

West Virginia Highlands Conservancy
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The Highlands Voice

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Up in Smoke, Part II:

A “Fix” for the Forest Service

By Hugh Rogers

“I never think it is a good deal when the Democrats get money and the Republicans get to change the environmental laws.” So Brett Hartl, of the Center for Biological Diversity (CBD), doesn’t like the deal that will give the Forest Service a break on its bills for fighting fires.

Here’s the problem: in the past twenty years, the share of the Forest Service’s annual budget spent on putting out fires has shot up from 20% to 60%, with a corresponding change in the jobs of its employees. Since the money allocated for fires has not caught up with the actual cost, the agency has to pinch its other programs.

Here’s the deal: while half the budget will continue to be dedicated to fire suppression, when costs exceed that (as expected), the Forest Service will be able to draw money from an emergency disaster fund—preserving the other programs.

This arrangement was anticipated, or anyway hoped for, when we attended the Forest Service “roundtable” in Elkins (reported in

the April *Voice*), shortly before Congress passed the budget. What remained to be seen was the cost—not the money, but the legal changes that Republicans would require. Now we know. Jessica Kutz summarized it in *High Country News* on March 29:

The bill includes two riders . . . The first will allow logging projects less than 3,000 acres in size to move forward with little environmental review, so long as the goal of those projects is to reduce heavy fuel loads that increase fire risk.

...

A second provision could delay habitat protections for newly listed threatened and endangered species. It targets a 2015 ruling . . . which determined that the Forest Service is obligated to consult with the U.S. Fish and Wildlife Service when new species are listed to evaluate whether its management plans might harm the species. . . . The forest plans are management blueprints for large landscapes,

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A Message from Our President

By Larry Thomas

Spring has arrived in our mountains. As winter fades away, driving along one finds evidence of the different stages of the transition. While in some areas the trees are greening with this year's leaves, here on North Fork Mountain trees are still the stately statues of winter waiting for it to get a little warmer. The birds have returned and are very busy with their nesting rituals. Mammals who have been sleeping during the long winter have reappeared and are scurrying about filling long empty stomachs. Spring flowers and fruit trees are blooming. I observed many honey bees on the blossoms of a peach tree the other day. It will be interesting to discover their hive during the summer. I love this poem "Spring" by Susan Filson.

Spring appears in whispers
and hushed tones
as the bellowing winter
bows away.
Drowsy flowers come to
attention,
waking from their sleep-
yawning;
with heads turned upward towards
the Maestro called sun-
I watch with Anticipation
As the concert begins.

In the April edition of "The Highlands Voice" I mentioned that during the 50th Anniversary celebration activities, the Board requested that members provide ideas to be considered for WVHC for the future. Many great suggestions were received and after a presentation and review of the suggestions at the January Board meeting, it was decided that the April Review should be devoted to a facilitated discussion of the suggestions. The Spring Review took place April 20, 21 and 22. Those who arrived on Friday evening engaged in catching up and discussing current issues. Saturday was devoted to the facilitated meeting and the quarterly Board meeting took place on Sunday. It was a great weekend.

The Saturday meeting was facilitated by Becky Mathis-Stump, Chief Operating Officer of Ethos Leadership Group, LLC. and started with a discussion of The Nonprofit Lifecycle which an organization might go through during its existence. Those cycles are Idea, Start-up, Growth, Maturity, Decline and Crisis and are analyzed through the categories of Programs, Human Resources, Board, Financials and Marketing. That provided for an interesting discussion and it was decided that WVHC is in the Growth and Maturity stages of our lifecycle.

Becky then asked what does WVHC stand for as an organization? We responded that since 1967, our volunteers have been protecting the air, water, forests, streams, and mountains, as well as the health and welfare of our communities through Education, Information, Legislation and Research. We pointed out that to fulfill our mission, WVHC engages in five key activities:

1. We advocate for specific environmental concerns, including clean air & water, preservation of public lands, wise management of natural resources, and the health and welfare of our residents and visitors.

2. We ensure our natural resources are being protected by monitoring compliance with laws, agreements, and best practices associated with oil & gas, strip mining, and other activities that impact our state and initiating litigation to enforce compliance if necessary.

3. We partner with other organizations that support the preservation and wise management of our state's natural resources by sponsoring events, education, and activism, including our long-term partnership with the Spruce Restoration Project.

4. We support lobbying efforts to raise awareness of environmental concerns and issues.

5. We educate residents and visitors on environmental issues through our monthly publication, "The Highlands Voice".

We then discussed the WVHC mission. The mission of the Conservancy taken straight from its organizing documents and reads:

"The West Virginia Highlands Conservancy promotes, encourages and works for the conservation – including both preservation and wise management – and appreciation of the natural resources of West Virginia and the Nation. We focus primarily on the Highlands Region of West Virginia, but our work is for the cultural, social, educational, physical health, spiritual and economic benefit of present and future generations of residents and visitors alike."

It was suggested that perhaps WVHC could strike a balance with a simplified mission statement such as:

- Preserving West Virginia's Natural Resources for Future Generations, or

- Preserving the Natural Resources that Make West Virginia Wild and Wonderful™

™Wild, Wonderful West Virginia is a Trademark of the WV Division of Tourism

Next, Becky asked, why are you here as a Board member? Responses included:

"I believe our state's natural resources are the common wealth of our citizens, and we should work to preserve and protect them."

"I understand the need for projects that are intended to advance economic opportunity in our state, but sometimes "advancement" comes with social costs that are too high, and I believe those costs are too high when projects compromise our air, water, public lands, and health."

"West Virginia's Highlands are the last remnant of the wildness that has earned our state the monikers of "Wild and Wonderful" and "Almost Heaven" and I want to protect that for my children, grandchildren, great-grandchildren, and all future generations."

"Many years ago, I moved to West Virginia to protect my health. It promised clean air, water, and additional natural resources that I couldn't find in other states. I chose West Virginia as my home,

(More on the next page)

More from Our President (Continued from p. 2)

and I want it to remain a healthy refuge for me, my family, and all fellow West Virginians.”

“I walk through the landscapes of West Virginia in awe of its beautiful mountains, rushing rivers, and vibrant wildlife. I want to preserve these features for generations of residents and visitors to come.”

“I want to be part of the legacy of honest, credible, honorable men and women who have worked to protect West Virginia’s natural resources, and WV Highlands Conservancy offers me that opportunity.”

“I want to save the natural habitat of the birds I love to watch, but that’s not the only environmental concern I have, and I appreciate that the WV Highlands Conservancy has maintained a broad focus and provided a platform for individuals to learn about and advocate for a wide range of environmental issues.”

Becky then pointed out how these powerful statements could be used to appeal to a larger audience of potential members.

We then moved on to a great discussion of the many suggestions provided by the membership, which were listed in the April “The Highlands Voice”.

Committees were appointed during the Board of Directors meeting to review suggested items and report back to the Board with recommendations for actions.

Again, I would like to thank the members for their recommendations, Board members for taking their weekend to participate in the facilitated meeting and Becky for facilitating Saturdays discussion. I am much looking forward to suggestions of the committees and further discussions.

More about Fighting Fires (Continued from p. 1)

and the rider to the fire fix essentially allows the agency to skip this big picture review for newly listed species. ...

The agency will still have to consider the effects of logging projects within a species’ habitat on a case-by-case basis. But the change means it could approve a number of small projects without considering their cumulative impact. ... Each new project could gradually whittle away their habitat.

Conservation organizations disagree on whether the “fire fix” is worth it. Out West, where relations with the agency tend to be adversarial, trust is in short supply. The CBD’s Hartl sees “a green light for abuse. Three thousand here, 3,000 there. Soon you are talking a lot of acres.” That is, if each of those 3,000-acre logging jobs is justified as a reduction of fire risk.

Another organization with which the Highlands Conservancy has worked, The Nature Conservancy, was involved in the negotiations that led to this agreement. Their policy advisor called it a great deal: “You are talking about stabilizing the Forest Service budget so that they can do the activities they should be focused on.”

But look at the baseline: the agency still has to spend half its annual appropriation on fire. It has become a hybrid Forest Service/ Fire Service. On paper, it gains maybe 10% to help with its backlog of watershed restoration, road ripping, trail improvements, and much else. It may fall behind more slowly.

No one should think a couple of “riders” in the budget bill would satisfy this climate change-denying administration’s appetite for resource extraction. It’s all of a piece: Drill more, dig more, cut more. Under pressure, the Monongahela National Forest has developed a five-year plan to increase timber production. In 2017, the final tally was 11.3 million board feet. That is projected to rise steadily, from 15 to 17, 19, 20, and 30 MMBF in 2018 and succeeding years.

This year’s estimate, by the way, includes two clear-cutting projects on which timber is merely a by-product: Corridor H and the Atlantic Coast Pipeline.

Currently, logging affects only 2 to 3 percent of the land base. By my calculation, that could be 5% in 2020, when the acreage involved is projected to approach 48,000 acres. The Mon hopes to “leverage” this operation in the interest of its long-range goals: clean air and water; forest restoration, fisheries, threatened and endangered species; trails and other recreation; and, of course, research. As the Rivers Coalition’s Angie Rosser put it, outcome is more important than output.

The Highlands Voice is published monthly by the West Virginia Highlands Conservancy, P. O. Box 306, Charleston, WV 25321. Articles, letters to the editor, graphics, photos, poetry, or other information for publication should be sent to the editor via the internet or by the U.S. Mail by the last Friday of each month. You may submit material for publication either to the address listed above or to the address listed for Highlands Voice Editor elsewhere in this issue. Electronic submissions are preferred.

The Highlands Voice is always printed on recycled paper. Our printer uses 100% post consumer recycled paper when available.

The West Virginia Highlands Conservancy web page is www.wvhighlands.org.

The West Virginia Highlands Conservancy is a non-profit corporation which has been recognized as a tax exempt organization by the Internal Revenue Service. Its bylaws describe its purpose:

The purposes of the Conservancy shall be to promote, encourage, and work for the conservation—including both preservation and wise use—and appreciation of the natural resources of West Virginia and the Nation, and especially of the Highlands Region of West Virginia, for the cultural, social, educational, physical, health, spiritual, and economic benefit of present and future generations of West Virginians and Americans.

A move toward financial responsibility**GAO Says Get Rid of Self Bonding**

By John McFerrin

The non-partisan Government Accountability Office (GAO) has recommended that Congress consider amending the Surface Mining Coal and Reclamation Act to eliminate the use of self bonding as a type of financial assurance for coal mine reclamation.

Under West Virginia and federal law, mining companies are required to post performance bonds to assure that reclamation is completed. If the company disappears, the Department of Environmental Protection would forfeit the bond and pay for the reclamation. Historically, bonds were posted by insurance companies or some other financial institution. Companies would pay the premiums; if the bond had to be forfeited, the financial institution would pay for the reclamation.

There is an alternative called “self bonding.” Under that alternative, the mining company in effect becomes the financial institution. It tells the Department of Environmental Protection that it has plenty of money so that if reclamation is ever needed it can pay. If it meets financial standards set forth in the regulations, it is approved for “self bonding” and doesn’t have to post a bond backed by an insurance company, etc.

In West Virginia, about 14 per cent of the mine land is self bonded; the national rate is about 11 per cent.

This system works when the companies are prosperous and have enough money to pay for any reclamation. The problems arise when the companies are less prosperous and can no longer pay.

The problems with self bonding became clear when the three largest coal companies in the United States filed for bankruptcy. Peabody Energy, Alpha Natural Resources, and Arch Coal all filed for bankruptcy between August, 2015, and April, 2016. Between them they had pledged \$2.3 billion in self bonding for mine cleanup. The possibility that some or all these companies could go out of business, leaving mine cleanup costs unfunded, got everybody’s attention and led to the Government Accountability (GAO) study.

GAO found several difficulties in the self bonding system:

- Financial situations change. There has been some decline in the demand for coal in recent years. Companies who were fat and happy when demand was strong may no longer be so.
- Self bonding requests are hard for regulators to evaluate, especially when there are subsidiaries involved. Even if subsidiary looks solvent and appears to have enough assets to be eligible for self bonding, a financially troubled parent could easily make the subsidiary insolvent. When the present system was set up in 1983, the regulations anticipated that state regulators would be able to evaluate the solvency of companies without financial experts. Now finances and

corporate structures can be so complicated that a financial expert is required.

- It is hard to determine eligibility if the company has mines in multiple states and is doing self bonding in more than one state.
- It is difficult to make companies who fall upon hard times replace self bonding with surety bonds. With changes in markets, it would be possible for a company to be prosperous when a permit is issued and be eligible for self bonding. In the course of mining things can (and do) change so that self bonding is no longer appropriate. Yet it is difficult to force the companies to replace the self bonding with a surety

bond from an insurance company. Being in financial difficulty makes it more difficult for companies to secure a surety bond; forcing them to do so may force companies out of business, probably guaranteeing that the promise to reclaim inherent in self-bonding will be broken.

History

It is not as if this is a problem we just discovered. In August 2016, citing the recent bankruptcies, lower market demand for coal, and the potential for more market downturn, the Office of Surface Mining issued a policy advisory to states suggesting, among other things, that states take steps to assess whether operators currently using self-bonds continue to qualify to do so and that states not accept new self bonds. It said that states should not accept new or additional self-bonds for any

permit until coal production and consumption market conditions reach equilibrium. OSM has reported that it is not likely for that to occur until at least 2021.

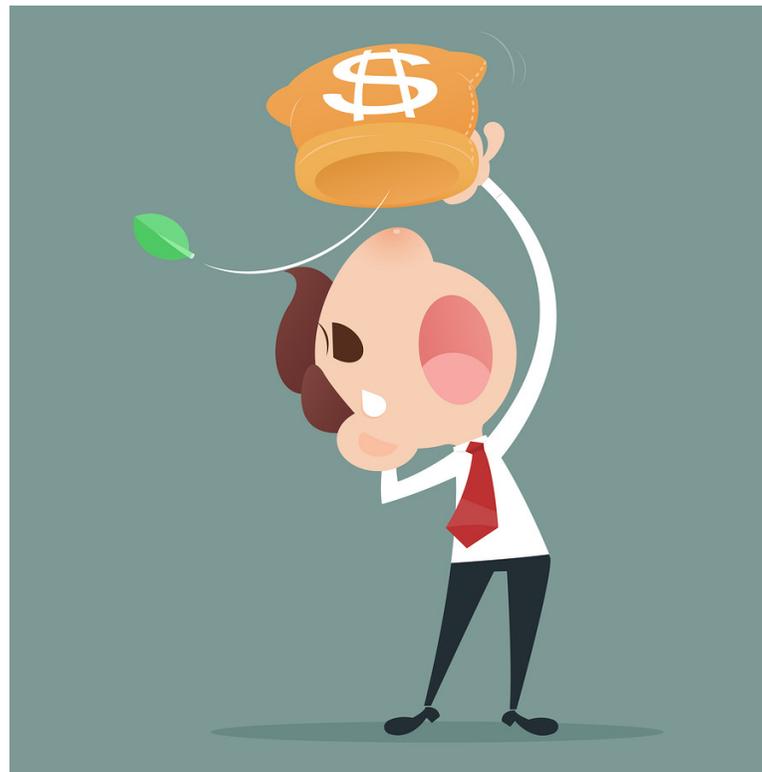
In 2016, a group called WildEarth Guardians petitioned the Office of Surface Mining (OSM), asking that it adopt a rule to ensure that companies with a history of financial instability not be allowed to use self bonding. The petition was pursuant to a provision of the Surface Coal Mining Control and Reclamation Act that gives anyone the right to petition the Office of Surface Mining (OSM) suggesting a new regulation.

When OSM solicited public comments on the petition, it got 117,191 comments. Of these, there were fourteen unique comments which opposed the petition.

In response, the Office of Surface Mining granted the petition and committed itself to doing something about self bonding. It did not commit to any specific plan, just to doing something.

Then we had an election. Acting as directed in Executive Order 13783 (Promoting Energy Independence and Economic Growth, March 31, 2017) the Department of the Interior (which includes the Office of Surface Mining) announced in October 2017

(More on the next page)





Tabling for Earth Day at Marshall University



More on Self-Bonding (Continued from previous page)

that it was reconsidering the need for and scope of potential changes to its bonding regulations. OSM officials said that they did not have a time line for finalizing a decision on potential changes in its bonding regulations. In addition, OSM rescinded its August 2016 policy advisory that states take steps to assess whether operators currently using self bonds can still quality to do so and that states not accept any new self-bonds.

What's next?

Right now, the Government Accountability Office thinks that the self bonding system should be changed or eliminated. Judging from the comments on the Office of Surface Mining's proposal that the system be changed, the public wants it changed. The Office of Surface Mining either wants to change it or leave it alone (or "establish no time line" for change, bureaucrat speak for leave it alone), depending upon who is in office.

The Office of Surface Mining is limited in its authority to eliminate self bonding. It is mentioned in the Surface Coal Mining and Reclamation Act itself. The Office of Surface Mining could change the regulations so that only those companies who are solvent and certain to stay that way would qualify but it could not eliminate self bonding altogether. Only Congress could do that. It would have to change the Surface Coal Mining and Reclamation Act.

As always, stay tuned. Before the GAO report we were moving toward drastically restricting self-bonding. Now the current Office of Surface Mining has halted that trend. We will see if we are headed back to the bad old days when a combination of self bonding and a declining coal market left us with under constant threat of a bankrupt coal company with a worthless commitment to reclamation.

Community Organizing Summit Leaves Participants Warmed and Strengthened

By Cindy Ellis

The registration desk was loaded with vases of daffodils from Roane County as attendees arrived in early April for our co-hosted event, a “Community Organizing Summit”, at Jacksons Mill. Our sub-theme was “Taking Action Against Extraction” and, after a hearty supper and a warm welcome, we were treated to an energetic lead presentation by Carol Davey of the Ohio Environmental Council. This Berea College grad is uniquely positioned to understand embattled communities; her own childhood home was in the now ghost town of Cheshire, Ohio, where an electric company bought everyone out and removed the houses.

Our second Friday speaker was Austin Sachs, director and founder of Protect and Divest. Even those of us who shrink from talk of numbers and finances found his remarks clear and motivating. <http://protectanddivest.weebly.com/>

Snow lightly covered any daffodils on the conference center grounds the next morning as about seventy of us---a nicely assorted mix of ages and genders---gathered eagerly to choose our morning sessions. “Starting and Building a Campaign—Goal Setting and Strategy” was offered up by Bill Price of the Sierra Club, while our friend from our previous Wellness and Water events, Jill Kriesky, discussed “Gas Related Health/Medical Effects”. Jill works with the Southwest Pennsylvania Environmental Health Project. <http://www.environmentalhealthproject.org/about>

OVEC staffers Vivian Stockman, Dustin White, and Robin Blakeman enlightened us next with information on media and outreach and on the ominous Appalachian Storage Hub.

We mingled with friends old and new at the long glossy tables in the Mount Vernon replica dining hall and then tucked into a smorgasbord of helpful topics and presenters for the afternoon sessions. Angie Rosser of WV Rivers Coalition and Leann Leiter of Earthworks tackled Environmental Monitoring, while Justin Raines of Sierra Club led us through “Speaking Across Bridges---How to Talk with All Sides”. Allen Johnson of Eight Rivers Council hosted “Coalition Building” and Dave McMahon of WV Surface Owners Rights Organization tried to help us navigate the tricky words and concepts in “Fighting Eminent Domain---Co-Tenancy, Forced Pooling, Right to Trespass, and Protecting Your Land”. Through these sessions, participants had offered questions and comments, and cheerfully undertaken role playing, but we had

some energy left to attend to the late afternoon offerings of reviewing “Permitting and Enforcement” by Kendra Hatcher of Downstream Strategies and with Justin again, in “Community Canvassing”.

Allen showed us a brief flight of a drone and our dinner fortified us with lasagna and rice crispy cakes, so, even after a very long day of a terrific slate of programs, we had time for one more innovative demonstration. FracTracker’s Leann Leiter told us of their new Mobile App for in-the-field pipeline and all gas activity observations. We dug right in and downloaded the app and found it a great new tool! <https://www.fractracker.org/apps/>

And that was the end. Except that it wasn’t for some of us. We opted to stay overnight and take the Pipeline Tour on Sunday. We are grateful to county residents Diane and Rue who led our van over 80 miles in Lewis County to see the horrific octopus-arms of pipelines. They also showed us expanded compressor stations and sites for new ones. We saw streams with no buffering from tree felling, we saw logging operations that were obviously minimally or not at all regulated, and we saw scene after scene of lovely meadows and extremely steep hillsides marred and scarred by very large pipelines. A new thought to some of us was that the companies will very likely use annual applications of herbicides to “maintain” the cleared routes of the lines. It was a sunny day, but only the enjoyment of sharing information and ideas kept our spirits up after seeing the totals of invasive gas construction.

The weekend itself left many of us warmed and strengthened. Indeed, one new friend offered up this endorsement, “Thank you for an amazingly informative weekend that I got to spend with passionate and caring people.”

We thank our co-hosts, OVEC and WV Rivers Coalition, and all our members and donors for helping make this event a reality and a success.



Join Now !!!

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Sustaining		\$100	\$150	\$200
Patron		\$250	\$500	\$500
Mountaineer		\$500	\$750	\$1000

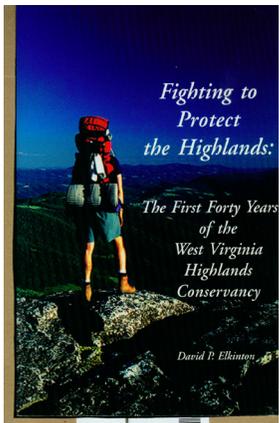
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GET A GREAT HISTORY BOOK

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



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

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

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

Tell a Friend!

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

Person you wish to refer: _____

Address: _____

Email _____

Your name: _____

Filling out the form, etc. is, of course, the old school way of doing things. If you prefer, just email the information to 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.

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.

Tree Sitters Hinder Pipeline

A company that builds fracked-gas pipelines is demanding the arrest of 61-year-old Theresa “Red” Terry and her daughter for trespassing — on their own property in the Blue Ridge Mountains. The Terry family is trying to block one of two pipelines proposed to transport fracked gas through Virginia, West Virginia and North Carolina from cutting through their homestead. More than a half-dozen others have taken to trees along the pipeline routes.

Their cause has widespread support that transcends ideological divides. Legal challenges to the pipelines are pending, Sen. Tim Kaine (D-Va.) and Reps. H. Morgan Griffith (R-Va.) and Don Beyer (D-Va.) have issued a bipartisan request for a rehearing from the federal oversight body, and a chorus of state legislators and local officials is sounding the alarm.

There has even been unusual solidarity between Northern and Southwest Virginia. Property-rights advocates are outraged at the abuse of eminent domain, while environmentalists decry the multi-billion-dollar boondoggles. Faith leaders protest Dominion Energy’s plan to locate its pipeline’s single Virginia compressor station in the rural African American community of Union Hill, turning a former plantation into a polluting industrial site. And Virginians from all walks of life point to the risk to groundwater and the threat to sustainable local jobs from ratepayer subsidized fracked gas competing with local solar electricity generation that has been growing steadily.

Gov. Ralph Northam (D) could reduce the escalating public concern. He could clarify that Virginia has the authority to protect clean water and that his Department of Environmental Quality can halt pipeline construction if standards have not been met, based on a law he signed this year. One standard he promised as a candidate was a stream-by-stream review of water protections. Given concerns about the legitimacy of the process to date — concerns reinforced last week by Kaine — it seems appropriate that work related to the pipeline be paused at least until the public has transparent access to evidence that this “Northam standard” has been met.

Unfortunately, the Virginia Department of Environmental Quality has deferred to the Trump administration’s misuse of a “nationwide” Clean Water Act permit allowing the pipelines to alter more than 1,000 streams and rivers. During his election campaign, Northam wrote the DEQ requesting that it do its own analysis of water impacts, not rely on the federal permit. Now *he* is in charge and can make this happen with a phone call to his DEQ director.

This is an important time to act. Red Terry has been in her tree platform for four weeks, braving snowstorms, bitter cold, heavy winds and torrential rains. EQT, the company that seeks to use eminent domain to seize a 125-foot-wide easement from the family and has successfully petitioned for a “right to early entry” for tree felling, hopes the court will levy stiff fines or get federal marshals to

bring her and her daughter, who is in a nearby tree, down. Now the judge has ordered the Terrys to appear in court Tuesday.

The Terrys’ stand is more than one family’s battle to save its homeplace. It is emblematic of the conflict between powerfully connected energy companies and the people Bruce McKay, an executive at the energy behemoth and pipeline developer Dominion Energy, derided in a *Washington Post* interview last fall as the “general citizenry,” bemoaning their increasing influence on energy issues.

Asking the government for help is nothing new for big energy companies; it has long been at the core of their business models. And whether or not federal marshals are called in to remove the Terrys, the pipeline developers already owe state and federal governments enormous debts of gratitude.

They have President Trump’s Washington to thank for Federal Energy Regulatory Commission approvals that ostensibly grant the companies eminent domain to run roughshod over landowners who don’t voluntarily yield their property rights. Two of the three FERC commissioners at the time were appointed by Trump. They accepted claims from pipeline developers that the projects are necessary, based almost entirely on the companies’ contracts *with their own affiliates* to purchase capacity on the routes. Commissioner Cheryl LaFleur — the one member not appointed by Trump — dissented, citing insufficient evidence of need. Virginia’s leaders, from the governor on down, should join the bipartisan group of federal officials demanding a re-do of these



flawed approvals.

Northam has embraced “the Virginia way” for his leadership style. At its best, the Virginia way is about different sides working together for common-sense solutions. At its worst, critics deride it as a pay-to-play system of backroom deals advancing the interests of the biggest companies with the most powerful lobbyists. Sometimes moral leadership is not about choosing between yes and no, but hitting pause until one has both the facts *and* the trust of affected citizens. How his administration handles this tense situation will say much about Northam’s vision of the way forward.

Note: This article originally appeared in *The Washington Post*.

Another Note: The tree sitters are a developing story. By the time this issue of *The Highlands Voice* comes out things will probably be different.

New Farm Bill Could Damage Public Lands

The farm bill is, as usual, enormous. The recently introduced Agriculture and Nutrition Act of 2018 will set agricultural policy for the United States. It includes provisions on commodities, agricultural loans, crop insurance, dairy insurance, wetland conservation, food aid to other countries, agricultural trade, Supplemental Nutrition Assistance Program (SNAP, what used to be called food stamps), rural health, broadband access for rural areas, agricultural research, etc. etc. etc.

It has been renewed every few years for decades. The 2018 Act is intended to set policy until 2023. If Congress can't manage to agree on the Agriculture and Nutrition Act of 2016 before the current law expires, it will probably do some sort of extension until they can agree.

It is the kind of bill that will somehow manage to lumber through Congress because it covers so much and serves so many constituencies. Those who are indifferent about, for instance, broadband access may care deeply about agricultural trade. Those indifferent about wetland conservation may be very interested on crop insurance policy. So many people depend upon something that is contained in such a broad bill that a bill of some sort is sure to pass. For advocates, the trick is to make sure that the policy that affects your particular interest is as you wish it to be.

The United States Forest Service is a part of the United States Department of Agriculture. Because of this, the farm bill has provisions that set policy on how our public lands, particularly National Forests, are managed.

There are three provisions of this farm bill that are of interest to those who are interested in forest management policy:

- Section 8302: Creates a loophole in the "Roadless Rule" to allowing logging in roadless areas. The 2001 Roadless Rule establishes prohibitions on road construction, road re-

construction, and timber harvesting on 58.5 million acres of inventoried roadless areas on National Forest System lands. The intent of the 2001 Roadless Rule is to provide lasting protection for inventoried roadless areas within the National Forest System in the context of multiple-use management. In West Virginia this could impact places like Seneca Creek, Tea Creek, Cheat Mountain, and Trout Pond.

- Section 8303: Allows the Department of Agriculture to "self-consult" on the Endangered Species Act without including the Fish and Wildlife Service. Under present law, the Forest Service/Department of Agriculture must consult with the Fish and Wildlife Service to determine the impact of logging on endangered species. Under this section, it would be allowed to "self-consult" (ask itself what effect a project it wants to allow would have on endangered species).
- Section 8311-8321: Expands many National Environmental Policy Act (NEPA) categorical exclusions to disturbances of 6,000 acres (almost 9 square miles) or less. NEPA is the federal law which requires the government to consider the environmental impact of federal actions. The study of the environmental impact includes a public process, including the right to review and comment upon a draft study. Categorical exclusions are exceptions to the Act; they are instances where the requirements of the Act do not apply. These sections would mean that forest management and logging projects less than that are not subject to the same environmental review and public comment.

Although the bill was recently introduced, the breadth of its constituencies will make it move quickly. Anyone who wants to influence the course of this legislation should contact his or her congressman soon.

Department of Environmental Protection Makes Pipeline Website

The West Virginia Department of Environmental Protection has established a web site containing information about the five major proposed or under construction natural gas pipeline. The five pipelines that are the focus of the webpage are the Atlantic Coast Pipeline, Mountain Valley Pipeline, the Mountaineer Gas Company Eastern Panhandle Expansion Project, Mountaineer Xpress Pipeline, and the Rover Pipeline.

If your head is spinning from all these pipelines going every which way in West Virginia this is a good place to straighten yourself out. There is a map with these five big pipelines shown as well as information about each.

The webpage also has information such as maps of the proposed route of pipeline routes and a link to WVDEP's searchable online database where additional information such as any inspection and enforcement action and any permit modifications can be found. Also available are public hearing transcripts, responses to comments received at public hearings, and press releases about the pipelines. The page will be updated as more information on each pipeline becomes available. Citizens will also be able to submit reports of possible permit violations via this webpage.

Since the pipelines are not fully (or even partially) under construction, there is no information about inspections, on the ground performance, etc. Right now, the information is mostly plans, comments, response to comments, etc. If the pipelines move ahead with construction there will presumably be more information about inspections, etc.

The website does have a phone number for spill reporting: 1-800-642-3074. Complaints can also be emailed to DEP.EEWebcomplaint@wv.gov.

This website only deals with the five large pipelines that are proposed to run through West Virginia or from West Virginia to another state. There are, of course, multiple smaller lines that connect to these larger lines or otherwise just operate within West Virginia. Information about these smaller pipelines is also on the more general DEP website, just not on this page.

Board Highlights

By John McFerrin

The Board meeting itself was mundane—some business stuff along with some reports on ongoing controversies. The more significant part was in the previous day's discussion on the future of the organization. While we didn't make any decisions, either in the Board meeting or on the day before, it gave us a chance to think seriously about where we are headed as an organization.

The previous day's discussion is mentioned briefly below. Larry talked some more about in his column on p. 2.

In the President's report, President Thomas mentioned a few items of interest. Larry described his practice of endorsing efforts of other groups on behalf of the Highlands Conservancy. He is routinely solicited by other organizations to sign on to letters that they intend to send supporting a position. He reviews them and determines whether they are consistent with our purposes and previous positions he signs. He estimates he has signed on to five such letters in recent months. He will continue this practice and will start circulating to the Board notice that he has signed a letter of support.

We reflected briefly on the discussions of the day before, when we had a long discussion on the future of the organization, possible hiring decisions, etc. Larry appointed a committee to consider issues raised by the discussion, particularly policy on hiring decisions. It will consider how many people (one person with multiple duties, several part timers, contracting out some functions, etc.), job descriptions, and finances. Committee members: Marilyn Shoenfeld, Larry Thomas, Frank Young, John McFerrin, Beth Little, Jackie Burns (reluctant member with possibly limited participation) and Hugh Rogers (resource person because he supervised our most recent hiring decision when we hired Beth).

Hugh Rogers presented a slide show on the hiking guide. There were slides of the front cover and samples of maps that will be included. Hugh has contracted with a map making wizard who has a mapping computer program. Because of this, the maps will be vastly improved from the ones in previous editions.

When Hugh began he didn't know what he was getting into and almost bit off more than he could chew. He is now, however, chomping away with gusto and hopes to have the new edition ready to print in a couple of months. We gave him a round of applause in appreciation of his efforts.

There was no webmaster report but we are aware from past discussions that there are some complications with the website, particularly with the store and with PayPal. The website committee (Cindy Rank, Jim VanGundy, Frank Young, Beth Little, Cindy Ellis, Jackie Burns, Dan Radmacher, and Larry Thomas) will address these.

We had some money matters to attend to. We considered the financial statement for 2017, the budget for 2018, and the financial statement for the first quarter of 2018. It was, as financial matters

are, moderately boring—money coming in, money going out as it usually does.

Larry reported on the endowment. It is invested in certificates of deposit, mutual funds, and stocks. Larry has also established an account where we can deposit cash that we don't intend to spend right away. It is all invested in certificates of deposit.

Frank reported on matters legislative. We are limited in our ability to take affirmative steps because we cannot find sponsors for any of the legislation that we would like to suggest being introduced. The result was the we spent the session defending against proposals. The most prominent was the proposal to timber in the West Virginia State Parks. There was such an uproar from the public that the matter was dropped. A resolution to study the matter over the summer and fall for possible action next year was introduced but did not pass so that, at least for now, the matter is closed.

There are still the grants from the Appalachian Regional Commission and the West Virginia Department of Commerce for a study of the timber within West Virginia's forests. The results of any study may be a justification for getting the question of timbering in State Parks back before the Legislature next year.

In matters of outreach, we discussed the possibility of a fall review. A committee of Larry Thomas, Jim VanGundy, Cindy Rank (limited enthusiasm and participation), and Marilyn Shoenfeld will look into having a review along with our fall meeting. A review would include outings, evening

discussion/panel, etc.

In renewable energy, Larry discussed the rules for siting of electrical wholesale generators, including industrial scale wind facilities/projects. We have been advocating for several years to have the Legislature require the Public Service Commission to reexamine its siting rules. Since we have never made any progress at the Legislature, the Renewable Energy Committee is going to make a formal request to the Public Service Commission to amend its rules to better reevaluate the siting electrical wholesale generators, including industrial scale wind facilities/projects. It is likely that the Public Service Commission will refuse the request. A refusal would provide an argument that the Legislature should address this problem.

Rick Webb described the Pipeline Compliance Surveillance Initiative (CSI). This is an initiative of the Allegheny Blue Ridge Alliance designed to support citizen efforts to ensure strict application of environmental laws and regulations in the event the pipeline goes forward. It is mostly carried out by volunteers who watch construction activities. If they see any water related violations, they can report them to CSI Central. It will have experts that review the information and make complaints to regulatory agencies, and then

(More on the next page)

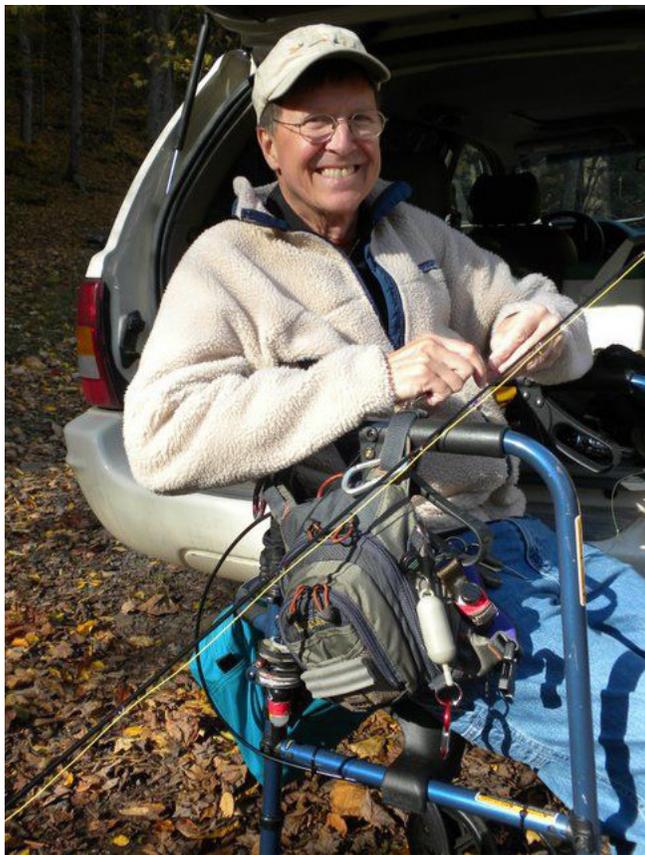


Book News

Off Belay: A Last Great Adventure by Jamie Shumway

A review by Dave Elkinton

“Isn’t that Jamie Shumway?” I said to my wife at the uppermost point at the top of Edinburgh Castle. It was 1992 and we were on our honeymoon in Scotland. We realized we both knew Jamie but from different worlds, she as his colleague at the WVU medical center and I as a fellow West Virginia conservationist. Indeed, it was Jamie and his wife, Betsy. They were just as surprised to see us as we were them, and it left a permanent memory for all four of us.



Dr. Jamie Shumway’s adult life had two parallel paths, the two Jan and I knew. From his first post-graduate life as a teacher, especially as he became a specialist in medical education, he had also been a very active outdoorsman. Whether living in Chapel Hill, North Carolina, Lexington, Kentucky or Morgantown, West Virginia, Jamie had spent many hours rock climbing, hiking and later,

whitewater paddling. His West Virginia river adventures were the usual suspects: Shavers Fork, Cheat Canyon, the Smoke Hole

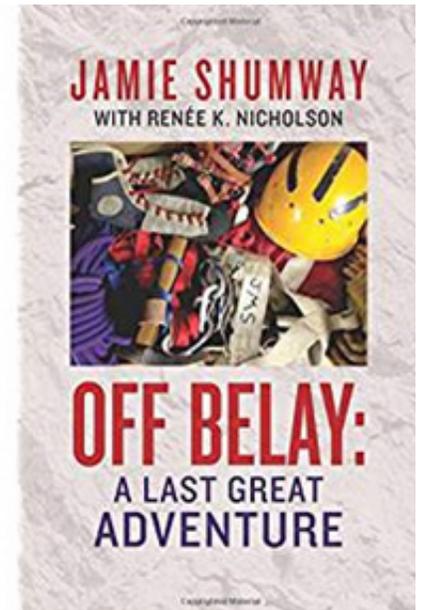
Section of the South Branch, and the nearby Youghiogheny in Pennsylvania.

Jamie was also one of the founders, and an early chair, of the Morgantown Group of the West Virginia Chapter of the Sierra Club. He was an organizer and early board chairman of the West Virginia Rivers Coalition. Somewhere along the way, my Highlands Conservancy life crossed paths with his Sierra Club life, but it was well before we met again at Edinburgh Castle.

But Jamie’s greatest challenge was yet to come: In 2008 he was diagnosed with ALS. For a man who had lived such an outdoor life, at least as an avocation, such a diagnosis seemed so ironic. As his physical activity became more limited, ever the medical educator, he found opportunities to present his experiences to several waves of medical students, interns and residents. Finally, in his last years, he authored his memoirs (with the help of a co-writer) for those of us left behind to reflect on his experiences.

Reading *Off Belay* (a rock climbing term he explains) brought back so many memories of places I knew, but also inspires me to carry on in his memory. Whether you knew Jamie, just knew of Jamie, or are just interested in preserving the beauty of West Virginia, Jamie’s life will touch you, both as one who enjoyed and helped preserve the outdoors and as a courageous champion of living life to its fullest.

Off Belay: A Last Great Adventure by Jamie Shumway with Renee K. Nicholson, 2017, available in soft cover at jamieshumway.com, or from Amazon.com.



More Board Highlights (Continued from previous page)

follow up on the complaints and agency action. They will also add the complaint to a map of the route. Most of the work will be done by volunteers although CSI intends to pay an attorney and a mapping specialist.

As a demonstration of the possibilities of monitoring, the presentation was little short of spectacular. We had slides of CSI’s aerial photography and illustrations of CSI’s capacities to pinpoint problem areas down to five-foot contours, and compare actual construction/destruction activities with submitted plans, and legal and regulatory requirements.

Given the difficulty of the terrain, Rick does not believe that Dominion can build the pipeline without routinely violating water quality laws. He views the CSI as a tool to document this and see that those laws are enforced. He also sees it as building a model that could be used for other pipelines as well. He would like the Highlands Conservancy to consider supporting the effort financially.

In extractive industries, Cindy Rank reported on continuing disputes. On the Fola Coal dispute, she reported that the company had moved to dismiss our legal action against it; the Court recently denied this motion so the case can go ahead. In the Leer Mine dispute, water monitoring is showing water quality impacts downstream of the big impoundment. Together with Save the Tygart group we continue to document stream conditions, monitor WVDEP’s response to the deteriorating conditions, and evaluate the potential for possible legal action in the future.”

On highways, Hugh Rogers noted that construction on the Kerens to Parsons section continues. Construction has not reached the areas where there are still disputes.

On public lands, Larry reported that we had received three specific proposals for projects that we might undertake that concern public lands. Right now we are in the midst of discussions on the future of the organization, staffing needs, etc. How those discussions turn out will have a big impact on how we would respond to the proposals. Because of this, we took no action and expressed an intention to consider them later.

Girl in the Woods

By Rachel Barton

girl in the woods
hair wild with twigs
could be eating dirt
or sucking roots
her skin the color of bark

I expect she may have grown
at least in knowledge
living with the leaves and bones
of trees for so long
trace of her in the ash

trunk sheathed in lichen
branches festive with clumps of moss
a scattering of red leaves like torn ribbons
and in the boughs of the larch
a light snow of reindeer lichen like lace

smell of the woods follows me
from any tree standing close
she is in my breath my lungs
the sap of her my blood
she breathes me in

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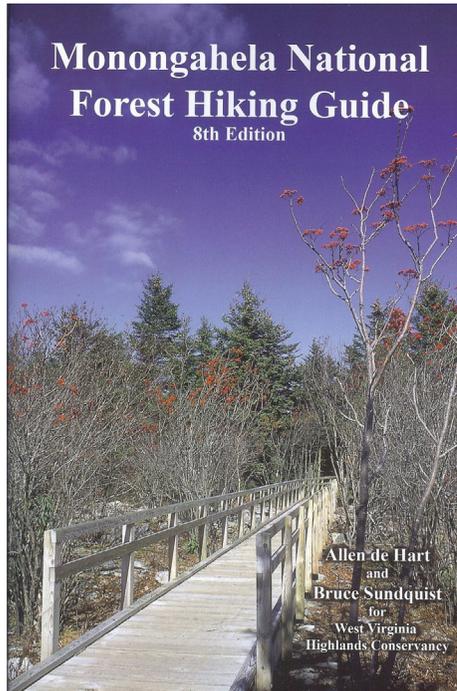
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Please email any poems, letters, commentaries, etc. to the VOICE editor at johnmcferrin@aol.com or by real, honest to goodness, mentioned in the United States Constitution mail to WV Highlands Conservancy, PO Box 306, Charleston, WV 25321.

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Remember the Highlands Conservancy in your will. Plan now to provide a wild and wonderful future for your children and future generations. Bequests keep our organization strong and will allow your voice to continue to be heard. Your thoughtful planning now will allow us to continue our work to protect wilderness, wildlife, clean air and water and our way of life.

Will the Atlantic Coast Pipeline Damage Virginia's Waters?

By John McFerrin

Several groups and individuals have sued the Virginia State Water Control Board, The Virginia Department Of Environmental Quality, and several individuals over the impact of the Atlantic Coast Pipeline on water quality.

The controversy is over the whether Virginia properly found that there was "reasonable assurance" that the pipeline and its construction would not harm Virginia's waters. As proposed, the pipeline would cross 890 Virginia rivers and streams and hundreds of acres of wetlands along its route. It will require the developer, Atlantic Coast Pipeline, LLC to clear 5,000 acres in the state, including 3,000 acres of forest. These streams including 73 or stockable trout streams in the mountains of western Virginia. In addition to trout waters, the pipeline will also cross 74 migratory fish spawning waters or their tributaries. Pipeline access roads will cross 89 Virginia rivers and streams, including 31 wild or stockable trout streams or tributaries to those trout streams. Pipeline developers may be required to blast in the stream channel or in adjacent areas to install the pipeline. Developers will drill under others, like the James River at the border of Buckingham and Nelson Counties,

With all these crossings and all this disturbance, the pipeline must receive a permit pursuant to the United States Clean Water Act.

Even though the United States Army Corps of Engineers approves the permits, the states have a role. Before the project may go ahead, the state must certify that there is "reasonable assurance" that the project will not violate state water quality

Here, Virginia has made this finding that there was "reasonable assurance." The plaintiffs claim that this was mistaken.

Background

Activities such as filling a stream or a wetland, crossing a stream or a wetland, etc. require a permit under the Clean Water Act. Many such activities apply for and receive an individual permit. To get an individual permit, someone must submit sight specific plans. Those plans are reviewed, and a permit is issued for specific activity on that sight.

In addition to the permit, before a project may go ahead the state where it is located must determine that there is "reasonable assurance" that the project will not cause a violation of state water quality standards. The goal is to assure that, even though federal authorities approve a project, state authorities have a chance to make sure that local water quality standards are not violated.

There are some activities for which an individual permit is not required. This comes about because the United States Army Corps of Engineers has decided that there are some activities where the effect is small, and it is the same no matter where the effect is. When this happens, the Corps issues what it calls a Nationwide Permit. Anybody who wants to do one of the activities covered by one of these Nationwide Permits just has to announce that it is going to do something covered by the Nationwide Permit. It then just has to follow the requirement of the Nationwide Permit and never has to apply for an individual permit.

Much to the horror of those concerned about the effects of the Atlantic Coast Pipeline, there is a Nationwide Permit (Nationwide Permit 12) for pipelines. Even though the terrain it must cross assures that there has never been a pipeline like the Atlantic Cost Pipeline, it has announced an intention to rely upon Nationwide

WARNING. This story contains law talk. May cause drowsiness. Do not read while driving or operating heavy machinery.

Permit 12. This means that no agency will have to evaluate each stream crossing individually.

Even though Dominion is relying upon Nationwide Permit 12, state agencies still must certify that there is "reasonable assurance" it will not cause a violation of state water quality standards.

The arguments

The plaintiffs make three arguments. The first is that there was no consideration of the cumulative effects of the pipeline on water quality. The pipeline will cross hundreds of streams and go through hundreds of acres of wetland. Even if the impact of each crossing is small (something with which the plaintiffs would disagree), the cumulative impact of so many crossings would not be. Virginia cannot certify that there is "reasonable assurance" that the project will not violate state water quality when it has not considered the cumulative impact.

For example, Townsend Draft, a Virginia wild trout stream in Highland County, has nine pipeline and access road crossings on the main channel and tributaries over one half mile. The Calfpasture River in Bath and Augusta Counties has 71 pipeline and access road crossings in its watershed. Even if the impact of a single crossing is minor, the cumulative impacts would be dramatic. Nobody could certify that there is "reasonable assurance" that state water quality will not be violated unless the cumulative impact had been considered.

Second, the agencies did not perform an anti-degradation review. All states, including Virginia, have what are called anti-degradation policies. They are supposed to be applied so that existing uses of waterways are maintained. Under these policies, streams are classified in what are called tiers. Tier 1 waters are those where the water barely meets water quality standards. Tier 2 waters are cleaner and can support more uses. Tier 3 waters are cleaner still and could support even more uses. Waters classified as Tier 3 are usually trout streams since trout can thrive in only the cleanest of waters.

It is possible, under the regulations, to lower the water quality in some streams so long as the resulting water does not fall below the standards that exist for all streams. Before that is allowed, the state agencies must conduct what is called an "antidegradation review." This involves a socioeconomic review to determine whether the lowering of water quality is worth the benefit that would be gained from the project.

The state agencies did not perform this review. Everybody agrees that this project will add sediment to the streams. Nobody could build a pipeline for hundreds of miles, crossing hundreds of streams, and not add sediment to the streams. Before this degradation of the streams is allowed there must be an

(More on the next page)

More about the Atlantic Coast Pipeline (Continued from previous page)

antidegradation review. There was no such review done for the Atlantic Coast Pipeline.

Third, the reviewing agencies did not consider that the proposed pipeline will go over karst topography. Karst is landscape underlain by limestone that has been eroded by dissolution, producing ridges, towers, fissures, sinkholes, and other characteristic landforms. These areas present a unique set of environmental challenges, including sinkhole flooding, sinkhole collapse, and groundwater contamination. Karst regions contain aquifers capable of producing large supplies of water used for watering livestock, drinking water, and stream recharge. Streams flowing through karst regions often disappear underground for many yards or miles before resurfacing as a spring or stream.

Rainfall landing on karst areas sinks quickly into the soil and the highly permeable rock beneath and then flows through a similarly integrated, but underground, drainage system. Rainfall carrying pollutants might flow hundreds or thousands of feet, or even several miles, to eventually emerge at and possibly contaminate a surface water.

Although Atlantic has assured, and the state agencies have accepted, that water in these regions will be protected, this assurance is meaningless as neither knows the boundaries of all the drainage areas in these regions. Thus, the state agencies have not determined what areas surrounding the pipeline path actually drain to a particular stream or creek. Without that information, the state agencies had no ability determine the potential impacts to water quality in karst areas, and therefore had no basis for a finding of reasonable assurance.

But there's more

These were the conventional arguments, the ones available to the plaintiffs at the time they first decided to take legal action.

Then Virginia took a procedural step which threw things into flux.

The developer of any project must decide if it will apply for individual permits for stream crossings or rely upon a Nationwide Permit. The Atlantic Coast Pipeline relied upon Nationwide Permit 12, the one for pipelines. When it came time for Virginia to make its certification that there was "reasonable assurance" that the pipeline would not violate water quality standards, Virginia said that it relied upon Nationwide Permit 12 and its provisions to assure that water quality standards would not be violated.

After having relied upon Nationwide permit 12 to certify "reasonable assurance", Virginia then had second thoughts. It asked for public comments on the question of whether the terms of Nationwide Permit 12 are adequate to protect Virginia waters. It could decide that the terms of Nationwide Permit 12 were not adequate and that the developer must seek individual permits for stream crossings.

A big part of the basis for Virginia's certification of reasonable assurance was that Nationwide Permit 12 was adequate. Not it is having second thoughts about whether Nationwide Permit 12 is adequate. If the basis for the certification of reasonable assurance is crumbling, then the certification of reasonable assurance must be faulty as well.

What plaintiffs want

The plaintiffs want the Court to decide that Virginia's certification of reasonable assurance that the pipeline would not cause a violation of water quality standards was invalid. They want the Court to send the decision back to Virginia to try again.

The case is pending in the United States Court of Appeals for the Fourth Circuit.



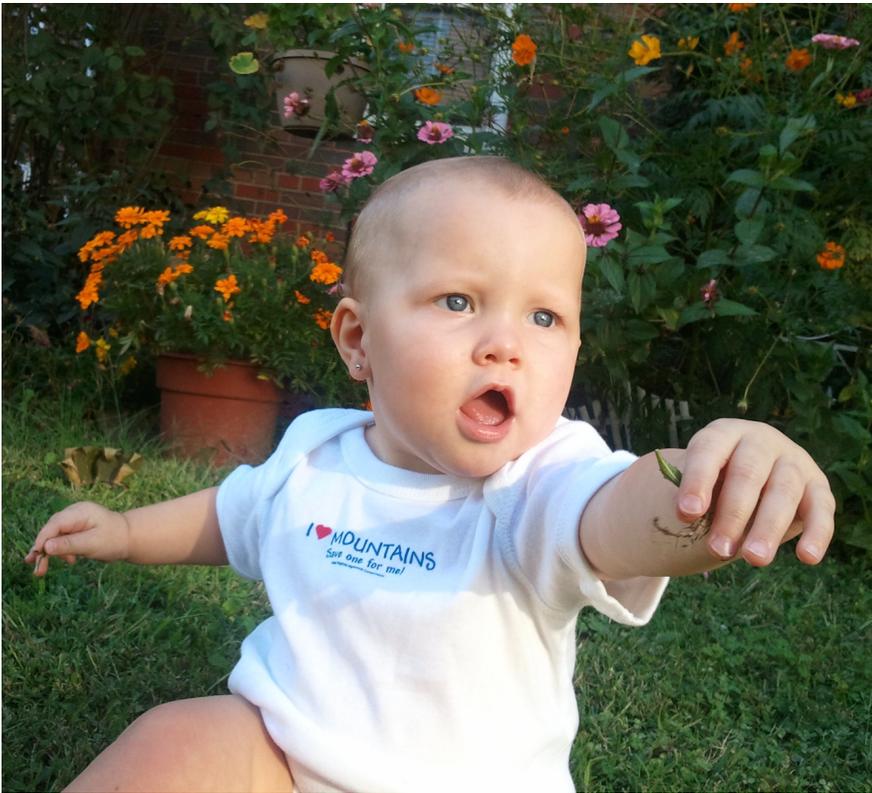
The Mayapple

Immature fruits as well as the vegetative structures of Mayapple are poisonous. As with many drugs, there is a fine line between poison and effective medicinal use. American Indians ate the ripe fruits and used a number of medicinal Mayapple preparations. The list of uses by American Indian include treatments for rheumatism, as a laxative as well as treatment for diarrhea, ulcers, sores, liver and bile problems, hemorrhoids, headaches, diuretic, whooping cough, cholera, pneumonia, problems of male and female reproductive tracts, as a purgative, and for anthelmintic (worming) purposes. Reportedly, individuals of some Indian tribes even used rhizomes of this plant to commit suicide.

In the 1800s and early 1900s, Mayapple extract was used as an active ingredient in Carter's Little Liver Pills; today, it is used as an extract called "Podophyllin" to remove genital warts. Drugs derived from the rhizome are being used in Europe, and are being tested in this country to treat forms of cancer such as cancer of the testes, two forms of lung cancer, Kaposi sarcoma, and some forms of leukemia. It also has been used to treat syphilis. There is some evidence that American Indians used this plant also to treat forms of cancer such as ovarian and skin cancer. Modern research shows evidence of Mayapple extracts that inhibit cell division, thus blocking new growth of tumors.

Information courtesy of the Prince William Wildflower Society.

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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 \$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