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Long Awaited “Stream Protection Rule” Becomes “Final”

By John McFerrin

The Office of Surface Mining has released regulations which make final the long anticipated, long litigated, long commented upon “Stream Protection Rule.” According to the official press release, the new rule “updates 33-year old regulations and establishes clear requirements for responsible surface coal mining that will protect 6,000 miles of streams and 52,000 acres of forests over the next two decades, preserving community health and economic opportunities while meeting the nation’s energy needs.”

The Highlands Conservancy has always been ambivalent about the new Stream Protection Rule. On the one hand, the new Rule eliminates what was known as the Stream Buffer Zone rule. This rule, which has been in effect since 1983, prohibits mining within one hundred feet of streams.

A sensible interpretation of the 1983 version of the rule would dramatically restrict mountaintop removal mining. A truism of the kind of large scale mountaintop removal mining that is practiced today is that the blown off top of the mountain has to go somewhere. That is almost always in a valley which almost always contains a stream. If mining within one

hundred feet of the stream is prohibited and filling is part of the mining, then the 1983 Buffer Zone Rule would effectively prohibit most mountaintop removal mining.

This was the interpretation given the old rule by Judge Haden in his 1999 ruling that effectively banned mountaintop removal mining. Judge Haden’s ruling was reversed on procedural grounds but there was no ruling the merits. The Court of Appeals said that he followed the wrong procedure, not that he misread the rule. While the ruling was never binding because of the procedural error, his reading of the rule was available as guidance.

The new Stream Protection Rule does away with the Stream Buffer Zone. The rule itself as well as the discussion of the rule make it clear that the federal Office of Surface Mining believes that it is acceptable under the federal Surface Coal

Mining and Reclamation Act to mine through streams, fill streams, etc.

The Office of Surface Mining can say with a straight face that this is a Stream Protection Rule because of what is now supposed



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Ramblin' the Ridges

By Cynthia D. Ellis

History 101

Fifty years!!! Our group has been active for fifty years!

Dam! We began with a dam...well, with more than one...and with several issues other than proposed changes on waterways in the mountain state.

Our story begins with the fact that the West Virginia Highlands Conservancy was organized in 1967. Those of us not privileged to be around for those early days must rely upon other sources to learn our history. So, it is with immense gratitude that we dip into our own book, "Fighting to Protect the Highlands: The First Forty Years of the West Virginia Highlands Conservancy," and we offer our sincerest thanks again to Dave Elkinton for writing the book.

Dave reminded us of the political and sociological climate of past times; of the nineteen sixties. He noted the dual forces of youthful activism and environmentalism that were thriving then. He also pointed out that our organization has always been a collective effort. We didn't have one founder; we had many. As awareness of problems regarding natural locations in the West Virginia highlands areas arose, some folks wanted to enact more protections and ensure more preservation measures. These included, from the WV Department of Natural Resources, Joe Rieffenberger and Lou Greathouse, and Don Gasper and Lee Maynard. Joe Cutler, of WVU, and Rupert Cutler of the Wilderness Society had action in mind too. Cutler said, "The need for a West Virginia Highlands Coalition evolved almost spontaneously in the minds of us all."

We were born of a notion that the Highlands region of West Virginia was a

treasure, in both headwaters capacity and in and of itself. Our founders worried about unchecked development, badly planned highways, clear-cutting of timber, and strip-mining. Some pointed to a proposed dam at Petersburg---the Royal Glen---and to the valley that would be flooded. Some of our early volunteers led "show-me" tours to jeopardized areas. They lobbied politicians and agency heads. They matched concern with action.

We were born at Yokum's Motel at Mouth of Seneca...because we had heard of plans for a scenic highway across Dolly Sods. At least that's where several of these originators gathered to bring focus to their burgeoning ideas for protection.

We officially got our organizational start at a meeting at Blackwater Falls on January 21, 1967...a few years after earlier gatherings and conversations. We fixed upon the special nature of the Highlands as our focus, recognized the importance of coalition efforts, and agreed upon our mission. We also stressed that we wanted to be an active voice for protection and preservation.

This is a streamlined version of our initial efforts, of course. But, as in 2017, one push in 1967 was for a celebratory Fall Review.

Our earliest review in October 1965, was an outdoor meeting, where, under a tent in the rain, at Spruce Knob, 350 to 400 people met. Barbequed chicken was enjoyed and featured speakers were Senator Robert C. Byrd and Stewart Udall, Secretary of the Interior!

Our next was held at Shot Cherry Cabin, near Spruce Knob Lake, and our first review under our "real" name was held at Mouth of Seneca. As we were completing our organizational tasks, we listed these partners in our coalition:

Audubon Society of Western Pennsylvania, Brooks Bird Club, Canoe Cruisers of Washington, Explorers Club of Pittsburgh, Tucker County Chapter of the Izaak Walton League, Kanawha Trail Club, Nittany and Pittsburgh Grottoes of the National Speleological Society, West Virginia Chapter of the Nature Conservancy, Pittsburgh Climbers, Potomac Appalachian Trail Club, West Virginia Recreational Society, Atlantic Chapter of the Sierra Club, West Virginia Garden Club, West Virginia Wild Water Association, and The Wilderness Society.

What do you want to hear about next? The proposed Rowlesburg Dam on the Cheat River? The first issue of "The Highlands Voice"? The proposed Davis



Shot Cherry Cabin

Power Project, which would have flooded Canaan Valley? Perhaps there's not time and space to write about all...but our 40 Year history book awaits anyone who wants to learn more. There's a copy in every library in the state.

In this anniversary year, we may look to the future and try to think what comes next. Certainly, we will look back. Here's what another president, Linda Cooper Elkinton, wrote in 1977---

"As a result of the hard work of many faithful and dedicated members and in light of our many successes, we have earned the right to blow our own horn now and then. We need to do it more. There are many people who, if they knew about the Conservancy, would want to join...Blow our horn whenever you get a chance and keep helping the Conservancy protect our beautiful West Virginia highlands!"



Stream Protection Rule (Continued from p. 1)

to happen after mining. The proposed rule adds a new emphasis on restoring the stream after mining is over, including taking extra care in the areas within one hundred feet of the stream.

The Conservancy's ambivalence is reflected in its comments on the new Stream Protection Rule. Those comments supported several features of the Rule which we believed would represent progress in requiring mining companies to limit the damage of their operations. At the same time, the comments criticized the basic assumption of the Stream Protection Rule:

The 1983 rule, with limited exceptions, took the simplest, most straightforward, and most effective step to protect streams: it prohibited mining in and near streams. While often not adequately enforced, it recognized the reality that mining or near streams will inevitably have deleterious effects upon those streams.

The proposed rule presents the odd juxtaposition of praising the effectiveness of buffer zones as tools of stream protection while effectively eliminating the buffer zone.

The rule attempts to soften this blow to real stream protection by including requirements that, after streams are destroyed by mining, they be restored. The proposed "stream protection" rule goes from a rule that really protects streams by keeping mining away from them to one that allows them to be destroyed.

The premise of a rule that allows streams to be destroyed is that they will be restored. This is not true. A drainage ditch is not a stream. Streams, including headwater streams, have multiple biological functions. There is no scientific evidence that a stream, once destroyed, can be recreated. Even were it theoretically possible, there is little indication that the mining industry will actually do it or that our current assortment of regulatory agencies will require it to do it.

For more details on the rule and its history (including what is good about the rule), see the August and November, 2015, issues of *The Highlands Voice*. Both are accessible at www.wvhighlands.org/2016/02/02/2015/.

Of course, history is always being written. Since those summaries there have been more public comments, more negotiations, more of everything. One apparent result of the negotiations was that the proposed regulations were changed. The final regulation does less to protect streams from longwall mining than did the originally proposed Stream Protection Rule.

The new Rule is only "final" in that, if nothing happens, it will become the law of the land. With a Rule as controversial as this one, something always happens. The new Rule—over fifteen years in the making—may have the lifespan of an adult Mayfly (order Ephemeroptera). There is a statute called the Congressional Review Act which allows Congress to review and strike down agency regulations. Congressional Republicans are already lying in wait, planning to strike down the new Stream Protection Rule using this Act. If this happens, the 1983 Stream Buffer Zone rule would once again be the law. This would leave the West Virginia Highlands Conservancy in another uncertain position. We would lose the beneficial parts of the new Stream Protection Rule but we would also regain the powerful—if unenforced—Stream Buffer Zone rule.

United States Fish and Wildlife Service Finalizes 30-Year Eagle Kill Rule

Thousands of protected Bald and Golden Eagles are now threatened by the Industrial Wind Energy Industry and the small eastern population of Golden Eagles is at serious risk under the new rules for businesses and facilities that unintentionally kill eagles which take effect January 15, 2017.

In its explanation of the new rule, USFWS asserts that wind energy and other industries could cumulatively kill up to 4,200 Bald Eagles and 2,000 Golden Eagles every year without reducing their populations. These numbers represent a substantial potential increase in eagle take quotas from those allowed under the previous rule. The agency concluded that there is a population of roughly 40,000 golden eagles and 140,000 Bald Eagles in the United States. USFWS itself recognizes that Golden Eagle populations in the U.S. may be declining and that the species does not have the capacity to tolerate any additional, unmitigated mortality.

"While we are pleased with some aspects of the new rule, including increased transparency and independence of eagle kill data, we still have some serious concerns," said Dr. Michael

Hutchins, Director of American Bird Conservancy's Bird-Smart Wind Energy Campaign. "The most prominent of these are the fate of the small eastern Golden Eagle population, which consists of only a few hundred individuals, and the lack of public involvement in the 5-year 'internal' reviews of the 30-year take permits."

The National Audubon Society was also disappointed. "As an organization we think a 30-year term is unreasonable, especially when we're still learning about the impacts of wind and other technology on wildlife," said Sarah Greenberger, vice president for conservation.

The primary beneficiary of the Eagle Take Rule is the industrial wind energy industry, not our nation's Bald and Golden Eagles, other native birds, and other ecologically important species such as bats.

See the article in the June 2016 Voice for further information concerning the Rule and watch for future articles as the details of the Rule develop.

Remembering Ken Hechler's Conservation Legacy

By Allen Johnson

I'm always fond of quoting the Preamble to the Constitution of the United States. "We the people" -- not we the corporations, nor we the polluters, but "We the people,"-- "in order to form a more perfect union, establish Justice..." -- that's the inspiration that the framers of our Constitution were talking about. When Lincoln, in his Gettysburg address, talked about a government of the people, by the people, and for the people, it really articulated the best statement of how government ought to be run and how every politician ought to have as his moral compass set to just that one word: justice. [Ken Hechler, from an interview with the Earthjustice series on Mountain Heroes, 2012]

The passing of Ken Hechler December 10, 2016 at age 102 marks an expansive and unparalleled legacy of honorable public service. Those blessed to know Ken Hechler as a friend, colleague, or even as an adversary respected him for his indomitable integrity and perseverance in pursuit of justice. The world is immeasurably better because of Ken Hechler.

Hechler's resumé is exceptional—Ph.D. in History and Government from Columbia; teaching at Columbia, Princeton, Barnard, and Marshall; combat historian in World War II, including the rank of Major; interrogator of Nazi war criminals in preparation for the Nuremberg Trials; compiler of the thirteen-volume set, Public Papers and Addresses of FDR; special assistant to President Harry Truman (1949-53); Congressman for nine-terms representing West Virginia's 4th District (1959-1977); Secretary of State for West Virginia (1985-2001); author of numerous books.

Ken Hechler had an unflinching and uncompromising passion for justice coupled with sharp intellect and winsome interpersonal skills. He literally "walked his talk." Hechler was the only congressman who walked alongside Martin Luther King, Jr. at Selma, even knowing it might cost him at election time. In 1999 at age 84, Hechler walked 530 miles alongside Doris (Granny D) Haddock on her cross-country trek across the United States advocating campaign finance reform.

During that same time frame Hechler kicked off the "Walk for the Mountains—a 490 mile walk by Larry Gibson, Mitchell Stanley, and Julian Martin across West Virginia—to raise awareness of mountaintop removal mining. That same year during a march to protest the issuance of a mountaintop removal permit on historic Blair Mountain, Hechler and companions were pelted with debris, shoved, and kicked. And at age 94, Hechler was arrested in a nonviolent direct action "sit-down walk" in objection to health-impairing Massey coal operations directly adjacent to the Marsh Fork Elementary School in Sundial, West Virginia.

As a Congressman representing a coal economy district, Hechler championed coal miner safety. Pushing through the Coal Mine Safety and Health Act of 1969 was one of his two proudest legislative accomplishments. Voting for the Wilderness Act in 1964 was the other.

Niel M. Johnson interviewed Hechler for the Truman Library in 1985.

I guess in Congress I was most active on three issues; coal mine safety, coal mine health in terms of setting a level above which the dust in coal mines would not be allowed to go, and black lung compensation. I also was active on a lot of environmental issues like saving a number of irreplaceable recreation and priceless areas throughout the state that

needed protection, such as saving the New River from being dammed up by the Appalachian Power Company. There were issues of that nature that I fought pretty hard on, and was generally successful on.

In his interview for the Mountain Heroes series [Earthjustice], Hechler describes his early attempts to abolish strip-mining.

In the 1960s, I was very inspired by a book by Harry Caudill called Night comes to the Cumberlands. It told of the damages done to

Eastern Kentucky by strip mining. I became very interested in what I could do to end this devastating practice. So I introduced a bill in the house to abolish strip mining. Within 18 months I had over 100 co-sponsors to that bill, and I also lobbied environmental organizations all over the nation and told them to join me in putting pressure on Congress to hold hearings over my bill.

Obviously, the coal industry did not cotton to Congressman Hechler's legislative efforts to safeguard health, safety, and the environment. Hechler faced obstruction at every step. In his interview for the Truman Library, Hechler explained why he thought he kept being reelected.

I guess some of that was due to the fact I put on a pretty vigorous campaign among young people. I had a program called "Week in Washington" where I'd bring about 50 students between their junior and senior year in high



(More on the next page)

Remembering Ken Hechler (Continued from p. 4)

school to work for a week in my Washington office. I raised the money on that from various corporate contributions that were administered by The American Political Science Association.

In addition to that I worked awfully hard on constituent contacts— working through the schools, colleges and universities. I had a really super staff that had a rule of answering every piece of mail the same day it was received. We had a very alert and responsive operation so far as constituent complaints were concerned...Well, if you do your job on other things; to most people that's more important. If you answer your mail directly and they believe that you're honest in your beliefs, why, this is usually accepted even if they disagree with you. Of course, a lot of the younger people would tell me, particularly after the first campaign, that their parents disagreed with everything I stood for, but when the youngsters insisted that their parents vote for me, why, they couldn't resist.

A listing of Hechler's prodigious support for environmental quality and protection includes the following: In 1969 he called for a state wide ban on coal mining of any kind in the Monongahela National Forest. In 1972 he introduced bill in Congress to ban all surface mining and ban coal mining in wilderness areas. In the spring of 1970, Mr. Hechler introduced a bill in Congress to designate as wilderness Otter Creek, the Cranberry Backcountry, and Dolly Sods.

In 1972 he opposed the Rowlesburg dam on Cheat River. At the time he said, "This project threatens to flood a large, productive section of Tucker County and ruin the beautiful Cheat River—one of the few remaining wild rivers in the eastern United States." In 1973 he presented testimony to the United States House of Representatives in favor of including Shavers Fork in the Wild and Scenic River System. Hechler only reluctantly supported the passage of the federal Surface Mining Control and Reclamation Act in 1977, much preferring to permanently ban strip mining altogether. [Information gleaned from *Fighting to Protect the Highlands: The First Forty Years of the West Virginia Highlands Conservancy* by Dave Elkinton.]

As West Virginia Secretary of State, Hechler would set up his desk in the hallway outside his office with a stack of papers, yet always ready to greet and help any passersby. With only a fifth grade education and no public advocacy experience, Larry Gibson was stumped on how to fight against mountaintop removal on his ancestral lands on Kayford Mountain. That is, until he ran into Ken Hechler who taught Gibson how to be an engaged citizen who clarifies an issue, organizes others, and brings a case into the political arena.

Larry Gibson becoming a passionate, courageous, charismatic "Keeper of the Mountains" inspired Ken Hechler— then in his 80's as West Virginia Secretary of State— to get out on the streets as a citizen activist. When in his mid-90's Hechler gave up driving, he gave his emblematic red jeep to Gibson. Ken Hechler with his extraordinary education and political career and Larry Gibson with his limited education and custodian career were a formidable pair.

Just shy of his 99th birthday, Ken Hechler, until then a bachelor, married his long-time friend, Carol Kitzmiller, and moved

to Hampshire County, West Virginia. Those who visited the Hechler household during the following 40 months attest to the couple's loving relationship and hospitality to visitors. Although weakening in body, Ken Hechler's keen mind, sly humor, and joy being with friends remained throughout.

John McFerrin lauds Hechler in a September 2010 *Highlands Voice* article.

The Highlands Conservancy has honored Mr. Hechler in a couple of ways. First, we made him a lifetime member. We have done this fewer than five times in our history and only for those who have rendered exemplary service to the Conservancy.

The second honor is more subtle. Although nobody planned it this way, Highlands Voice articles railing about do nothing politicians often contain the phrase "with the notable exception of Ken Hechler."

The legacy of Ken Hechler will continue for generations to come through those he served and inspired to work for justice for the land and people.

Calendar of Events:

Sunday, January 22, 2017: WVHC Quarterly Board Meeting, 9:30 am, Tenth floor, City Center East, 4700 MacCorkle Ave SE, Charleston, WV. Open to all members. Want to be more active with us? Attend a board meeting. Contact President Cindy Ellis, cdellis@wildblue.net

Wednesday, February 8: First Day of WV Legislature, all day, at the State Capitol, Charleston. Here is a link to the legislative calendar on the WV Legislative webpage, http://www.legis.state.wv.us/Bulletin_Board/calendar_2017.cfm

Monday, February 27: E Day, many environmental organizations will have an exhibit in the rotunda at the WV State Capitol in Charleston. Open to the public.

Monday, February 27: WV Environmental Council Awards Dinner, 6:00 pm, Women's Club, Charleston. Last year WVHC President Cindy Ellis was honored. Who will be honored this year?

Friday-Sunday, September 15-17: WVHC Highlands Conservancy 50th Anniversary Celebration and Conference, at Canaan Valley Resort State Park. Lodging or camping options are available. Save the Dates. More info will come.

Pocahontas Land Corporation

Accountable for Water Pollution

By Cindy Rank

In December 2016 Pocahontas Land Corporation agreed to apply for a Clean Water Act permit for ongoing water pollution from a former White Flame mountaintop removal mine in Mingo County.

The action comes after citizen monitoring revealed that valley fills at the mine site continue to discharge selenium and conductivity at levels harmful to aquatic life despite the fact that the regulatory agency had earlier released all permits pertaining to the mine.

A lawsuit was filed in November 2015 by attorneys with Appalachian Mountain Advocates representing plaintiffs West Virginia Highlands Conservancy, Ohio Valley Environmental Coalition and Sierra Club of West Virginia. For more detail about the fillling and the claims made, see the December, 2015, issue of *The Highlands Voice*. <https://www.wvhighlands.org/2016/02/02/2015/>. This led to the settlement agreement whereby Pocahontas Land will apply for an NPDES water pollution discharge elimination permit. The permit will set limits on how much pollution may come from the mine area.

Vigilance will still be needed to ensure compliance with the permit, but at least this is another step in addressing ongoing pollution from big strip mines and valley fills where WV Department of Environmental Protection has released permits.

Why WVDEP released this and other similar permits while the mine sites were still polluting our streams is beyond comprehension.

Better by far would be that permits likely to result in pollution not be granted in the first place, but once granted, the state is wrong to release the permits and return the bond money to the companies when pollution continues to harm nearby streams.

The number of mountaintop removal mines throughout West Virginia and Appalachia may have declined over the past couple of years but the legacy of water pollution from many of these mines threatens to continue far into the future.

Much like acid mine drainage that harms thousands of miles of streams near old mine sites, selenium and conductivity pollution promise to be gifts that keep on giving.

The programmatic prevention of such pollution by stronger more forward looking permitting by WV DEP is long overdue.

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.

Roster of Officers, Board Members and Committee Chairs, and Board of Directors

PRESIDENT: Cynthia D. Ellis, 3114 Steel Ridge Road, Red House, WV 25168, (304) 586-4135, cdellis@wildblue.net
SENIOR VICE PRESIDENT: Larry Thomas, P.O. Box 194, Circleville, WV 26804, (304) 567-2602, larryvthomas@aol.com
VICE PRESIDENT FOR FEDERAL AFFAIRS: Marilyn Shoenfeld, 167 Balsam Way, Davis, WV 26260, (304) 866-3484, marilyn.shoenfeld@gmail.com
VICE PRESIDENT FOR STATE AFFAIRS: Frank Young, 33 Carnian Ford Road, Ripley, WV 25271, (304)372-3945, fyoung@mountain.net
SECRETARY: John McFerrin, 202 Van Tassel Court, Morgantown, WV 26508, (304) 291-8305, johnmcferrin@aol.com
TREASURER: Bob Marshall, 2108 Emma Road, Kenna, WV 25248, (304)545-6817, woodhavenwva@aim.com
PAST PRESIDENT: Hugh Rogers, 531 Moon Run Road, Kerens, WV 26276, (304)636-2662, hugh.rogers@gmail.com

DIRECTORS-AT-LARGE (Terms expire October 2018)
George E. Beetham Jr., 2819 Mt. Carmel Avenue, Glenside, PA 19038, (267) 252-3748, geobeet@hotmail.com
Jackie Burns jackie.burns@frontier.com.
Bill McNeel, 1234 Jericho Road, Marlinton, WV 24954, (304) 799-4369, wpmcneel@gmail.com
John Terry, 907 Grasslick Run, Montrose, WV 26283; farmerstwo@msn.com; (304) 637-3020
Randy Kesling, 116 Farm Meadow Drive, Bridgeport, WV 26330; (304) 622-5982; rkesling@MA.RR.com

DIRECTORS-AT-LARGE (Terms expire October 2017)
Adam Casseday, 212 Davis and Elkins St, Elkins, WV 26241, 304-636-4944, dr_casseday@yahoo.com
George Hack; 510 HANNA RD; Bel Air, MD 21014; 443 742-0463 george.hack@db.com
LeJay Graffious, P.O. Box 69, Bruceton Mills, WV 26525, lejay@oldhemlock.org
Rick Webb, 481 Ravens Run Road, Monterey, VA 24465, (540) 468-2881, rwebb@virginia.edu
Mike Withers, Rt 2, Box 328, Grafton WV 26354, 304-265-3750, 1nastynash@comcast.net

ORGANIZATIONAL DIRECTORS
NATIONAL SPELEOLOGICAL SOCIETY: Vacant
PITTSBURGH CLIMBERS: Buff Rodman, 32 Crystal Drive, Oakmont, PA 15139, (412) 828-8983, buffrodman@hotmail.com
BROOKS BIRD CLUB: Cynthia D. Ellis, 3114 Steel Ridge Road, Red House, WV 25168, (304) 586-4135, cdellis@wildblue.net
MOUNTAINEER CHAPTER TROUT UNLIMITED: Chris Byrd, 292 Magnolia Avenue, Clarksburg, WV 26301, (304) 622-3023, cbyrd@ma.rr.com
WEST VIRGINIA RIVERS COALITION: Don Garvin, P.O. Box 666, Buckhannon, WV 26201, (304) 395-0078, DSGJR@aol.com
FRIENDS OF THE LITTLE KANAWHA: Cindy Rank, 4401 Eden Road, Rock Cave , WV 26234, (304) 924-5802, clrank2@gmail.com
TEAM (Taylor Environmental Advocacy Membership): Beth Baldwin, 222 Westwood Ave Bridgeport , WV 26330; elbrn6e21@msn.com
ALLEGHENY HIGHLANDS ALLIANCE: Dr. Wayne C. Spiggle, 3987 Knobley Road, Keyser, WV 26762, 304-726-4868, wspiggle@mac.com
SHAVERS FORK COALITION: Jim Van Gundy, 210 Buffalo Street, Elkins, WV 26241, (304) 636-4736, jjvg01@gmail.com

COMMITTEE CHAIRS
EXTRACTIVE INDUSTRIES COMMITTEE: Cindy Rank, 4401 Eden Road, Rock Cave, WV 26234, (304) 924-5802, clrank2@gmail.com
PUBLIC LANDS MANAGEMENT COMMITTEE: Marilyn Shoenfeld, 167 Balsam Way, Davis, WV 26260, (304) 866-3484, marilyn.shoenfeld@gmail.com
WIND ENERGY COMMITTEE: Peter Shoenfeld, 167 Balsam Way, Davis WV 26260, (304)866-3484, pshoenfeld@gmail.com
LEGISLATIVE COMMITTEE: Frank Young, 33 Carnian Ford Road, Ripley, WV 25271, (304) 372-3945, fyoung@mountain.net
ENDOWMENT FUND COMMITTEE: Larry Thomas, P.O. Box 194, Circleville, WV 26804, (304) 567-2602, larryvthomas@aol.com

RIVERS COMMITTEE: Vacant
HIGHWAYS COMMITTEE: Hugh Rogers, 531 Moon Run Road, Kerens, WV 26276, (304) 636-2662, hugh.rogers@gmail.com

MISCELLANEOUS OFFICES
WEB PAGE – DIGITAL PUBLISHING: Dan Radmacher, (540) 798-6683, dan.radmacher@writingleft.com

ADMINISTRATIVE OFFICES
MEMBERSHIP SECRETARY: Beth Little, 214 Black Gum Lane, Hillsboro, WV 24946, (304) 653-4277, blittle@citynet.net
HIGHLANDS VOICE EDITOR: John McFerrin, 202 Van Tassel Court, Morgantown, WV 26508, (304) 291-8305, johnmcferrin@aol.com

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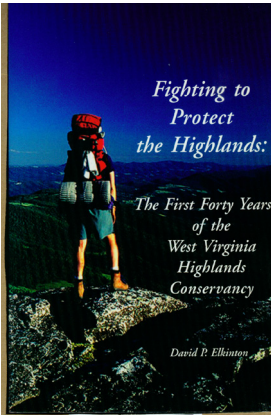
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Working to Keep West Virginia Wild and Wonderful

You may also join on-line at 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, where payment is accepted by credit card and PayPal. Or write: WVHC, PO Box 306, Charleston, WV 25321. Proceeds support the Conservancy's ongoing environmental projects.

SUCH A DEAL!
Book Premium With Membership

Although *Fighting to Protect the Highlands, the First 40 Years of the West Virginia Highlands Conservancy* normally sells for \$15.95 plus \$3.00 postage. We are offering it as a premium to new members. New members receive it free with membership.

Existing members may have one for \$10.00. Anyone who adds \$10 to the membership dues listed on the How to Join membership or on the renewal form will receive the history book. Just note on the membership form that you wish to take advantage of this offer.

Tell a Friend!

If you have a friend you would like to invite to join the West Virginia Highlands Conservancy just fill out this form and send it to West Virginia Highlands Conservancy, Box 306, Charleston, WV 25321.

Person you wish to refer: _____

Address: _____

Email _____

Your name: _____

Filling out the form, etc. is, of course, the old school way of doing things. If you prefer, just email the information to Beth Little at blittle@citynet.net.

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.

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.

Pipeline after Pipeline

By Cindy Rank

Mere days after the end of comment period for the Draft Environmental Impact Statement (DEIS) for the Mountain Valley pipeline, the Federal Energy Regulatory Commission (FERC) has just released the DEIS for the Atlantic Coast Pipeline (including the Supply Header Project and Capacity Lease Proposal) and comment period for Atlantic Coast Pipeline begins now and ends **April 6, 2017**.

FERC has published the following link for accessing the DEIS for the Atlantic Coast Pipeline [FERC docket CP15-554]:

<https://www.ferc.gov/industries/gas/enviro/eis/2016/12-30-16-DEIS.asp/>

West Virginia Highlands Conservancy works with and is represented along with many other groups in comments submitted about the Mountain Valley Pipeline. We will again join in commenting on the Atlantic Coast Pipeline (ACP).

For starters here is the first response to the FERC notice about the ACP DEIS from state and regional groups who have submitted extensive documentation and studies and information throughout the review process these past many months.

#####

America's next big pipeline fight is emerging in the mountain towns and farming communities of West Virginia, Virginia and North Carolina. With federal regulators poised to rubber-stamp the proposed fracked-gas Atlantic Coast Pipeline, landowners, community leaders and their allies are taking inspiration from the water protectors at Standing Rock and vowing to stand together to stop it.

Community and Conservation Groups Blast FERC Findings on Fracked-Gas Atlantic Coast Pipeline

Dozens of local groups and public advocacy organizations today condemned federal regulators for ignoring evidence that the proposed 600-mile Atlantic Coast Pipeline is not needed and puts lives, communities, drinking water supplies, private property, publicly owned natural resources and the climate at unacceptable risk.

The Federal Energy Regulatory Commission has released its [draft environmental review](#) of the \$5 billion pipeline spearheaded by Dominion Resources. For two years, the proposal has sparked fierce opposition from hundreds of landowners in the three states — including farmers, business leaders, Native American tribes and rural African-American communities — who reject the company's plan to take their land without their consent. Their fight has drawn comparisons to the ongoing citizen-led resistance at Standing Rock against the Dakota Access Pipeline, and to the fight in Nebraska to stop the Keystone XL Pipeline.

The Atlantic Coast project would pump fracked gas across West Virginia, Virginia and North Carolina, harming communities, water resources, private property, historic sites, and iconic public treasures including the Blue Ridge Parkway and Appalachian Trail.

The groups say FERC failed to honestly assess these impacts and disregarded evidence that the project would lock consumer into decades more reliance on dirty fossil fuels.

An independent [study](#) shows there is enough existing gas supply in Virginia and the Carolinas to meet consumer demand through 2030 -- negating the need for the massive pipeline and the harm it would trigger. The Atlantic Coast Pipeline is one of six major pipelines proposed for the same region of West Virginia and Virginia, where experts warn the gas industry is [overbuilding](#) pipeline infrastructure. However, FERC ignored this evidence in its draft Environmental Impact Statement while also failing to assess the cumulative effects of the pipelines. The groups also fault the agency for dismissing clean energy alternatives.

In response to requests from numerous elected officials and organizations, FERC has extended the usual 45-day period for public comments; the deadline is April 6, 2017.

While legal and environmental experts are continuing to review the document, they have initially identified major gaps in FERC's analysis, including:

- The core issue of whether the massive project is needed to meet electricity demand, and whether alternatives including energy efficiency, solar and wind would be more environmentally responsible sources;
- A complete analysis of the cumulative, life-cycle climate pollution that would result from the pipeline;
- A full accounting of the negative economic consequences to communities, including decreased property values, loss of tourism revenue and other factors;
- Any accounting of other environmental and human health damage from the increased gas fracking in West Virginia that would supply the pipeline; and
- Thorough, site-specific analysis of damage to water quality and natural resources throughout the pipeline route.

Citizens along the route of the Atlantic Coast Pipeline — along with landowners in the path of the Mountain Valley Pipeline, a 301-mile fracked-gas project proposed in the same region — vow they will continue to build resistance to stop them.

Highlights of major impacts of the Atlantic Coast Pipeline and the related Supply

Header Project (SHP):

- Cross 1,989 waterbodies, including 851 perennial, 779 intermittent, 248 ephemeral, 64 canals/ditches, 21 major water bodies, and 47 open water ponds/reservoirs (some waterbodies are crossed more than once)
- In West Virginia, 73 percent of the mainline route would cross areas susceptible to landslides; almost 12 miles cross slopes greater than 35 percent
- In Virginia, approximately 28 percent of the mainline route would cross landslide areas; 12.5 miles cross slopes greater than 35 percent.
- 71 miles of vulnerable karst terrain would be crossed

(A bit more on the next page)

Restrictions on Nuisance Law Coming Again?

By John McFerrin

Since the memory of man runneth not to the contrary (old fashioned, lawyerly way of saying “longer than anyone can remember”), the use of land was controlled by nuisance law. It was the tool that landowners had to protect themselves from offensive uses of land by nearby landowners. Although most people would consider a “nuisance” to be mosquitoes, telemarketers, lawyers, or the like, in the eyes of the law a “nuisance” is a use of land that interferes with someone else’s use and enjoyment of their land.

It is what is called a common law cause of action. It does not depend upon any statute, regulation, or government agency. If one landowner is using land in a way that interferes with another’s use and enjoyment of land, that is a nuisance. Historically it developed as conflicts arose over the use of land, judges resolved those conflicts, and a body of precedent grew up. A “nuisance” was not any specific land use; it was whatever a judge and jury believed was interfering with another landowner’s use and enjoyment of his or her land.

Nuisance law existed long before there were any zoning laws, regulatory statutes, government agencies, or any of the relatively recent tools for protecting landowners. Nuisance law can overlap the protections that are found in regulations since something which is prohibited by statute or regulation often is a nuisance. For the most part, however, a nuisance action exists whether or not there is a statute or regulation. As a practical matter, it protects people in the multiple situations where the state won’t do anything but a jury will.

The 2016 West Virginia Legislature sought to change this by pretty much doing away with nuisance law. That attempt failed last

year but since bad ideas have a way of reappearing, it will probably be back this year.

Last year’s attempt would have taken away that right to sue for nuisance unless the perpetrator had broken a law, violated a permit, etc. This would have left landowners with no protection from things like dust, noise, traffic, etc. that accompany, for example, gas drilling operations. These things are routinely present at oil and gas sites but the statutes and regulations covering them are limited if they exist at all. So long as the law of nuisance exists, landowners can get relief when there are offensive things that are not specifically prohibited by regulations. It also gives people some place to go when the state won’t do anything.

The oil and gas industry would be the most obvious and immediate beneficiary of any attempt to limit the right to sue on a nuisance claim. It kicks up dust, is noisy, smells, and does a host of things that can make its neighbors miserable. The regulations that prohibit these things are limited or non-existent. If landowners can only sue when a regulation has been violated they are left with no remedy in many situations.

Another beneficiary would be the industrial wind industry. There is ample evidence that industrial scale windmills can cause health problems. See *The Highland Voice*, August, 2016. There is little to control how far away they have to be from homes. If landowners can’t sue to prohibit a nuisance they are virtually defenseless.

Even if the oil and gas industry is the most obvious beneficiary of limits on nuisance lawsuits, the statute what was proposed last year would eliminate the rights of anyone living near any offensive land use.

Pipelines and More Pipelines

(Continued from previous page)

- Crosses 15.9 miles of the George Washington National Forest in Virginia, and 5.1 miles of the Monongahela National Forest in West Virginia.
- 12,030 acres affected by construction, of which 5,976 acres permanently affected by operation.
- 786 wetland acres temporarily affected, of which 248 acres would be permanently affected by operation
- Five federally listed species impacted (Indiana bat, Northern long-eared bat, Roanoke logperch, running buffalo clover, and Madison Cave isopod)
- 76 homes within 100 feet of pipeline.
- 66 new access roads built during construction.

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. 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.

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 or by real, honest to goodness, mentioned in the United States Constitution mail to WV Highlands Conservancy, PO Box 306, Charleston, WV 25321.

What Landowners Should Know If Gas Company Comes Calling

By John Barrett

A group of landowners in West Virginia and Virginia are about to be put through an ordeal that will have long-lasting consequences for them. As proposals for three major natural gas pipelines solidify and go through the regulatory process, pipeline companies have already begun working to assemble and purchase easements along the pipeline routes.

To secure the privilege of running their pipelines across private lands, the pipeline companies are offering landowners money in exchange for easements.

What is an easement? Essentially, it is a contract that limits the use of your land and gives rights to that land to the pipeline company. The pipeline company becomes a partner in your land; it ties you to them.

Suddenly, many of the things you want to do with your land — develop your land, sell lots, drill a well, put in roads crossing the easement, put up a fence — requires a negotiation and approval of your new partner.

Contrary to what some people believe, the pipeline company's offer is not a windfall, and without a full understanding of what the easement is worth and how it will affect their rights to use their own land in the future, landowners will almost certainly give up more than they receive.

Landowners do not have to accept the company's initial offer, even if company representatives start talking about eminent domain. None of the pipeline companies have been granted the right to use eminent domain — and it's possible they never will. But even if they are, landowners don't give up their right to negotiate.

Landowners shouldn't be afraid to hold out. The initial offers are almost never the best offer you can get.

Every landowner's situation is going to be different going into these negotiations. Every landowner's goal will be different. But the pipeline companies' goals are clear: They want to assemble the necessary rights-of-way at the least expense with the most flexibility.

The pipeline companies will employ knowledgeable and experienced attorneys and other negotiators to get what they want. Landowners need to ensure they negotiate as broad of a scope of use for their own

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property as possible.

There are a multitude of issues landowners need to consider when negotiating an easement with a pipeline company. The language of the easement document is critical. How the document is drafted can determine whether it protects a landowner's rights or erodes them.

For instance, a well-drafted "hold-harmless" provision will protect a landowner from liability in the case of an accident or damage caused by the pipeline construction or operation, but a poorly worded release could prevent the landowner from receiving compensation from the pipeline company for an accident that damages the property.

The pipeline company doesn't want the landowner to sue for damage to trees after the easement has been granted — but if a release is vaguely worded it could indemnify the company for damage beyond the easement.

Say a careless surveyor tosses a cigarette and starts a brush fire (which

has happened). A poorly written easement could make it difficult to get the pipeline company to pay for that damage — or even the much worse potential damage from a pipeline rupture or explosion.

The easement will also determine whether a pipeline company has a right to place above-ground fixtures. Some of these fixtures could be unobtrusive, such as warning signs. Others could be large fixtures surrounded by huge fences. What's allowed is determined by the language of the easement.

Other considerations include what rights of access the pipeline company has, both during the construction and after. Can the pipeline company use a driveway or other roads on the property? Will the company restore any damage to the roads after construction?

The company may also often want a temporary construction easement — which could be double the width of the permanent easement. This will be a muddy, industrial construction zone, with heavy machinery, trucks and pipes stored on it for the duration of the build. After construction, it will be returned to the landowner's full use, but the easement determines what shape the company must leave it in.

This all just brushes the surface of the complexity and consequences of these negotiations. No landowner should enter into them lightly, or without a lawyer to help them.

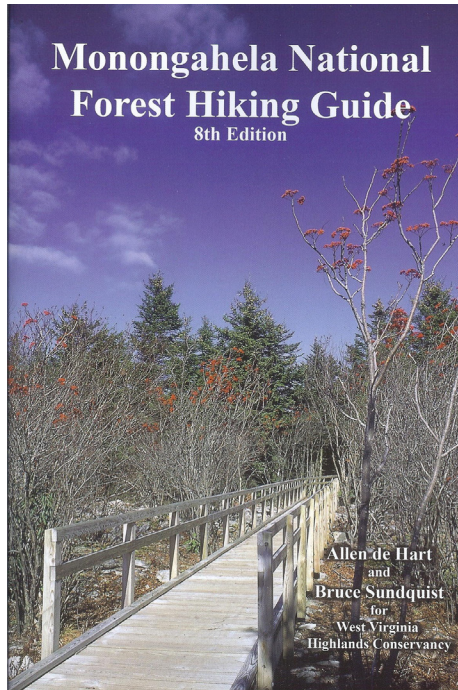
John Barrett is a partner at Bailey & Glasser, a Charleston-founded firm with offices in nine states and the District of Columbia. This article originally appeared in *The Charleston Gazette*.

BUMPER STICKERS

To get free **I ♥ Mountains** bumper sticker(s), send a SASE to Julian Martin, 1525 Hampton Road, Charleston, WV 25314. Slip a dollar donation (or more) in with the SASE and get 2 bumper stickers. Businesses or organizations wishing to provide bumper stickers to their customers/members may have them free. (Of course if they can afford a donation that will be gratefully accepted.)

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





The Monongahela National Forest Hiking Guide

By Allen de Hart and Bruce Sundquist

Describes 180 U.S. Forest Service trails (847 miles total) in one of the best (and most popular) areas for hiking, back-packing and ski-touring in this part of the country (1436 sq. miles of national forest in West Virginia's highlands). 6x9" soft cover, 368 pages, 86 pages of maps, 57 photos, full-color cover, Ed.8 (2006)

Send \$15.95 plus \$3.00 shipping to:
West Virginia Highlands Conservancy
P.O. Box 306
Charleston, WV 25321
OR
Order from our website at
www.wvhighlands.org

8TH Edition Now Available on CD


WV Highlands Conservancy proudly offers an Electronic (CD) version of its famous Monongahela National Forest Hiking Guide (8th Edition), with many added features.

This new CD edition includes the text pages as they appear in the printed version by Allen deHart and Bruce Sundquist in an interactive pdf format. It also includes the following mapping features, developed by WVHC volunteer Jim Solley, and not available anywhere else:


- ☐ All pages and maps in the new Interactive CD version of the Mon hiking guide can easily be printed and carried along with you on your hike
- ☐ All new, full color topographic maps have been created and are included on this CD. They include all points referenced in the text.
- ☐ Special Features not found in the printed version of the Hiking Guide: Interactive pdf format allows you to click on a map reference in the text, and that map centered on that reference comes up.
- ☐ Trail mileages between waypoints have been added to the maps.
- ☐ ALL NEW Printable, full color, 24K scale topographic maps of many of the popular hiking areas, including Cranberry, Dolly Sods, Otter Creek and many more

Price: \$20.00 from the same address.

HATS FOR SALE

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

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

The I  Mountains The colors are stone, black and red.. The front of the cap has I MOUNTAINS. The heart is red. The red and black hats are soft twill, unstructured, low profile, sewn eyelets, cloth strap with tri-glide buckle closure. The stone has a stiff front crown with a velcro strap on the back. All hats have West Virginia Highlands Conservancy printed on the back. Cost is \$20 by mail. West Virginia residents add 6% tax. Make check payable to West Virginia Highlands Conservancy and send to West Virginia Highlands Conservancy, Atten: Online Store, P.O. Box 306, Charleston, WV 25321-0306

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.



Landslides and the Atlantic Coast Pipeline

By Rick Webb

Two documents that substantiate the dramatically increased probability of precipitation-induced landslides following the extensive excavation associated with construction of the proposed Atlantic Coast Pipeline and related roads were recently submitted to the Federal Energy Regulatory Commission. One, submitted by the DPMC (Dominion Pipeline Monitoring Coalition), concerns the Little Valley area in Bath County, Virginia. The other, submitted by the United States Forest Service, concerns the Monongahela National Forest in West Virginia. Summary information on both reports follows.

The Proposed Atlantic Coast Pipeline Route through Little Valley in Bath County, Virginia: An Assessment of Landslide Risk and Slope Stability Factors, prepared by Malcolm G. Cameron, Jr., Coordinator of Geohazards Analysis, Dominion Pipeline Monitoring Coalition.

This Dominion Pipeline Monitoring Coalition report presents information on the environmental setting of Little Valley and evidence of recent and prehistoric landslides close to the proposed pipeline corridor. The report describes several landslides on both sides of the valley resulting from a heavy rain in July 2015. These slides range from small slumps along ravines up to a one-quarter-acre rotational slide that traveled over 450 feet down the upper east slope of Little Mountain. At least 3 prehistoric landslides are identified, one of which was overlapped by the large July 2015 slide. With slopes averaging 30 to 55 percent and up to over 80 percent combined with unstable soils, any construction involves a high risk of landslides during heavy rains.

The submitted report also includes a map sheet from the Geologic Hazards Map Book submitted by Dominion to the Federal Energy Regulatory Commission (FERC) on August 2, 2016, revealing a cursory and incomplete documentation of geologic hazards related to slope steepness, bedrock type, and groundwater conditions in the Little Valley area. The Dominion map does not identify the existing landslides documented in the DPMC report.

Other studies are referenced in the DPMC report that document slope failures or high risk of failure from construction of pipelines and other steep-slope disturbances that change runoff or groundwater flow patterns and overload slopes with excavated soil and rock. The report concludes that efforts by Dominion to avoid slope failures will be difficult or impossible to accomplish in steep mountain areas along the ACP pipeline route. To date, there is no indication that site-specific investigation of landslide risk and

development of mitigation or risk-avoidance plans will be completed and made available on a schedule that allows informed agency and public review and comment prior to permitting and construction.

Landslide Analysis, Monongahela National Forest Flood Event (June 2016), prepared by the USDA Forest Service, Monongahela National Forest.

The Forest Service report provides an analysis of 48 landslides that occurred during the flood of June 23, 2016 in areas with soils, geologies, and slopes similar to the proposed route of the ACP corridor on the Monongahela National Forest.

The majority of the landslides occurred on very steep slopes, although landslides occurred across all slope classes. Landslides also occurred on geologies and soil series that are historically known to have a high risk of mass movement, as well as on those that are thought to be comparatively stable. The occurrence of numerous landslides across a range of slope classes, geologies, and soil series was attributable to the intensity of the precipitation and to increased susceptibility associated with prior disturbance (road construction).

Report conclusions include:

- Flooding and landslides related to storm events are common in the Central Appalachian region, and the June 2016 event should not be considered unusual.
- Even more-stable land forms and geologies are susceptible to landslides under the right conditions (amount and intensity of precipitation).
- Disturbed soils can be highly susceptible to mass movement resulting in landslides.
- Forest Service standards and guidelines must be followed when operating on steep slopes and soils that are susceptible to slides.

The [Monongahela National Forest Plan](#) provides general management directives (standards and guidelines) related to operation of equipment on steep slopes, including limitations on slopes in the 40%-50% range and a general prohibition on slopes of more than 58% without special approval. National Forest staff have also indicated that slopes at high risk of slippage potential start at 15% due to the clay mineralogy of certain soil types.

Much of the proposed Atlantic Coast Pipeline corridor route and related infrastructure, including access roads, is on slopes greater than 40%, with segments exceeding 58%.

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The Highlands Voice is always printed on recycled paper. Our printer uses 100% post consumer recycled paper when available. The West Virginia Highlands Conservancy web page is www.wvhighlands.org.



How shall we Celebrate?

In 2017 the West Virginia Highlands Conservancy celebrates 50 years of working for the health of West Virginia's highlands.

We think 50 years of activism by a volunteer organization is pretty spectacular.

Of course, our founders were hard at work since 1965, but our official organizational papers were formalized in 1967 and so we are planning a big celebration in the beautiful Canaan Valley September 15 – 17, 2017. We hope you will join us as we honor our heroes of the past, celebrate our own successes and those of our partners over the years, and engage with friends as we work for the future. We're planning lots of fun trips and thoughtful conversation and music and dancing and a big anniversary dinner.

You can help. We would like your help. Please tell us what you would like to see and how you can help us celebrate this milestone – in September and sponsoring other field trips throughout the year. Send your suggestions to clrank2@gmail.com.

We envision the September celebration as being like the fall review weekends, with field trips, workshops and information on how you can be involved. What field trips would you like to see that weekend in or near Canaan Valley? Do you know of any speakers on pertinent topics that might be of interest and that we might ask to do a workshop? Who might do a session on becoming an activist, on how to be more involved in the many issues that confront us these days?

At the September gathering or during the year leading up to the 50th Anniversary celebration, what field trips would you be interested in? Where to? What topic? Who might lead them?

Do you belong to a partner organization, like WV Environmental Council, or Central Appalachian Spruce Restoration Initiative, or Ohio Valley Environmental Coalition, or West Virginia Rivers Coalition, or Sierra, or Friends of Blackwater, or local watershed groups, or Trout Unlimited, or Coal River Mountain Watch? How might your organization help us celebrate? How can we celebrate you and your work on behalf of West Virginia?

Would you be interested in having a table display at the September celebration, or co-host a field trip, or provide a speaker, or participate in a panel discussion? We'd love to have you join us. We want to recognize the good work we've all been part of these past 50 years. Please let us know. Put on your thinking and wishing caps and let us know what you would like to see happen during our great September weekend. Send input to clrank2@gmail.com.

Thanks from the 50th Anniversary planning team. ... And may your holidays be merry and bright!

!! START THE COUNTDOWN !!
8 Months to go !!

MAKE PLANS NOW
Save the Dates
September 15-17, 2017
West Virginia Highlands Conservancy
50TH Anniversary Celebration

Canaan Valley



Time for West Virginia to Plug Methane Leaks

By John McFerrin

One of the reasons to use natural gas instead of coal is that, when burned, natural gas releases less carbon dioxide. Producing energy from natural gas releases about 44% less carbon dioxide than producing the same amount of energy from coal.

While this may appear an overwhelming advantage for natural gas as an energy source, methane leaks may be diminishing that advantage. Fortunately, there are efforts going on to reduce those leaks. Unfortunately, there is much more that remains to be done.

In the short term, methane is a much more potent greenhouse gas than is carbon dioxide. Some of the difference is offset because methane does not linger in the atmosphere as long as carbon dioxide does. Still, methane is a supercharged global warming pollutant that is 87 times more potent than carbon dioxide over a 20-year time scale.

In the United States, the oil and gas industry is the largest industrial source of methane pollution—releasing 33 percent of all methane emissions in 2014. The onshore oil and gas production sector's methane emissions totaled more than 48 million metric tons of carbon dioxide equivalent, or CO₂e, in 2014. This is the equivalent of 14 coal-fired power plants powered for one year, according to the method EPA uses to calculate emissions equivalency.

These estimates are based upon the Green House Gasses Reporting Program, administered by the Environmental Protection Agency. It only requires reporting from those who emit more than 25,000 tons of CO₂e in a year. As a result, small emitters are unaccounted for and the actual total is larger.

There are a couple of features that make this a problem that is potentially easier to solve than other problems. First, the pollutant is valuable. Unlike other pollutants which must only be captured and gotten rid of, natural gas can be sold. This offsets the cost of compliance at least to some degree.

Second, some companies are already doing it. Companies who emit more than 25,000 tons of methane per year must report emissions to the Environmental Protection Agency. The Center for American Progress recently released a compilation of the reports, listing companies and their emissions.

The striking feature of the report is that there is no correlation between production and emissions. Often the companies with the highest production were not the ones with the highest emissions. Companies with the lowest production did not have the lowest emissions. The compilation was of reports for 2014, the most recent data available.

The report also shows great disparity in emissions per well, with the emissions per well from the biggest emitter being over three times greater than emissions per well from the tenth biggest emitter.

From this, it is possible to infer that some companies are better at controlling emissions than others. If this is true, then the techniques and equipment necessary to limit emissions must exist. At least part of the problem could be solved if the worst performing companies could come up to the standards of the best performing ones.

What the Environmental Protection Agency Has Done

The most prominent effort to address this problem is the rules promulgated in 2016 by the Environmental Protection Agency. The final standards for new and modified sources are expected to

reduce 510,000 short tons of methane in 2025, the equivalent of reducing 11 million metric tons of carbon dioxide. Natural gas that is recovered as a result of the rule can be used on site or sold. EPA estimates the final rule will yield climate benefits of \$690 million in 2025, which will outweigh estimated costs of \$530 million in 2025. Reductions in VOCs and air toxics are also expected to yield benefits. EPA was not, however, able to quantify those benefits.

The standards also are expected to reduce 210,000 short tons of ozone-forming VOCs in 2025, along with 3,900 tons of air toxics, such as benzene, toluene, ethylbenzene and xylene. Ozone is linked to a variety of serious public health effects, including reduced lung function, asthma attacks, asthma development, emergency room visits and hospital admissions, and early death from respiratory and cardiovascular causes. Air toxics are known or suspected to cause cancer and other serious health effects.

The Bureau of Land Management, or BLM, also is moving forward with rules to reduce methane leaks from oil and gas production on public and Native American lands.

What is yet undone

Reducing emissions from new wells and facilities is an important step. The effort is incomplete, however, because it only covers new and modified sources. The rules do not address existing sources. This is important because after the EPA's methane limits for new and modified sources go into effect, methane pollution from 75 percent of the wells and oil and gas infrastructure in the United States will remain unregulated at the federal level.

This is an opportunity for West Virginia. It could step forward and do what needs to be done: regulate methane emissions from existing sources.

What is being done

The Environmental Protection Agency has begun gathering information about methane emissions from existing sources. This is the first step in a rulemaking that would result in existing sources being regulated.

This is, of course, a project of our current EPA. When we have a new president, this may change. This effort could be an instance of states being forced to take the lead in doing what needs to be done. In the past, states who could not or would not address environmental problems could wait. Eventually the United States Environmental Protection Agency would take the lead; states would follow along. If the new EPA declines to act for political reasons then states will have to take the lead.

This is already happening in Pennsylvania. It has recently begun a permitting program to regulate methane leaks from new gas wells. At the same time, it announced a plan calling for development of standards to control leaks from existing oil and gas facilities.

Noise – Will We Ever Do Anything About It?

By Cindy Rank

Does noise count?

What is important, to whom, how relevant, how important in policy making is *noise*? Are there consequences for individuals exposed to certain decibel levels? And where does one draw the line or set priorities? Does it make a difference if the impacts are temporary, short lived, or constant and long term?

Should noise levels tolerated by some serve as standards for all – i.e. people who live next to train tracks, or near loud manufacturing plants, or in the midst of big city goings on, or hearing constant truck and car traffic, might be accustomed to certain noise levels. Does this mean that people who live in the woods or on the prairie or in quiet mountain towns should be expected to 'learn to live with' whatever level of noise new developments might bring to their neighborhood?

Whether we're talking about a new coal mine, chemical plant, wind facility, drilling site or compressor station, are neighbors to be disabused of their right to complain about that noise, especially about decibel levels that could be somewhat muffled or contained by additional precautions in siting or construction?

All are valid questions and deserve to be addressed.

And yet, when posed those questions are often dismissed as mere nuisance concerns not worthy of consideration. In some instances they even prompt rude challenges among even the most presumably responsible and considerate and thinking persons.

At point is an incident during a presentation at the combined WV Environmental Council/WV Highlands Conservancy fall meeting in October 2016 about the health impacts of noise from wind turbines on people living within certain distances of individual or multiple turbines. Even before the presentation was over a couple of people presumably concerned about the health and safety of our citizens everywhere, people concerned about the health of our water resources and importance of energy efficiency bluntly, rudely and I might say very offensively challenged the presenter.

On a separate occasion members of the community organization TEAM, concerned about the proposed location of exhaust fans at the longwall deep mine near Tygart Lake, questioned the noise levels they would ultimately be exposed to when the fans were in full operation. They were confronted by a local politico who pooh-poohed their concerns by holding up a decibel meter to show the sound level in the room was as loud as the fan would presumably be. The fact that the closed room with many people talking at once and involved in a heated discussion is not really a situation you live with in your home every day was ignored. Despite sound studies done by credible consultants, there remained unanswered questions about how much more the company could reduce the levels.

The latest to present questions about the health impacts of noise is a study that suggests merely hearing the noise associated with natural gas fracking operations can jeopardize human health.

As reported in the Weirton Daily Times newspaper in December (<http://www.weirtondailytimes.com/news/local-news/2016/12/study-finds-frack-drilling-site-noise-can-be-hazardous/>), the study, in which West Virginia University occupational and environmental health professor Michael McCawley participated, suggests that those living near fracking operations can experience *"sleep disturbance, cardiovascular disease and other conditions that are negatively impacted by stress."*

"People living near oil and gas development may bring up concerns like air pollution, traffic and groundwater safety, but many also complain about noise," said Jake Hays, director of the Environmental Health Program at PSE Healthy Energy, a nonprofit research institute based in Oakland, Calif. *"But until now, most of the research relevant to public health has focused on the impacts of air and water pollution."*

... In addition to methane, natural gas producers have confirmed the potential to discharge various amounts of pollutants into the air from the operations at well sites, compressors and refineries. These include benzene, carbon dioxide, nitrogen oxides, carbon monoxide, sulfur dioxide, carbon dioxide equivalent, xylenes, toluene and formaldehyde.

However, environmental researchers are now concerned with the noise drilling and fracking operations create. Indeed, the noise generated at the sites is such that some companies working in the Upper Ohio Valley establish sound barrier walls around their operations to mitigate the public disturbance.

"Oil and gas operations produce a complex symphony of noise types, including intermittent and continuous sounds and varying intensities," PSE Healthy Energy Executive Director Seth Shonkoff, who is also a visiting scholar at the University of California-Berkeley's Department of Environmental Science, said.

Researchers claim fracking noise negatively impacts human health in three main areas: annoyance, sleep disturbance and cardiovascular health. **They claim sustained, low-decibel sounds can be as disruptive as high-decibel sounds.**

"Noise exposure, like other health threats, may disproportionately impact vulnerable populations such as children, the elderly and people with chronic illnesses," the researchers state.

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Buoyed as one might be about this current study, I can't help but reflect on how many other similar studies that show impaired health of individuals living near large scale strip mines and other coal production facilities are being ignored – or dismissed lightly.

Protests by the dedicated citizens of the local Coal River Mountain Watch group have for the most part gone unanswered in permitting new mines along the Coal River Valley where fine silica dust from blasting already adds to the pollution levels in streams and the elimination of the forest ecosystem that for ages has provided protection, recreation, food, and medicinal plants for the communities.

The WV Highlands Conservancy has fully supported and fought for the protections environmental laws purport to guarantee all of us, not just for the preservation of the forest and aquatic ecosystems that are directly impacted by mining, but for the people who live in and around those resources and depend on them.

Be it the canary in the coal mine, or the bird on the wing, or native brook trout, or a sensitive species of caddis fly, protecting the least of these is a way of protecting all of us. But when even these basic measures and warnings are not enough to prompt action, we must take seriously studies that consider most directly the health complaints of individual citizens.

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Protecting (or not) Bats From Pipelines

November 25, 2016 the United States Fish and Wildlife Service (USFWS), announced its intent to prepare a draft environmental impact statement (EIS) for proposed issuance of an incidental take permit (ITP) under section 10(a)(1)(B) of the Endangered Species Act (ESA) for the draft Oil & Gas Coalition Multi-State Habitat Conservation Plan (O&G HCP). The Oil and Gas Habitat Conservation Plan is allegedly being developed to streamline environmental permitting and compliance with the ESA for nine companies in conjunction with their respective midstream and upstream oil and gas exploration, production, and maintenance activities in Ohio, Pennsylvania, and West Virginia over a 50-year period.

The ITP which would provide the nine companies with ITP coverage for five bat species: The endangered Indiana bat (*Myotis sodalis*), the threatened northern long-eared bat (*Myotis septentrionalis*), the little brown bat (*Myotis lucifugus*), the eastern small-footed bat (*Myotis leibii*), and the tri-colored bat (*Perimyotis subflavus*) seems extremely restrictive in the species it should address based on the activities.

The coalition members are: Antero Resources Corporation; Ascent Resources, LLC; Chesapeake Energy Corporation;

EnLink Midstream L.P.; EQT Corporation; MarkWest Energy Partners, L.P., MPLX L.P., and Marathon Petroleum Corporation (all part of same corporate enterprise); Rice Energy, Inc.; Southwestern Energy Company; and The Williams Companies, Inc.

The primary beneficiary of the proposed ITP appears to be the industry, not our nation's ecologically important species.

West Virginia Highlands Conservancy (WVHC), along with 23 other organizations, has signed onto the public comments letter submitted by The Center for Biological Diversity stating that the USFWS should deny the application, because an ITP – especially one that lasts for 50 years – cannot legally be issued for these bat species. Specifically, the ESA prohibits the issuance of an ITP if the proposed taking will “reduce the likelihood of the survival and recovery of the species in the wild.” 16 U.S.C. § 1539(a)(2)(B)(iv). Given the recent dramatic decline in bat populations from habitat loss and white-nose syndrome, any additional habitat loss and fragmentation from oil and gas activities could reduce the likelihood of the survival and recovery of these species. Consequently, the issuance of an ITP for

take of these bats would violate the ESA and the USFWS implementing regulations, and should be denied.

It further stated that should USFWS continue to consider granting this ITP, the Commenters urge USFWS to provide for a much shorter coverage period, and to issue a draft EIS for comment that considers the cumulative impacts to these bat species from oil and gas activities in these three states in conjunction with impacts to the species from white nose syndrome, other habitat loss and fragmentation, climate change and the contamination of waterbodies these species rely on, and to require extensive protection and mitigation measures to ensure that they will not be jeopardized.

WVHC will continue to monitor this issue and report further in future issues of the Voice.

Federal register posting link:

<https://www.federalregister.gov/documents/2016/11/25/2016-28336/proposed-oil-and-gas-coalition-multi-state-habitat-conservation-plan-for-ohio-pennsylvania-and-west>

Comments letter link: http://www.biologicaldiversity.org/campaigns/bat_crisis_white-nose_syndrome/pdfs/3_state_bat_HCP_comments_12-27-16.pdf