated increases in extractive resource development resulting in indirect community impacts such as interference with quality-of-life, overburdened transportation and health infrastructure, and disproportionate increases in social problems, particularly in small isolated rural communities where local governments and infrastructure tend to be unprepared for rapid changes. Rates of traffic fatalities and major injuries were higher in heavy drilling counties.

Other **Major Findings** were:

- **Air impacts** that could affect **respiratory health** due to increased levels of particulate matter, diesel exhaust, or volatile organic chemicals. They referenced McCawley's study (WVU School of Public Health) that determined that heavy vehicle traffic and trucks idling at well pads were the likely sources of intermittently high dust and benzene concentrations, sometimes observed at distances of at least 625 feet from the center of the well pad. These emissions have the potential to contribute to community odor problems, respiratory health impacts such as asthma exacerbations, and longer-term **climate change impacts** from methane accumulation in the atmosphere.
- **Drinking water impacts** from underground migration of methane and/or fracking chemicals associated with faulty well construction. Groundwater contamination clusters were found to be due to gas leakage from intermediate-depth strata through failures of annulus cement, faulty production casings, and underground gas well failure. Shallow methane migration has the potential to impact private drinking water wells, creating safety concerns due to explosions. Some studies suggest additional sources of potential water contamination, including surface spills and inadequate treatment and disposal of radioactive wastes.

- Further **soil and water contamination** resulting from inadequate wastewater treatment.
- **Earthquakes** induced during fracturing. Although the potential public health consequence of these relatively mild earthquakes is unknown, this evidence raises new concerns about this potential HVHF impact.

The thing is - this information has been out there for years. It's old news to the residents of Frackistan - the heavily drilled counties in West Virginia. And the NY DOH admits that they just did a “review,” not a new study. So how come none of our elected officials or environmental ‘protection’ agency leaders could reach similar conclusions? Could it be that the NY DOH is comprised of people with more integrity, who haven't been influenced by politics or bought by campaign donations and lobby gifts from the gas industry?

I just wish that Governor Tomblin was as attentive to science and as concerned about the health of West Virginia citizens as Governor Cuomo.

### 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.

# Groups Comment on Enforcement Action against Dominion Resources

By John McFerrin

The West Virginia Highlands Conservancy has joined with ten other groups in commenting on a Consent Order that is proposed to resolve violations of West Virginia water quality laws at its operations in the northern panhandle of West Virginia. Although the violations are important in their own right, much of the groups' interest is a reflection of their interest in Dominion's planned Atlantic Coast Pipeline. If the issues the Consent Order addresses are any indication of Dominion's ability to manage its operations, anyone might reasonably wonder how Dominion might hope to successfully manage a multi-state pipeline crossing public lands, sensitive areas, and mountain ridges.

## The Consent Order

The G-150 pipeline, which Dominion recently sold, extends from northern Brooke County through Ohio County and into Marshall County, where it terminates at Dominion's new natural gas processing complex being built at Natrium.

According to the consent order, state Department of Environmental Protection inspectors began issuing notices of violation of state water quality laws to the pipeline company in October 2012, when sediment deposits were found in Battle Run in Ohio County. Later in 2012, inspectors found slips along the pipeline route that allegedly allowed sediment to accumulate in Sims Run and in unnamed tributaries of Little Tribble Creek, Grave Creek, Bartletts Run, Leach Run and Little Toms Run in Marshall County. During a March, 2013, inspection, DEP officials determined that sediment problems persisted at Sims Run and tributaries of Little Tribble Creek as well as in Long Run and Middle Run, resulting in additional violation notices.

From June 12, 2013 to Jan. 6, 2014, Dominion failed to respond to repeated requests by DEP personnel to provide information about the location of earthen slips associated with pipeline construction and any efforts being made to remediate them, according to the consent order.

On Jan. 15 of this year, DEP inspectors investigated a spill report at the Lightburn Compressor Station near Jane Lew in Lewis County, and found that underground pipelines associated with the station were leaking water produced in the

drilling process that wasn't being contained by secondary containment structures.

The following month, DEP inspectors cited Dominion for operating a ruptured pipeline that released a crude oil and water mix into Dry Fork in Marshall County, and then failing to contain the leak or report it to the DEP.

Among other things, the consent order mandates that Dominion:

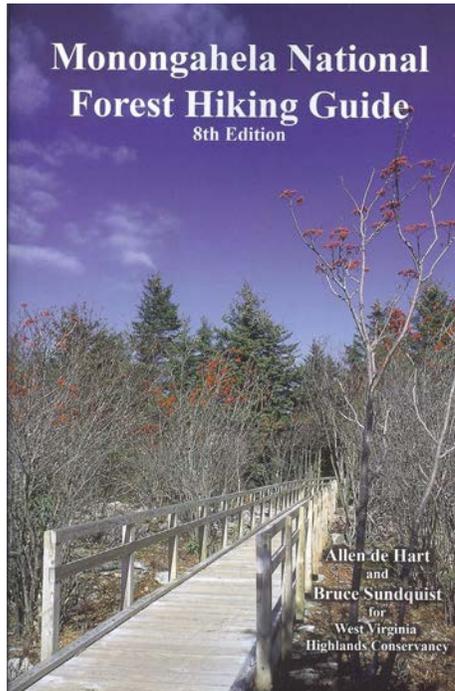
- Must follow the state's best management practices for sediment and erosion control in all of its DEP-regulated pipeline construction projects.
- Complete a groundwater protection plan for the Lightburn Compressor Station within 90 days.
- Provide DEP with a list of all earthen slips recorded at all its West Virginia pipeline construction projects within 60 days.
- Provide DEP with geo-referenced line work and placement data for all Dominion pipeline construction or restoration projects with active permits within 60 days.
- Conduct, within 120 days, a geo-technical analysis to determine the root causes of historical pipeline right-of-way failures.
- Develop, within 90 days, a written policy on how Dominion should prevent, contain and remediate earthen slips associated with pipeline construction in West Virginia.
- Pay \$55,470 in civil penalties to the state Water Quality Management Fund for "legislative rule violations" within 30 days.

## The comments

In response to the proposed Consent Order, the groups had this to say:

- The WVDEP should not finalize the Consent Order until Dominion has completed those things that it was already required to do by law and regulation. There is no reason to give Dominion additional time to come into compliance and consideration to assessing an accumulating daily fine until the cited violations are in fact corrected should be considered.

- The WVDEP should set a definitive date for the completion of written reports and policies, rather than times (e.g. 60 days or 120 days) that are based on the finalization of the Consent Order. Dominion seems to be refusing to prepare the reports and documentation concerning slip locations and causes of right of way failures unless it gets favorable Consent Order terms.
- The WVDEP should provide an additional public comment period after Dominion has provided the written reports and policies before the Consent Order is finalized.
- The WVDEP should require Dominion to immediately produce the existing groundwater protection plan for the Lightburn Compression Station. The Consent Order requires Dominion to produce such a plan and indicates that, according to a Dominion spokesman, such a plan was already on site when the violation was cited.
- The WVDEP must maintain the Consent Order requirement that Dominion provide a listing of all earthen slips and geo-referenced line work and placement data for all of Dominions active West Virginia pipeline projects.
- The WVDEP must require that Dominion must include the G-150 pipeline (which Dominion has sold) in the full scope of the Consent Order requirements, or issue the same requirements to the purchaser. A majority of the violations are associated with the G-150 pipeline and it is a real failure of regulatory process if responsibility for problems simply disappears or remedial action is further delayed when ownership of a problem project is transferred. Dominion cannot be allowed to distance itself from the problems that it has caused.
- The WVDEP must highlight the importance of the requirement that Dominion must prepare a written policy on how it will prevent, contain and remediate earthen slips associated with pipeline construction in West Virginia. The finalized Consent Order should focus on Dominion's adherence to this established policy.



## The Monongahela National Forest Hiking Guide

By Allen de Hart and Bruce Sundquist

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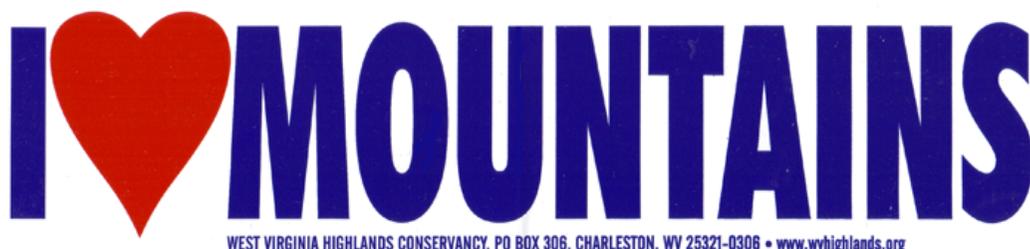
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# The Big Pipeline: the Fish and Wildlife Service Speaks

By John McFerrin

In August, 2014, Dominion Resources wrote the United States Fish and Wildlife Service requesting information regarding its proposed 560-mile Atlantic Coast pipeline and associated access roads project which extends from West Virginia through North Carolina. In December, the Service answered. In doing so, it provided information about its current thinking about the pipeline and the fish and wildlife issues it raises. Its comments were provided pursuant to the Endangered Species Act (ESA) 16 U.S.C. 1531 *et seq.* the Bald and Golden Eagle Protection Act (BGEPA) (16 U.S.C. 668-668c, as amended), and the Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703-712).

The letter lists as species that could be affected by the construction and operation of the pipeline: the endangered Indiana bat, (*Myotis sodalis*), clubshell mussel (*Pleurobema clava*), snuffbox mussel (*Epioblasma triquetra*), and running buffalo clover (*Trio folium stoloniferum*); and the threatened Cheat Mountain salamander (*Plethodon nettingi*), small whorled pogonia (*Isotria medeoloides*), and Virginia spiraea (*Spiraea virginiana*); and the proposed endangered northern long-eared bat (*Myotis septentrionalis*). Bald (*Aquila chrysaetos*) and golden (*Haliaeetus leucocephalus*) eagles, other migratory birds, and species of concern also occur within the project area. The letter goes on to address issues that will arise concerning each species and what Dominion must do to address those issues.

## Endangered and Proposed Bats

The letter notes several places along the route where bats which are either endangered or being considered for listing as endangered are either known to exist or are potentially present. Dominion is deciding whether it will do surveys or just assume the bats are present and act accordingly. The letter reminds Dominion that it must provide a bat protection plan in areas where endangered bats are known or presumed to exist.

It also suggests that Dominion survey the area for abandoned mines since they are known habitat for bats.

The letter notes that the northern long eared bat (*Myotis septentrionalis*) is proposed for listing under the Endangered Species Act and that a decision on listing is

anticipated by April 15, 2015. The Service suggests that Dominion proceed as if the northern long eared bat will be listed. The Service is also considering the listing of other bat species such as the little brown bat (*Myotis lucifugus*). It is recommended that this species also be considered in project planning and surveys.

## Cheat Mountain Salamander

Known and potential habitat for the Cheat Mountain salamander occurs where the project would go. Cheat Mountain salamanders are only known to occur on a restricted number of high elevation ridges in five counties in West Virginia. They need a lot of moist areas and forested areas, primarily found in red spruce forests on West Virginia high mountain ridges. They are sensitive to cutting trees, earth moving, drying out the land, and just about everything else the project would involve. The project would also fragment salamander habitat.

The letter points out that the 2006 Land and Resource Management Plan for the Monongahela National Forest contains lots of things in it to avoid adverse effects and enhance the recovery of the including restoration and management of red spruce and spruce hardwood communities, and reducing fragmentation of salamander habitats. In addition, the Forest Plan states that ground and vegetation-disturbing activities within occupied salamander habitat, or within 300-feet of that habitat, shall be avoided.

The letter points out that Cheat Mountain contains high quality habitat not only for Cheat Mountain salamanders, but also for the native brook trout (*Salvelinus fontinalis*) and the recently delisted West Virginia northern flying squirrel (*Glaucomys sabrinus fuscus*). The letter points out the efforts of The Fish and Wildlife Service, along with the U.S. Forest Service, Trout Unlimited, The Nature Conservancy, the Central Appalachian Spruce Restoration Initiative (in part a West Virginia Highlands Conservancy project), and other non-profit partners have all focused habitat restoration efforts on Cheat Mountain for many years in an effort to increase habitat connectivity and quality and reduce fragmentation of the spruce hardwood habitat that exists on Cheat Mountain for a wealth of species.

The clear message of the letter is that the Fish and Wildlife Service really,

really wants Dominion to find a route other than one crossing Cheat Mountain. It doesn't flatly say that it would block such a route but it is "highly recommended" that Dominion find some other way.

## Freshwater mussels

As currently planned, the project proposes to cross the West Fork River and Hackers Creek, both of which contain suitable habitat for the clubshell and snuffbox mussels. The proposed alignment for the pipeline as of this writing involves one crossing of the West Fork River and eight crossings of Hackers Creek. Dominion plans to make the crossings by open trench cutting instead of horizontal directional drilling.

According to the letter, if Dominion does the planned crossings the current population of clubshell mussels will likely be adversely affected and could potentially be extirpated.

After detailing exactly how that many crossings will adversely affect the mussels, the letter "highly recommends" that Dominion find some route other than along Hackers Creek.

## Federally listed plant species

The proposed route contains potentially suitable habitat for running buffalo clover, small whorled pogonia, and Virginia spiraea. The letter describes the habitat for each and recommends that Dominion survey for these species in potentially suitable habitat along the route. Dominion should avoid any places where it occurs.

## Bald and Golden Eagles

The letter points out that bald and golden eagles are protected under the Bald and Golden Eagle Protection Act and the Migratory Bird Treaty Act. These statutes contain broad prohibitions of any activity that would damage the eagles. The Fish and Wildlife Service does not have any data which shows an eagle nest within ten miles of the proposed pipeline route. At the same time, there are frequent sightings in the area and eagles are known to use the area for nesting, migration, and winter habitat.

Because of the known presence of eagles, the Fish and Wildlife Service recommends that Dominion perform surveys. Although the Bald and Golden

**(More on the next page)**

## Fish and Wildlife Keeps Talking (Continued from previous page)

Eagle Protection Act provides broad protections for eagles, the presence of eagles (or even the possibility that the project would damage eagles) would not automatically prevent the project going forward. It would be possible for Dominion to get a permit from the United States Department of the Interior which would allow it to damage the eagles.

The Fish and Wildlife Service wants to avoid any situation where Dominion would have to do this. The letter says, "The results of these surveys will assist us in developing recommendations to avoid and minimize, to the extent practicable, effects to bald and golden eagles. Our goal is to work with project proponents to develop measures which avoid the need for eagle permits."

### Migratory Birds

The Migratory Bird Treaty Act protects all native migratory game and non-



**Migratory bird (Cerulean Warbler) just in from South America and looking for protection**

game birds with exceptions for the control of species that cause damage to agricultural or other interests. As a practical matter, this means that it covers almost all birds. There are 836 species protected by the Act.

Unlike with eagles, there is no provision in the Migratory Bird Treaty Act for issuing permits which would allow the harming of birds covered by the Act. The letter addresses this by implicitly recognizing that protected birds will be harmed but then articulating an enforcement policy that assures Dominion that if it tries to avoid the harms it will not be prosecuted:

While it is not possible to absolve individuals or companies from MBTA or BGEPA liability, the Service's

Office of Law Enforcement focuses its resources on investigating and prosecuting those who take migratory birds without identifying and implementing reasonable and effective measures to avoid take. The Service will regard a company's coordination and communication with the Service, as appropriate means of identifying and implementing reasonable and effective measures to avoid the take of species protected under the MBTA and BGEPA."

The letter goes on to describe measures Dominion should take to minimize harm to migratory birds.

### Brook Trout

The eastern brook trout is the only native trout that inhabits the cold, clear streams of the eastern United States. Most brook trout are relegated to headwater streams that originate in the mountains and foothills where forest cover is still prevalent.

The letter recommends that Dominion identify brook trout streams, avoid them "to the maximum extent practicable" and "mitigate appropriately for any unavoidable impacts to these systems." The letter contains some specific suggestions on how Dominion might do this.

### West Virginia Northern Flying Squirrel

The West Virginia northern flying squirrel was recently delisted on March 4, 2013. ("Delisted" means it was taken off the list of protected endangered species. For the story of the squirrel's various listings and delistings, see the September, 2012, issue of *The Highlands Voice*)

As the letter points out, the Fish and Wildlife Service did not simply delist the squirrel, wish it good luck on not going extinct, and walk away. The delisting was contingent of the squirrel was contingent upon the continued implementation of Forest

Plan standards that "do not allow activities that would cause adverse impacts to the squirrel unless conducted for research or if the activity will have long-term beneficial effects." The Fish and Wildlife Service thinks that the proposed pipeline would adversely impact the squirrel by fragmenting its habitat. It recommends that Dominion avoid any habitat that is suitable for the squirrel.

### Invasive Species

The Fish and Wildlife Service is concerned that the construction will introduce invasive species into the area. Such an introduction would have adverse effects, effects which the letter lists.

The letter make several recommendations of steps Dominion could take to prevent the introduction of invasive species. These are such things as avoiding excessive disturbance and cleaning construction equipment before moving into an area.

### Conclusion

The letter ends with an overall conclusion. While most of this article has summarized and abbreviated the letter's main points, the conclusion needs to be quoted in its entirety:

*In conclusion, the current proposed alignment for the Atlantic Coast pipeline will impact multiple sensitive areas. The Service highly recommends exploring alternative alignment routes to avoid sensitive areas such as Hackers Creek and Cheat Mountain. We recommend alternative alignments further south as a more southern route may avoid many of the issues outlined in this letter. If alternatives are not feasible, Service recommends that you provide documentation detailing why avoidance is infeasible and how the proposed alignment has minimized impacts to federally listed species and sensitive habitats to the maximum extent practicable. Once an alternatives analysis has been provided and reviewed by the Service, survey plans for threatened and endangered species shall be sent to this office for concurrence prior to surveys being conducted, and a report shall follow after surveys have been completed.*

*It should be noted that the Service will only concur on a whole and complete project. It is important to note that "project" includes all project features, not just the portion of the project prompting the submittal of a permit application (e.g., FERC, WVDEP or the Corps). For example, our review of this project would include not only the pipeline, but also the roads, compressor stations, and staging areas.*

## Another suggestion for managing West Virginia forests

By Charlie Feldhake

Vegetation and animal species have evolved little, if any, in the mere 10,000 years that humans have lived in Appalachia. The habitat, however, has changed drastically. Many species have become extinct and others are on the verge. Since we have been the primary drivers of this habitat change, we have the ability to decide which threatened species survive and degree of effort justified.

The nature of long-past versus current forest disturbances differs greatly and saving some species may require searching the far distant past to understand the environment in which they evolved. No disturbance may be as detrimental as the wrong disturbance since the distant past was typically highly disturbed.

One concept that has received much attention in grazing systems research is that a vibrant, diverse system requires rapid cycling of nutrients. Allowing the wrong kind of biomass accumulation results

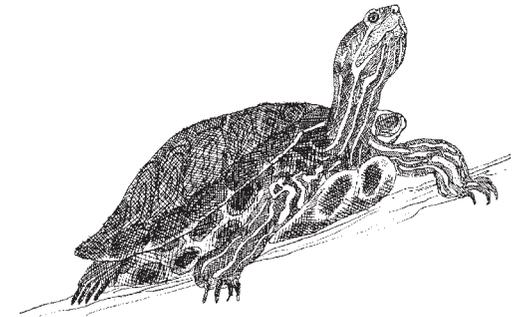
in ecosystem stagnation. Vegetation needs to be eaten, defecated, then further decomposed by insects, worms, bacteria and fungi to feed the food chain for other animals and provide nutrients for continued plant productivity.

So, how is merely protecting land from all disturbances helping to maintaining a vibrant ecosystem? It is not! Setting land aside as National Parks, National Forests, and whatever does not a healthy ecosystem make. Harmful disturbance is good to avoid but no disturbance is an equally flawed management.

When I was a little younger I used to ride my bike most days after work to the Grandview Park which is now part of the New River National River. It was a 24 mile round trip ride and kept me slimmer than I am currently. I enjoyed the majestic views but was at the same time uncomfortable. The forest was too uniform, like a 60's era shag carpet. It wasn't natural.

Since we killed off the big critters we have to do what they did. We have to cut down a few trees every little bit, chop them up and leave the biomass in place. We need to bring a herd of goats to chomp down the regrowth every year and keep the sites open. We need to put beaver back in the streams and help them by planting aspen, willows and birch along their clearings. We need to create ecosystem edges to maximize species diversity.

Yes, that would be a good sight to see from the seat of my bicycle!



**First the comments, then it's "Come on down!"**

## Should the Forest Service Authorize Surveys?

The United States Forest Service is seeking comments on whether to allow surveys on a 12.6-mile segment of the George Washington National Forest for the proposed Atlantic Coast Pipeline in Highland and Augusta counties, VA. Proposed environmental surveys include surveying wetlands, water, soil, and suitable habitat for sensitive species, including federally listed threatened and endangered plants and animals. Surveys will also record and document cultural resources and invasive species.

The Forest Service will use public comments and an environmental review to decide whether to issue a permit for the environmental and cultural resource surveys on the George Washington National Forest. Comments are being accepted through Friday, January 9, 2015.

From the tone of the press release announcing that it is seeking comments, it does not sound as if the Forest Service would seriously consider denying the survey request. It talks of how useful the information gathered in the surveys would be in making future decisions on whether to allow the pipeline.

"It is important to remember that allowing these survey activities does not mean we are allowing the construction of a pipeline," said Forest Supervisor Tom Speaks. "At this time, we are seeking comments on survey activities; additional opportunities to

comment on the specific route and construction of the proposed pipeline will be provided by the FERC in the coming months."

"The information gathered from these surveys are necessary to make future decisions on whether or not to allow the construction and operation of the proposed pipeline on the George Washington National Forest," states Forest Supervisor, Tom Speaks. "If allowed, the survey information will inform us where to avoid or reduce the impacts to sensitive resources."

Activities associated with the proposed surveys include:

- Survey crews walking the corridor. No vehicles will be used except to access the corridor using public and existing Forest Roads.
- Using hand tools to remove minor amounts of brush to navigate the route; saplings or limbs removed will be less than two inches in diameter.
- Placing biodegradable survey ribbon, flagging, survey stakes, and plastic pin flags within the corridor and removing them after all surveys are conducted.
- Removing soil with shovels to test for cultural resources. Soil will be replaced prior to leaving each sample site.
- Identification and documentation of cultural resources, sensitive species habitat, and invasive species. No flora, fauna, or cultural resources will be removed.

# Landowners Oppose Surveys in Court

By John McFerrin

Five landowners in Nelson County, Virginia, have filed suit in the United States District Court for the Western District of Virginia claiming that a Virginia statute which allows Dominion Transmission to survey on their land without their permission is unconstitutional.

For centuries, all land ownership has included the right to occupy land, the right to use land, and, in the right in question here, the right to exclude those they do not wish to come onto the land. Although landowners can—and often do—convey easements and rights of way that give up this right to exclude people, unless they have done so the right to exclude people is one of the rights that goes with land ownership.

Here, Dominion Transmission does not have an easement, right of way, or any other right that would authorize it to go on the plaintiffs' land and survey. Instead, it relies upon a Virginia statute which allows gas companies to go onto land and conduct surveys without the landowners' permission.

The plaintiffs contend that this statute is unconstitutional. They contend that their right to exclude others is a valuable property right, just as the rights to occupy land, rent the land, mine the minerals, cut the timber,

sell the land, or do anything else with the land would be. By passing this statute, Virginia has deprived them of this property right without any compensation and without any due process of law.

The statute does provide for compensation should the survey damage the property. This is a different right. Any landowner has the right to have his land be free from damage. The landowner also has the right to exclude people whether or not damage results. It is this right which

*"The poorest man may in his cottage bid defiance to all the forces of the crown. It may be frail - its roof may shake - the wind may blow through it - the storm may enter - the rain may enter - but the King of England cannot enter."*

William Pitt, the first Earl of Chatham, also known as Pitt the Elder, 1763

the plaintiffs claim the Virginia statute has taken away. Because it has taken away this valuable property right without compensation or due process of law the statute is unconstitutional.

Dominion Transmission has filed a motion to dismiss the suit; a hearing is set for February 5 at 10:30 a.m. in the federal courthouse in Harrisonburg, VA. If that

hearing does not resolve the case, then it has been set for trial in August.

This is the type of case that is often resolved by a motion to dismiss. Trials are held to resolve disputes about what the facts are. In this case, everybody would agree that Dominion wants to come on the plaintiffs' land and that it does not have their permission. There is a statute which appears to allow the entry on the land without the landowners' permission. Either the statute is unconstitutional or it isn't.

There are probably not any disputed facts which a trial would have to resolve.

In West Virginia the law is different. There is no similar statute which allows gas companies to come onto land and survey without permission. Mountaineers are always free to exclude others from their land.

West Virginia law does have the wrinkle that landowners must communicate that they wish to exclude someone. Many people do this by fences or posting. If there is no communication that a landowner is asserting this right to exclude then a stranger may come onto the land although he or she must leave if asked to.

## It's not over 'til it's over, and

## It's Not Over Yet

The controversy over the United States Environmental Protection Agency's veto of 404 Clean Water Act (CWA) permits goes on, with another appeal to another court.

### Short Version

The United States Army Corps of Engineers had originally issued to Mingo-Logan Coal a permit to fill some streams in Mingo County, WV. The EPA then vetoed that permit, concluding that it would have unacceptable water quality impacts. Mingo-Logan challenged this decision in court, arguing both that EPA did not have the authority to veto a permit and that, even if it did, it acted arbitrarily in this case.

After the United States District Court decided in Mingo-Logan's favor, the United States Court of Appeals reversed and held that the EPA did have the authority. The United States Supreme Court refused to review the case so the opinion of the Court of Appeals stands. The EPA does have the authority.

Then it was back to District Court to decide the question of whether the EPA had been arbitrary in Mingo-Logan's particular case. The District Court decided it had not.

If you want a longer version, see stories in the April, 2014, issue of *The Highlands Voice* (<http://wvhighlands.org/Voice%20PDFs/VoiceApr14.pdf>) and the August, 2014, issue. (<http://www.wvhighlands.org/Voice%20PDFs/VoiceAug14.pdf>.)

### What just happened

Mingo-Logan has appealed the decision of the District Court to the Court of Appeals. There is no information on when it will rule. The West Virginia Highlands Conservancy intends to continue to participate as amicus curiae in the case.

Although insignificant in geologic time, in human years this case has been going on a long time. It appears that we are now at a point where we can see the end, even if that end is still a ways away. Stay tuned.

# 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.]---\$17, Infant tee [18 mo.]---\$15, Toddler tee, 2T,3T,4T, 5/6---\$18
  - ▶ Soft pima cotton adult polo shirts are a handsome earthtone light brown and feature the spruce tree logo. Sizes S-XXL [Shirts run large for stated size.] \$18.50
  - ▶ Order now from the website!
- Or, 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

## 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 \$15 by mail; **long sleeve** is \$18. 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 ♥ 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 \$15 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