



# *The Highlands Voice*

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

Volume 51 No. 9 September, 2018

## **Pipelines Keep Getting Stopped** (at least temporarily)

By John McFerrin

### **Atlantic Coast Pipeline**

The Federal Energy Regulatory Commission (FERC) has ordered the Atlantic Coast Pipeline to stop construction because it does not have the proper permits and approvals.

#### **In previous episodes**

There are three things going on that always have had the potential to stop construction of the Atlantic Coast Pipeline, at least temporarily. The first is the difficulty with approvals by the Fish and Wildlife Service on its efforts to protect endangered species.

FERC is the big dog in this fight. It gets to decide the big question: whether the Atlantic Coast Pipeline gets built at all. In deciding the big question, it relies upon the decisions of several other agencies. These decision by other agencies serve as the building blocks upon which the big decision is based.

One of these other agencies is the United States Fish and Wildlife Service. It has to decide whether the developers have an adequate plan to avoid harm to endangered species.

There are eight different endangered species which are potentially imperiled by the Atlantic Coast Pipeline. The Pipeline developers are supposed to make a plan on how they will avoid

**(More on p. 3)**

### **Mountain Valley Pipeline**

The Federal Energy Regulatory Commission has ordered construction on the whole length of the Mountain Valley Pipeline stopped, subject to some conditions.

As originally planned, the Mountain Valley Pipeline would run 300 miles from Wetzel County, West Virginia, to Pittsylvania County, Virginia. EQT Corporation, the project's parent company, had originally said that it would be finished in late 2018; it has recently announced that it would be finished in early 2019. The planned route takes it through the Jefferson National Forest.

The pipeline as a whole must be approved by the Federal Energy Regulatory Commission (FERC). FERC's job is to promote reliable and efficient and sustainable energy services at a reasonable cost. It decides whether a proposed pipeline is necessary and will serve the needs of consumers. It had previously decided that the Mountain Valley Pipeline was necessary.

Because the pipeline was slated to cross the Jefferson National Forest, it would have to be approved by the United States Forest Service (which manages the National Forests) and the Bureau of Land Management (which manages land which the United

**(More on p. 4)**

#### **What's inside:**

Thoughts of our president	2	Bird banding	10
Roster of officers	4	Tracking birds that once	
Fall Review	4	came to visit	12
Remembering Ben Stout	6	Building the banding	
Help wanted	7	building	12
Membership meeting	7	One awesome bird	13
Get a Hiking Guide	8	Watching the ACP	14
E-Readers: Listen up	8	Get stuff	16
How to join	9		



## Thoughts from our President

By Larry Thomas

### A Remembrance

The West Virginia Highlands Conservancy (WVHC) has received a contribution from the Explorers Club of Pittsburgh (ECP) in the memory of former ECP club members George Bogel and Robert Broughton. I did some research before responding to thank ECP for the contribution.

The transmittal letter from ECP stated that Bob Broughton was involved in the early days of The West Virginia Highlands Conservancy. In fact on page 5 of, "Fighting to Protect the Highlands: The First Forty Years of the West Virginia Highlands Conservancy", I found that both Bob and his wife Sue were involved. Quoting from an article in the September 1977 edition of "The Highlands Voice" it's mentioned that Bob and Sue Broughton of the Pittsburgh Climbers attended the first meeting, in the spring of 1965, of the people who would eventually become the West Virginia Highlands Conservancy.

Further on page 7, it states that at another meeting in January 1967 it was decided to organize and become a permanent on-going organization to act as a watchdog for the wilderness areas of West Virginia and to be an activist organization rather than to just try to coordinate activities of other outdoor groups. At the meeting they adopted the Constitution and Bylaws, and accepted the name proposed for the new organization by Bob Broughton: "The West Virginia Highlands Conservancy".

Bob Broughton in an article in the January-February 1967 issue of "The Social Climber", the newspaper of the Pittsburgh Climbers stated:

The West Virginia Highlands Conservancy was formed on January 21, 1967 at a meeting at Blackwater Falls State Park, attended by representatives of a large number of organizations interested in the fate of the Highlands region. The agreed statement of purpose was the preservation and conservation of the natural, scenic, and historic areas of significance within the highland region.

Further on pages 206 and 209 of the history of WVHC, Bob Broughton is again mentioned. He was opposed to the Forest Service's use of eminent domain to acquire farms for the Spruce Knob-Seneca Rocks National Recreation Area.

The history section of the ECP website I found the following tribute to George and Bob:

"In the summer of 1977, 14 members of the Explorers Club of Pittsburgh (ECP) went to the Himalayas to climb Nanga Parbat, at 26,660 feet, the ninth highest peak in the world. It was the first American attempt on the mountain and the difficult Diamir Face was the route selected. After a grueling two week approach on foot, an additional two weeks was spent establishing Base Camp, Camps I and II, plus an intermediate "Depot" camp on a small rock ledge in the middle of the face at 18,000 feet.

As the advance party prepared for a push to Camp III, George Bogel, expedition climbing leader, and Bob Broughton left Base Camp after descending with another

member of the team who had been injured by a rockfall. After a long day of climbing, they were forced to bivouac at the "Depot" hoping to join the advance team the following day. That opportunity never came. During the evening a massive rockfall occurred, killing both climbers and scattering most of the expedition's food and fuel supplies.

Climbers have been killed before while attempting difficult summits, but this particular accident was especially tragic because of who these climbers were.

Bob was relatively new to the Club but not to mountaineering having spent nearly 20 years in the sport. He was a respected professor of law at Duquesne University and a driving force behind the Environmental Law movement. Thus, it seemed fitting to establish, in accordance with his family's wishes, a memorial fund for Bob which would benefit the Environmental Law Library at Duquesne.

George was a longtime member of the ECP and was proficient in many of the "Earth Sports" long before it became the "in" thing to do. As a rock climber he pioneered new routes, including the classic West Pole at Seneca Rocks, and led the first ascent up the face of Angel Falls - the world's highest - in the jungles of Venezuela. As one of the first Big-Water kayakers in the Pittsburgh area, he was known for his solos of the New River and for the first and only decent of the Gauley in a two-man raft. He built a hang-glider from a kit and without benefit of instruction, crashed on his maiden voyage and broke his arm (without much ado). His accomplishments go on and on, not just in mountaineering but as a caver, scuba diver, skydiver and engineer - his profession.

Most of all, he was my friend and I loved him. I was his partner in that raft on the Gauley and in innumerable other escapades of dubious value to any but ourselves. I helped to drag his lifeless body off Nanga Parbat, cursing him for leaving me with so much left to do together.

I didn't have exclusive rights to his friendship. George wasn't that way; he loved and was loved by many. Those of you who never knew him have missed much and those of us who did have established a memorial fund in his name to be used for environmental purposes. It is our way of sharing our feelings about him with all of you. Please feel free to participate in some way, by making a donation or offering suggestions, for use of the funds.

Help us to keep his memory alive.

Bruce McClellan"

I enjoyed the research highlighting Robert's involvement in the founding of WVHC and continued activities.

Larry Thomas

## Atlantic Coast Pipeline Stopped For Now (Continued from p. 1)

harm to these species; the Fish and Wildlife Service is supposed to approve the plan.

The Fish and Wildlife Service had approved the Atlantic Coast Pipeline's plan for avoiding harm to endangered species. As reported in the May issue of *The Highlands Voice*, the United States Court of Appeals for the Fourth Circuit decided that the pipeline's developers' plan was inadequate and sent it back to the drawing board.

The second thing that could stop construction of the pipeline is difficulty getting approval from the National Parks Service. The pipeline's proposed route intersects the Blue Ridge Parkway, a unit of the National Park System managed by National Park Service. The National Park Service issued a right-of-way permit allowing the pipeline to drill and pass underneath the Parkway surface. The pipeline will also carve a path through a nearby forest, affecting views from the Parkway's scenic overlooks.

Just as they had with the United States Fish and Wildlife Service decision on endangered species, several environmental and citizen groups petitioned the United States Court of Appeals for the Fourth Circuit.

The Court decided that the National Park Service had improperly issued the right-of-way. Unlike the National Forests (which are managed for multiple uses) the Blue Ridge Parkway is like a National Park. It is only managed for conservation. The National Park Service could only issue a right-of-way if it determines that the right-of-way is part of a conservation use. In the words of the Court, "the right-of-way permit in this case would violate statutory requirements if not accompanied by a valid agency determination that the pipeline is not inconsistent with the Parkway's scenic value and the public's enjoyment thereof."

According to the Court, the National Park Service's failure was to explain its conclusion that the pipeline right-of-way would be a conservation use. There was evidence before the agency that it would not be such a use. Theoretically the Park Service could have weighed this evidence and any other and decided that a pipeline right-of-way was a conservation use. It could have, but it didn't. It just determined, without apparently thinking about it, that this right-of-way was consistent with its duty of manage the Blue Ridge Parkway for conservation, and only conservation. The Court considered such acting without weighing any evidence or making a reasoned decision to be illegal.

The third thing that has the potential to stop the Atlantic Coast Pipeline, at least temporarily, is its failure to get the proper approvals for its stream crossings. The Clean Water Act requires that all pipelines that cross streams or wetlands have a permit. Developers may either seek an individual permit for each crossing or seek to qualify under a Nationwide Permit.

Nationwide Permits are issued for large classes of activities. They are appropriate for projects with minimal individual and cumulative environmental impacts. It is a one size fits all approach for lots of nearly identical activities that have small impacts. Individual permits are site specific; developers would submit an individual plan for each crossing and regulators would look at each one individually. Developers of the Atlantic Coast Pipeline sought to use the less site specific Nationwide Permit.

As reported in the August issue of *The Highlands Voice*, several environmental and citizen groups had asked the United States Court of Appeals for the Fourth Circuit to stop the pipeline because the Atlantic Coast Pipeline was trying to use the wrong

kind of Clean Water Act permit. It was trying to use the less specific Nationwide Permit instead of the more site specific individual permit.

### Now what has happened

The Court of Appeals had ruled that the Fish and Wildlife Service and the National Park Service had each been mistaken in its ruling on the Endangered Species Act and the management of the Blue Ridge Parkway. Even though the Court told the agencies that they had to go back and try again, it did not stop the pipeline construction in the meantime.

This left things to the Federal Energy Regulatory Commission. It ordered construction to stop along the whole length of the pipeline route. It assumed that the Atlantic Coast Pipeline would be able to eventually straighten out its problems with endangered species and the crossing of the Blue Ridge Parkway. At the same time, however, FERC could not predict when that would be or what new approvals would require. FERC wanted to avoid the possibility that changes in these two approvals would make it necessary to change the route of the rest of the pipeline, raising the possibility that land along the route that the Atlantic Coast Pipeline had to abandon had been disturbed for nothing.

The Court of Appeals has also acted on the request to shut down construction because the ACP does not have the proper permit under the Clean Water Act. The Court denied that request, at least for right now. It said that it did not have sufficient evidence that the permit which the ACP sought to use was improper. Because of this, it would not stop construction until it had a more complete hearing.

This does not, however, settle the matter. The United States Army Corps of Engineers has the responsibility to approve use of a Nationwide Permit by the Atlantic Coast Pipeline. Because of the controversy, it has temporarily suspended stream crossings in the West Virginia portion of the pipeline.

### Now where are we

Construction on the Atlantic Coast Pipeline has stopped, sort of. In its order stopping construction until the developers could straighten out problems with the Endangered Species Act and crossing the Blue Ridge Parkway, FERC had allowed the developers to continue work necessary to stabilize the right of way and work areas. ACP has prepared a plan to do this and FERC has issued another letter detailing what ACP is allowed to do while FERC's stop work order is in effect. Construction has stopped other than what is in that letter.

### Words mean what you want them to mean

This story says that construction on the ACP has "stopped, sort of." For more insight into what "stopped" and "sort of" might mean in this situation, see the story on p 14.

## Mountain Valley Pipeline Stopped for Now (Continued from p. 1)

States owns). Both of these agencies had previously approved the pipeline's crossing of the Jefferson National Forest. In a previous episode

As reported in the August issue of The Highlands Voice, the United States Court of Appeals for the 4th Circuit Court vacated the Bureau of Land Management's decision to grant a right of way, and the U.S. Forest Service's decision to allow a right of way and construction through the Jefferson National Forest after both were challenged by a coalition of citizen and environmental groups. Now what happened?

Once the pipeline was stopped, at least for now, in the Jefferson National Forest, the question remains what happens along the rest of the route. Only a small fraction of the pipeline is planned for the Forest. Even if, under the Court's Order, construction could not go ahead in the Forest, could it go ahead on other parts of the line?

The Federal Energy Regulatory Commission says no. In its order it ordered all construction all along the line to stop. While it assumes that the Mountain Valley Pipeline will be able to eventually get proper approval to cross the Jefferson National Forest, the approval might end up making it necessary to move other parts of the line. FERC does not want to allow construction to continue in one spot with the possibility that changes in the route across the National Forest might make it necessary to put the pipeline in a different spot.

But what about areas where the developers had begun construction already? The FERC order covered that too. It allowed work that was necessary to stabilize the right of way and work areas.

In response, the Mountain Valley Pipeline asked that it be allowed to continue to work on the first 77 miles of the pipeline. It said that it had already cleared the right of way, dug the ditches for the pipe and moved the pipe to the site. It said that if it couldn't reclaim the site without substantial earth moving; at the same time, it could not just walk away and leave the site idle while it straightened out its permitting problems with the Jefferson National Forest. It said it feared vandalism, corrosion, and erosion at the site were it left idle.

FERC bought it. It allowed construction to continue on the first 77 miles of the pipeline.

Meanwhile, politics has once again intruded itself into the process. Both Sens. Joe Manchin and Shelley Moore Capito as well as Rep. David McKinley, R-W.Va. urged the Federal Energy Regulatory Commission to allow construction to resume on the Atlantic Coast Pipeline and Mountain Valley Pipeline as quickly as possible.

### Breaking news

**Just at press time the FERC announced that it was allowing the Mountain Valley Pipeline to resume construction along all most of the route, exempting mostly those parts in the National Forest. It says that the environmental harm would be less is construction is allowed to than there would be if construction were stopped. There was some grumbling by Commissioners that this should have been a Commission decision rather than one made by the staff, as this one was.**

**And so it goes. The saga continues.**

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

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: Cynthia D. Ellis, 3114 Steel Ridge Road, Red House, WV 25168, (304) 586-4135, cdellis@wildblue.net

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. 304 866 4093  
 Bill McNeel, 1234 Jericho Road, Marlinton, WV 24954, (304) 799-4369, wpmcneel@gmail.com  
 Randy Kesling, 116 Farm Meadow Drive, Bridgeport, WV 26330; (304) 622-5982; rkesling@MA.RR.com  
 Kent Karriker, 344 Harpertown Road, Elkins, WV 26241 (304) 636-8651, bykarriker@suddenlink.net

DIRECTORS-AT-LARGE (Terms expire October 2019)  
 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  
 Hugh Rogers, Moon Run, Kerens, WV 26276, (304)636-2662, hugh.rogers@gmail.com

### ORGANIZATIONAL DIRECTORS

WEST VIRGINIA CAVE CONSERVANCY: Randy Rumer; 295 Caraway Lane Renick, WV 24966; (304) 497-2657; rrumer@frontiernet.net  
 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  
 WEST VIRGINIA RIVERS COALITION: Turner Sharp, Box 4751, Parkersburg, WV 26104 Tsharp@suddenlink.net  
 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  
 RENEWABLE ENERGY COMMITTEE: Larry Thomas, P.O. Box 194, Circleville, WV 26804, (304) 567-2602, larryvthomas@aol.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

# West Virginia Highlands Conservancy Fall Review 2018

## And Annual Meeting

Experience Learning Inc.  
Spruce Knob Mountain Center  
18 Woodlands Way  
Circleville, WV 26804 USA  
<https://experience-learning.org/>

Friday October 5 through Sunday October 7, 2018

### **FRIDAY & SATURDAY**

Presentations on the History of Experience Learning and the Spruce Knob Mountain Center, The Nature Conservancy and Activities in West Virginia, the Allegheny-Blue Ridge Alliance Pipeline Compliance Surveillance Initiative (CSI) and National Forest Concerns.

Tabling and Posters, Field Trips and Recreational Opportunities!

### **SUNDAY: ANNUAL MEMBERSHIP MEETING AND FALL BOARD MEETING**

TO REGISTER, please send the registration form below to Larry Thomas at P. O. Box 194 Circleville, WV 26804 or at [larryvthomas@aol.com](mailto:larryvthomas@aol.com). Additional questions can also be emailed. Please register by September 21 so we can have a meal count for the review. (Reservations will be accepted at the conference for registration and lodging only. Late lodging is based on availability. Meals must be booked in advance.)

DIRECTIONS FROM JUDY GAP, WV at the Intersection of Route 33 and Route 28. Follow Route 28 South through Circleville (3 miles) and Cherry Grove (3 miles). Approximately 2–3 miles after going through Cherry Grove, turn right on Sawmill Run Road/Co. Rte. 28/10 toward Experience Learning and Spruce Knob Lake (there will be a small Forest Service sign). After about 3 miles, continue left at the intersection with Hunting Ground Road another 3 miles to our sign and entrance on the right at the top of a hill; if you go down a very long hill and over a bridge at a small creek you have gone too far. Follow the dirt road 1 mile through farm land (bearing right at our motor pool) until you get to the large round buildings—yurts.

## Registration

Name(s): \_\_\_\_\_

Organization (if other than WVHC): \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Cell: \_\_\_\_\_

E-Mail: \_\_\_\_\_

Number of people being registered: \_\_\_\_\_

### **Lodging:**

Dormitory beds cost \$25 per night. Number \_\_\_\_\_ Total \$ \_\_\_\_\_

Four private guest yurts, nestled up against the spruce forest, are \$60 per night. As available. Number \_\_\_\_\_ Total \$ \_\_\_\_\_

Camp sites are available as well around the Center; they cost \$15 per person, per night. This includes access to bathroom and shower facilities. Number \_\_\_\_\_ Total \$ \_\_\_\_\_

**Meals:** (check here if vegetarian) \_\_\_\_\_

Friday Evening: Pizza and other snacks – will you be present? Yes \_\_\_\_\_ No \_\_\_\_\_

Saturday Breakfast: \$ 8.00 per person (number of meals \_\_\_\_\_) Total: \$ \_\_\_\_\_

Saturday Lunch: \$ 10.00 per person (number of meals \_\_\_\_\_) Total: \$ \_\_\_\_\_

Saturday Dinner: \$ 12.00 per person (number of meals \_\_\_\_\_) Total: \$ \_\_\_\_\_

Sunday Breakfast: \$ 8.00 per person (number of meals \_\_\_\_\_) Total: \$ \_\_\_\_\_

Sunday Lunch: \$ 12.00 per person (number of meals \_\_\_\_\_) Total: \$ \_\_\_\_\_

Total for all lodging and meals: \$ \_\_\_\_\_

Payment will be collected at registration. We're not set up for credit cards so cash or check, please.

## Remembering Ben Stout

By Cindy Rank

Ben Stout, father, teacher, friend, scientist, ecologist, activist and lover of life, died August 3, 2018. Since then there has been an outpouring of fond remembrances from a multitude of friends, acquaintances, and co-workers.

When I first heard I sent the following message to the WV Highlands Conservancy Board.

*Sad news this morning as longtime friend, Conservancy supporter, activist and teacher Ben Stout died.*

*His enthusiasm for life and his love of our fresh water resources and all the critters who live in those streams invigorated and inspired all who knew him.*

*His determination to share his knowledge and expertise in support of communities harmed by polluting industries was boundless.*

*He gave unselfishly of his time, energy, knowledge and skills to protect the environment and the goodness of the world around us.*

*He will be missed*

For me personally it feels as though a certain circle of life has been completed – I met Ben at Canaan and I last saw him at Canaan.

The first time we met was in the early 1990s during meetings of the Canaan Valley Task Force, a platform for discussions and



**Ben with some students in the field**

negotiations initiated by Chris Clower of the US Fish and Wildlife Service and other supporting agencies like WVDNR that culminated in the official establishment of Canaan Valley as the country's 500th National Wildlife Refuge. Ben's research and documentation of the increasingly negative impacts of human activity on the unique wetlands of the Valley added a certain urgency to the conversations and highlighted the need for greater protection of the area.

The last time I saw Ben was also in Canaan - just a year ago at the Highlands Conservancy 50th Anniversary celebration. He loved the area and enjoyed any time he could spend in the Valley,

Dolly Sods, the Sinks of Gandy, etc. whether fishing or hiking or on a paddle board during the 50<sup>th</sup> celebration. [see photo].

Interspersed throughout the 25 years between those events were a multitude of trips to southern West Virginia and encounters at meetings, on mine sites, and at public hearings across the state where Ben's work and mine overlapped, and our mutual desire to protect the water resources of West Virginia was being challenged.

Ben was born and raised in West Virginia and taught Biology



and Stream Ecology at Wheeling Jesuit University for the past 26 years. His environmental research, scientific publications, and testimony are widely recognized.

Among the many awards he received he may have been most proud of his recent and very prestigious induction in the first class of Fellows of the Society of Freshwater Science in 2017, an honor given in recognition of outstanding contributions in the field of freshwater science.

Prior to working at Wheeling Jesuit, Ben taught at Southern West Virginia Community College in Williamson and Logan. He would later return to those communities to testify in Federal Court in our first mountaintop removal litigation on behalf of citizens arguing that valley fills stemming from mountaintop removal mining operations were a violation of the Clean Water Act.

He often said that was a life changing experience that led to even greater involvement with communities throughout West Virginia, southwestern Pennsylvania and eastern Ohio where water pollution from industrial activities – mainly from coal mining and other coal related activities but also later from the newer unconventional gas well drilling – has devastated the people and the environment.

He loved life, his three kids, his students, and the world around him ---- And he loved bugs - especially those tiny critters that live in small headwater streams and work hard every day to keep our freshwater streams healthy and happy.

It has been noted elsewhere that Ben's career-long goal had been to "bring the voice of science to the people." And boy did he.

**(More on the next page)**

## More Remembering (Continued from previous page)

His enthusiasm and joy were contagious.... He made science come alive when he talked.

Whether explaining the stream life continuum in court, or excitedly picking out tiny organisms from the very headwaters of Pigeonroost Branch to show Judge Haden there truly was life worth saving in that stream, or talking with reporters and filmmakers overlooking Hobet 21 or other mountaintop removal mine sites, Ben was at his best.

Whether listening to and talking with community members in Mingo County where the injection of toxic coal sludge had polluted their well water, or with community members near the toxic Little Blue Lake coal ash lagoon in northern WV and nearby PA, Ben paid attention to pockets of people who weren't being heard, documented their concerns, and gave them a new voice.

Of all the tributes I've read the following from a co-worker at Wheeling Jesuit may have said it best:

*"Ben made the biology degree go far beyond book learning. It was also great that Ben took his students into the back roads of West Virginia--it wasn't ever just about the data. The work addressed the impact that compromised water quality has on human communities and wildlife habitats. Dr. Ben Stout's legacy lives on through his students, publications, and audiences throughout WV and Appalachia who valued his voice and continue his work. What a pleasure and honor it was to cross paths with this wise soul."*



Ben at the 50th anniversary celebration

### Wanted: Membership and Fulfillment Secretary

After eleven+ years in the position, Beth Little is retiring and resigning her position at the West Virginia Highlands Conservancy. Because of that

**THE WEST VIRGINIA HIGHLANDS CONSERVANCY**, the state's oldest and largest environmental advocacy organization, is seeking a membership and fulfillment secretary with strong organizational skills and a passion for the environment. Primary responsibilities include membership contact, membership database management, coordination with the board of directors to include quarterly meeting attendance and support, and publication and online store order fulfillment and record keeping. Advanced experience and ability with Microsoft Excel and other Microsoft Office applications required. This is a contract position; salary dependent upon experience and skills. Please contact Larry Thomas at [larryvthomas@aol.com](mailto:larryvthomas@aol.com) before September 28 for additional information and a job description.

### Annual Membership Meeting!

Among the activities that will take place during the West Virginia Highlands Conservancy Fall Review are the Annual Membership Meeting and the quarterly Board meeting. The Annual Membership Meeting will be held at 9:30 AM on Sunday, October 7<sup>th</sup> at the location indicated for the WVHC fall review. The Board meeting will follow immediately afterward.

The main item of business at the Annual Membership Meeting will be the election of at large board members and officers.

We have a nominating committee: Frank Young, Buff Rodman, and Hugh Rogers. If you wish to suggest someone, or volunteer yourself, for the Board or an officer position, please contact one of the members of the committee. Contact information is on page 4. Nominations will also be taken from the floor at the Annual Meeting.

The Directors-at-Large, who shall be individual members of the Conservancy, shall be elected by the members of the conservancy to terms of two years, more or less, to coincide with the annual meeting.

The Officers shall be individual members of the Conservancy and elected by the members of the Conservancy to terms of two years, more or less, to coincide with the annual meeting.

The Board Meeting immediately follows the Annual Meeting. All Conservancy members are welcome at the Board meeting. Although they are not allowed to vote or make motions, they are welcome to participate in the discussion.

## Mon National Forest Hiking Guide

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

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

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

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

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

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

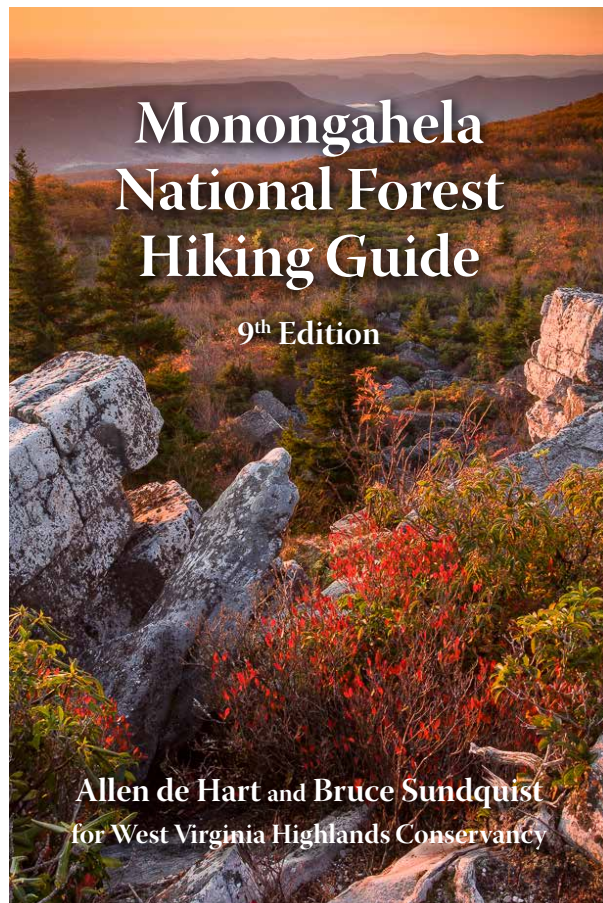
**Send \$18.95 plus \$3.00 shipping to:  
West Virginia Highlands Conservancy**

**P.O. Box 306**

**Charleston, WV 25321**

**OR**

**Order from our website at  
[www.wvhighlands.org](http://www.wvhighlands.org)**



### VOICE AVAILABLE ELECTRONICALLY

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

### 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.

### ATTENTION EREADERS

**Attention readers who have asked to get the Voice by internet link:** Occasionally when I send the Voice link to the email address I have for you, I get a reject. When this happens I will switch you back to receiving the paper copy. With no valid email address, I have no other way of contacting you. If you have been getting the electronic version and suddenly start getting a paper version, it just means I do not have a valid email address. Just send me a correct email address and I will fix it. [blittle@citynet.net](mailto:blittle@citynet.net)



**Join Now !!!**

Name \_\_\_\_\_

Address \_\_\_\_\_

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

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

<b>Membership categories</b> (circle one)		Individual	Family	Org.
Senior		\$15		
Student		\$15		
Introductory		\$15		
Other		\$15		
Regular		\$25	\$35	\$50
Associate		\$50	\$75	\$100
Sustaining		\$100	\$150	\$200
Patron		\$250	\$500	\$500
Mountaineer		\$500	\$750	\$1000

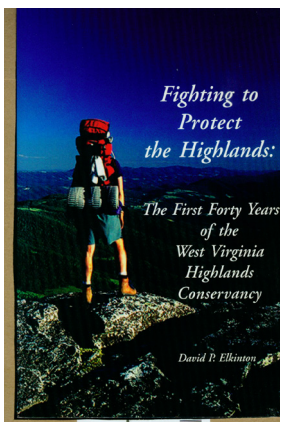
Mail to West Virginia Highlands Conservancy, P. O. Box 306, Charleston, WV 25321

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

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

**GET A GREAT HISTORY BOOK**

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



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

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

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

**Tell a Friend!**

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

Person you wish to refer: \_\_\_\_\_

Address: \_\_\_\_\_  
 \_\_\_\_\_

Email \_\_\_\_\_

Your name: \_\_\_\_\_

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

## Banding Birds for Over Six Decades

By LeJay Graffious

Each year, in late summer through early fall, volunteers gather near Red Creek campground on the Dolly Sods Wilderness Area, to help with banding efforts of migrating birds.

This year, 2018, has been designated by National Geographic and Audubon



as “The Year of the Bird,” in honor of the anniversary of the Migratory Bird Treaty Act. So, it is especially fitting that we look at the place and people associated with more than six decades of surveying birds as they head south through the mountains of West Virginia.

Banding occurs at the Allegheny Front Migration Observatory. This is an apt and elegant name for an area centered by a uniquely designed three-sided hut, perched on a rocky outcrop and accessed by a short trail east of the campground. The view is outstanding, especially at sunrise, when

one looks out across seven ridges. The observatory is directed by Joan Pattison and Todd Schnop.

Birders originally came to high elevation location to count hawks flapping and soaring overhead. Then they became aware of, first thrushes, and then warblers, in large numbers. The spot developed into the Allegheny Front Migration Observatory.

Welfare of the birds is primary. The nets, finely spun and called “mist nets,” are suspended on metal poles in sections of the ridge area known to be passages for migrants. Nets are unfurled in pre-dawn hours and wound up each day at noon. Birds “bounce” into the nets, fall into the flaps of netting, and are quickly extricated. At the hut, banders complete the data for each bird and use special pliers to carefully place a lightweight metal band on one

leg; then the birds resume flight.

Experience has shown that birds will mostly be caught before midday; that accounts for the closing at noon. Also, rain [and yes sometimes snow!] will mean that the nets are closed.

The bird banders must undergo rigorous training and secure a license.

The banding station’s datashowthevalueofhighridges as corridors and the dangers of windmills and other towers.

Conservation groups support keeping ridges open, not making them obstacle courses.

Environmental groups support the creation and maintenance of young forests, which are much more productive providing food sources than mature forests, to fuel the journey. They support maintaining green undeveloped areas along the routes. They support keeping cats indoors, a safer option

for our feline friends and one that does not contribute to the estimated 4.4 billion birds killed annually in North America.

In addition to migration data, banding also provides a window into other scientific work. With technology taking more of role in birding, a researcher came to AFMO with recording equipment and light-tight enclosures. Since birds migrate at night, they use a series of chip notes to stay in communication. He recorded these notes and developed a program to listen to the night skies and record the number of each species passing overhead. Other studies have occurred at AFMO including birds as vectors of Lyme disease. Birds do not get Lyme, but they carry ticks which move the virus around the country.

Of course, all banding data is reported to the USGS Banding Lab in Laurel, MD. AFMO data, along with the other reports from around North America, give a big picture of environmental health through bird populations. Some reports say the birds have decreased by half in the past forty years. Also, studies on climate change and the effects on migrants have used this



data. To me, one of the most valuable assets of the station is the educational component, which gives a personal, up close “look them in the eye” experience to visitors. They can actually hear the racing heartbeat of a bird pressed to their ear. These interactions create lasting impressions and possibly plant the seeds of environmentalism.

The station at Dolly Sods is staffed completely by volunteers, as it has been throughout its long history. This year we

## More About Bird Banding (Continued from previous page)

have 9 banders cycling through the season from August 18 to October 6. Ten trained net tenders and a few more in training assist throughout the migration.

These include WVHC members such as LeJay Graffious. Jackie Burns,



Carol and Fred McCullough, and Tom and Dawn Fox. They freely donate their time [and some muscle] to assist with hut set-up, net lane maintenance, net tending, bird retrieval, and, when possible, hosting and educating visitors.

Two prominent persons in the early days of the Allegheny Migration Front Observatory were Ralph Bell and Dr. George Hall. Each brought foresight and enthusiastic action to the idea that much could be learned about the patterns and numbers of passing species through formal study. Their yearly reports were enlightening and one, for 2003 began this way: "The 46<sup>th</sup> year of bird banding at the AFMO [Allegheny Front Migration Observatory], Grant County, West Virginia, was another season of modest results. The number of bandings was only 62% of the long-term average, making this the sixth poorest season since we have had full time coverage." Contrastingly, next year's began, "The 47<sup>th</sup> year of bird banding at the AFMO [Allegheny Front Migration Observatory], Grant County, West Virginia, was the best since 1999." Reports noted numbers banded, the first date of capture, last date, and peak numbers and dates for all species processed.

In other informal reports, especially stories around campfires at Red Creek, birders do and did recount adventures from the fifties, sixties...and on. George Hall told of cattle grazing at the Sods; those with horns often got tangled in nets [early

nets were at the location of the present campground]. He also told of being alone there, in the 1950's, with a dead car battery and walking 12 miles to get help. The second part of that adventure included a ride on the back of a Harley Davidson motorcycle...to Maysville.

Bander Leon Wilson would always ask child visitors, "Which do you think weighs more...a hummingbird or a ping pong ball?"

I first visited the AFMO in 1976 when Elizabeth Zimmerman took me to the station. At first I was attracted to the variety of species that could be seen up close and personal. There have been 127 species recorded at AFMO; the only confirmed record in WV of a Kirtland's Warbler is from there.

Then I was drawn to the skill of the banders and net tenders. After several visits, in 1977 I was taught to extract birds and removed my first bird from the mist nets. I was hooked.

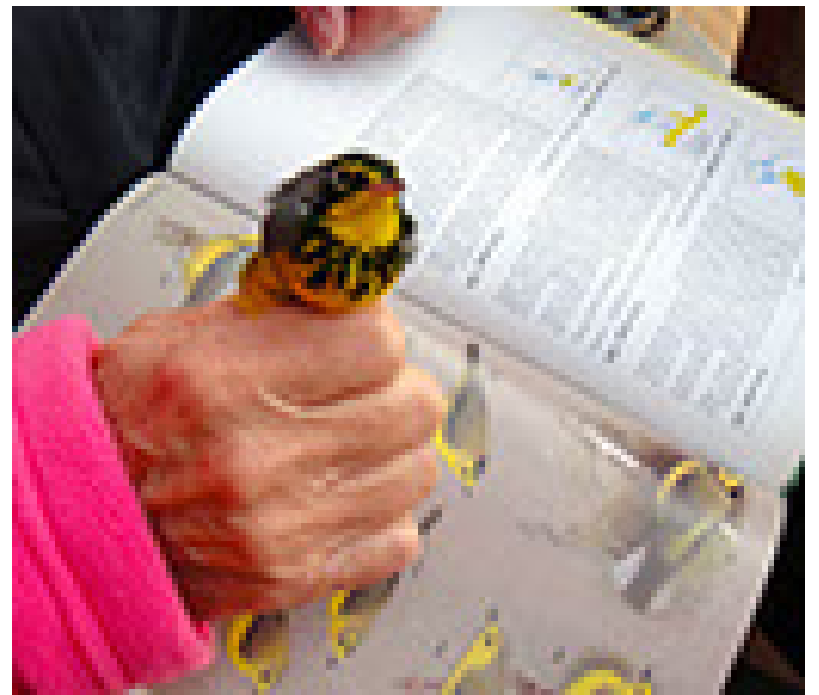
As my net tending continued, Ralph Bell first approached me about becoming a bander in 1996.

As a working school principal, I did not think that I had the time but, through his persistence and wanting the station to continue, I agreed and was his trainee,



or sub-bander, from 2000 until his death. Now, I am a Master Bander at AFMO and run my own summer station, Old Hemlock Bird Observatory, near Bruceton Mills, WV, under the Institute of Bird Population, Point Reyes, CA guidelines.

There have been many changes at AFMO over the years. When I first started going to Dolly Sods it was free range for cattle and sheep. When it became a Wilderness area, the livestock were removed. They were maintaining the vegetation at low heights. When the plants were taller than



humans and net poles, the number of birds captured dropped off precipitously because they were flying over the nets. Volunteer Tom Fox stepped in and worked with the Forest Service to clear-cut a section to the east of the nets. Now the birds fly up the ridge and, when they encounter the west winds at the Front, they drop down to the protection of the trees and hit our nets. This has helped improve our capture rate of birds.

The birds still hold to their course over that ridge and the volunteers still try to briefly detain them in that flight. It must be dreadful and glorious to lift off and wend through the starry skies. It is glorious and wonderful to see them come over our mountains, and to have even a chance to hold one for just a moment. A person may gently cup hands and feel the warm and fiercely beating heart...and be speechless with the joy of that gift of that time and that place.

**Cindy Ellis also contributed to this article.**

## Where do the birds go from here?

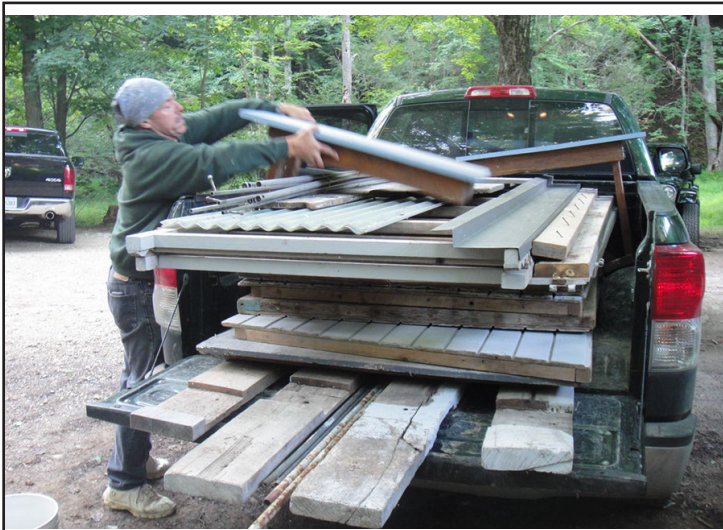
By LeJay Graffious

Joan Bell Pattison maintains the recovery data related to the AFMO. Fewer than 100 birds banded at AFMO have been found away from the station. This rate is low when compared to the time and effort involved to band nearly 300,000 birds, thus showing the importance of each band. But this is understandable when thinking of AFMO as just a dot on the map in the Western Hemisphere. Compare this rate to my MAPS (Monitoring Avian Production and Survivorship) station at Old Hemlock where about 30% are recaptures from previous years. I am recapturing birds that have strong site fidelity, so they return to their home breeding grounds annually.

There have been some interesting AFMO recoveries, however. A grandson of a Brooks Bird Club member worked on an oil rig in the Gulf of Mexico. After a storm, hundreds fatigued birds died seeking refuge on the platform. He was assigned to sweep them into the Gulf. He spied a band and sent it to his grandmother who submitted it to the Banding Lab in Laurel, Maryland only to discover it was banded in WV.

A banded bird was seen in a bird cage on the streets of Santo Domingo, Dominican Republic by another Brooks member. That Cape May Warbler was banded by Leon Wilson on Dolly Sods. A birder in Sidell, LA had a Ruby-crowned Kinglet coming to a feeder in her yard. Through persistence and the aid of a telescope she was able to record a few numbers at a time until all nine digits were confirmed over the course of days.

In 1995, I banded a Yellow Palm Warbler, after he had successfully made four complete round trips from the north to the wintering ground around the Gulf of Mexico. On the fifth return trip in April 2000 he struck a window on the World Trade Center, was picked up off the sidewalk, and submitted to the Banding Lab. Sadly, we know the rest of the story.



## Building the Banding Building

By LeJay Graffious

The small banding building is only used for about 2 months and is assembled and taken apart each year. The idea for a shelter began in 1979, with Ralph Bell and George Hall discussing with Kathleen Finnegan about the addition of a shelter to be more convenient for the aging banders and more conducive to sharing the process with visitors. I sketched my plans and shared them with the group. The designs were, in turn, approved by Petersburg District Ranger, Jerry Bremer, in May.

In the summer of 1980, I constructed the 6 foot by 8 foot banding shed in my garage. The panels are easily disassembled to be transported in the bed of a pickup truck. Epehe Oliver, then superintendent of the Mon Forest, provided access to a shed at Laneville for storage. Each year we truck from the foot of the mountain to the trailhead, then carry the components to the front and assemble. 2018 was my thirty-ninth trip to set up the banding shed.

I still have the original sketches and materials list. My receipt from General Woodworking of Morgantown shows the total cost was \$282.68.

## One Bird's Story

By LeJay Graffious

Maggie Perl returns from the net lanes with several brown paper bags, each labeled with a bird alpha code and twisted at the top to create a safe air space for the bird being transported. She hands them over to me, the bander on duty. I do a quick scan of the codes to triage the banding order. One is labeled BLPW, the bander's alpha code for Blackpoll Warbler. Generally, this code is the first two letters of the first word and the first two letters of the second word of the bird's name. For example, a Northern Cardinal would be abbreviated as "NOCA."

But there are exceptions when there is overlap. I know, from years of experience, the Blackpoll takes a 0-size bird band. Birds' tarsi vary in size, so bands come in different sizes to fit loosely, but not slide over the joints, thus not interfering with the birds' movements. My last banded bird was a 0-size band. To simplify record keeping, I want to continue with the same size band, so I extract the bird from the bag with a bander grip.

I confirm Maggie's identification and proceed with the banding process. I next place a band on the tarsus and record the band's nine digit code and the bird's alpha code. This particular bird now has an individual identity and a story begins. By wing length and pattern of the dusky or black in the back feathers, I determine this Blackpoll is a hatch-year male. I confirm the age by looking at the skull. A few drops of water on its head allow me to easily part the wetted feathers, revealing patterns of pink and white seen through the skin.

Pink areas are unpneumatized windows confirming a hatch year bird. The process of a bird developing hollow, strong air-filled bones is called pneumatization. As calcium struts form between the inner and outer layers of skull bones, these windows fade to white. With his nine digit code and pertinent data recorded, the bird is released to continue his journey.

As 2810-36780 flies over the brink of the Allegheny Front, I wonder at its journey. Jack Conner wrote in his book, *Season at the Point*, "Almost everything we know with certainty and precision about bird migration has been discovered or proven through banding, and it is not an exaggeration to say that the numbered leg band has been as important a tool in the science of avian migration as the telescope has been in planetary astronomy."

We know Blackpoll Warblers breed coast to coast in black spruce and tamarack forests in Canada's and Alaska's boreal forests. Could this bird be from western Alaska? Draw a straight line from Nome, Alaska to Sao Luis, Brazil. You may be surprised that it crosses West Virginia.

The Allegheny Front Migration Observatory bands more Blackpolls each year than all of North America's other banding stations combined. As of the beginning the 2018 season, 33,947 of the 270,265 birds banded during the history of the station have been Blackpoll Warblers. Of these, only two have been foreign recaptures. One banded in September 1976 was found near

Kalispell, MT the following year. Bob Dean banded a hatch year bird in September 2006 that was recaptured in Santa Marta, Colombia in October 2008. This is a small return on the large investment of time and effort but, when taken in aggregation with all records, a picture emerges of migration patterns.

Ornithologists are piecing the Blackpoll puzzle together. The Cornell Lab's *allaboutbirds.org* website states, "This long-distance athlete weighs less than half an ounce (12-13 grams) yet makes the longest overwater journey of any songbird—nearly 1,800 miles nonstop over the Atlantic Ocean to its wintering grounds." They first do an eastern journey across the continent north of the Great Lakes to the coast, then some turn southeast over the Great Lakes through WV. This journey can be nearly 3000 miles for some.

Then they wait along the coast from Maine to the Carolinas

for a night with a brisk, northerly tailwind after a cold front passes. The normally 12 gram birds, now fueled up to around 19 grams, head out to sea, climb to 5000 feet and, aided by northwesterlies, fly toward their winter home. Midway, around Bermuda, they pick up the subtropical trade winds which carry them southwest. They make landfall on the north coast of South America. Scott Weidensaul wrote in *Living on the Wind: Across the Hemisphere With Migratory Birds*, "... an overwater trip of about 2000 miles – a passage

with no rest, no refueling, no water, during which each bird will have flapped its wings nearly 3 million times." Yet, they have not reached their destination! They spread out through South America adding up to another 1,500 miles. Then in April, they reverse course back to the breeding grounds. During the northern trip they cross the western Caribbean or the Gulf of Mexico.

I marvel at 2810-36780's travels. Being hatched this summer in the north, he has never made this trip before. Yet young birds migrate at different times than the adults. The whole flight plan is preprogrammed in their genetic code. The rigors of migration take their toll. Only one in six birds survive the first year. That is why the work of conservation groups like the WV Highland Conservancy is so important.

Meanwhile, the story of the Blackpoll Warbler, number 2810-36780, continues. Hopefully, he will make many trips between breeding and winter grounds. And, if we are truly lucky, he will be re-found somewhere along his life's path, filling in a new chapter in his story and adding to the growing body of knowledge of North American ornithology.



**Dominion games the system; FERC plays along****THE ATLANTIC COAST PIPELINE'S TIMELINE OF DEFIANCE**

*Assembled by Rick Webb, Highlands Conservancy Board Member and Chair of the Allegheny-Blue Ridge Alliance CSI Program*

When the Federal Energy Regulatory Commission (FERC) approved construction of the ACP in late 2017, it made its approval conditional upon approvals from other regulatory agencies. However, when a U.S. Fourth Circuit Court of Appeals ruling in May 2018 voided one of the required approvals, Dominion continued with construction of the ACP and FERC did nothing to stop it. Only after the Court voided another permit in August of 2018 and reconfirmed its earlier ruling, did FERC finally issue a stop work order. By then ACP construction activity in West Virginia included over 30 miles of right-of-way clearing and excavation, extensive trenching, and deployment of over 30,000 feet of pipe in the construction corridor. Although Dominion was on notice that it lacked an essential approval when it chose to continue with construction, FERC has accepted Dominion's request that it be allowed both to complete installation of deployed pipe in previously excavated trench and to excavate additional trench in steep slope areas.

**Selected timeline events:**

**May 2, 2018:** Pipeline Air Force surveillance of the ACP right-of-way corridor in West Virginia and Virginia (east to Buckingham County, Va.) *Observed previous tree-felling, with cut trees laying in the right-of-way corridor, including about 40 miles of corridor in West Virginia and 32 miles in Virginia. No construction activity or use of motorized equipment observed in the corridor.*

**May 15, 2018:** The U.S. Fourth Circuit Court of Appeals vacates the U.S. Fish and Wildlife Service Incidental Take Statement, which authorized the ACP project to take certain species protected by the Endangered Species Act (ESA), on the grounds that the indeterminate take limits set by the agency undermine enforcement and monitoring under the ESA.

**May 16, 2018:** The Southern Environmental Law Center (SELC) alerts FERC that the U.S. Fourth Circuit Court of Appeals has vacated the Incidental Take Statement for the ACP. *SELC notes that the incidental take statement is a required component of formal consultation under the ESA, that FERC's approval of the ACP is conditioned on completion of consultation under the ESA, and therefore FERC must halt all on-the-ground construction activities until formal consultation under the ESA is reinitiated and*

*completed.*

**June 8, 2018:** Pipeline Air Force surveillance of the ACP right-of-way corridor in West Virginia. *Right-of-way construction observed in a 4-mile section of the corridor in Upshur County, including road construction, removal of trees, stumps, and roots, rough grading, cut-and-fill excavation, rock breaking and blasting, and installation of certain runoff and erosion and sediment controls. No pipe observed in the right-of-way corridor. Earlier phases of construction, without installation of runoff and erosion and sediment controls, observed in the southern-most mile of the construction area.*



**ACP contractor yard between WV 92 and Knapps Creek south of Frost in Pocahontas County. This yard was developed in the summer of 2018.**

**June 28, 2018:** Pipeline Air Force surveillance of the ACP right-of-way corridor in West Virginia. *Additional construction, but no pipe observed in the corridor.*

**July 28, 2018:** Pipeline Air Force surveillance of the ACP right-of-way corridor in West Virginia. *Observed pipe in some sections of the corridor in Upshur County, as well as extensive trenching*

**August 5, 2018:** Pipeline Air Force surveillance of the ACP right-of-way corridor in West Virginia. *Observed 24,500 feet of pipeline deployed in the corridor, as well as extensive trenching.*

**August 6, 2018:** U.S. Court of Appeals for the Fourth Circuit issues final order vacating the National Park Service (NPS) right-of-way permit for the ACP and confirms its earlier decision vacating the U.S. Fish and Wildlife Service Incidental Take Statement for the ACP. *The Court noted: ". . . FERC's authorization for ACP to begin construction is conditioned on the existence of valid authorizations from both FWS and NPS. Absent such authorizations, ACP, should*

*it continue to proceed with construction, would violate FERC's certificate of public convenience and necessity."*

**August 10, 2018:** FERC issues a stop-work-order for all portions of the ACP, with the exception of measures deemed necessary to ensure stabilization of the right-of-way and work areas.

**August 12, 2018:** Pipeline Air Force surveillance of the ACP right-of-way corridor in West Virginia. *Observed 7,900 feet of additional pipeline deployed in the corridor since August 5 (32,400 feet total).*

**August 15, 2018:** Dominion submits request to FERC seeking approval to continue

*construction activities based on the need for stabilization of the right-of-way corridor. In addition to completion and maintenance of erosion and sediment control measures, Dominion proposes to install strung pipe in previously excavated trenches. Dominion proposes to excavate trenches for installation of strung pipe in steep areas (where slopes exceed 30% for 100 feet or more).*

**August 16, 2018:** SELC and Appalachian Mountain Advocates submit response to FERC concerning Dominion's stabilization plans, arguing that Dominion should be required to remove pipeline from the right-of-

*way and should not be allowed to excavate additional trench and install pipe in the name of stabilization. The law firms contend that Dominion has known since May 15, 2018 that it lacks a key permit for the project and that FERC should not countenance the decision by Dominion to proceed in the absence of required permits, by allowing Dominion to bury the pipe it brought to the right-of-way at its own risk.*

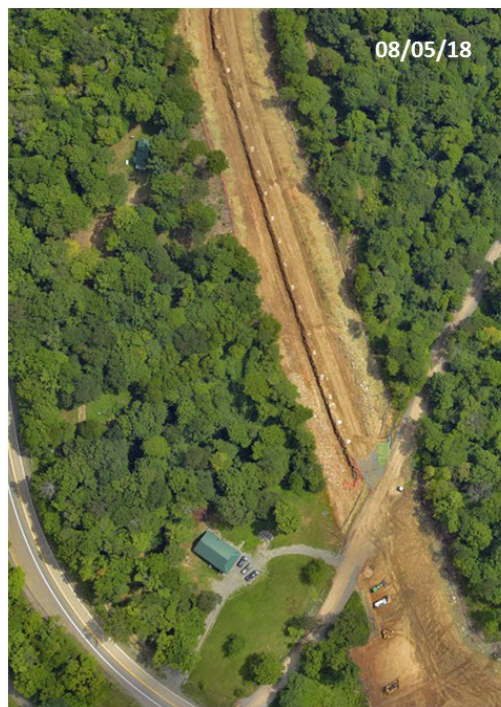
**August 17, 2018:** FERC approves Dominion's proposed stabilization plans, allowing excavation of additional trench and installation of pipe deployed after key permits were vacated by the U.S. Fourth Circuit Court of Appeals.

**August 22, 2018:** Pipeline Air Force surveillance of the ACP right-of-way corridor in West Virginia. *Observed 1,100 feet of additional pipeline deployed in the corridor since August 12 (33,500 feet total).*



Point Mountain in Randolph County obtained on July 28th. The ACP corridor has been cleared and the trench has been excavated. This work occurred after the Fourth Circuit Court of Appeals voided the Incidental Take Statement for the ACP.

Photos of ACP construction on Point Mountain in Randolph County taken on August 5th (left side of the photo) and August 12th (right side of the photo). The trench was open on the 5th. Pipe was deployed in the corridor between the 5th and the 12th. The Pipeline Air Force obtains aerial imagery of ACP construction on an approximately weekly basis, allowing evaluation of compliance with environmental requirements and legal restrictions.



Laurel Run in Upshur County, 2018. Pipe strung and welded adjacent the excavated trench in the Buckhannon River area of Upshur County. Dominion moved over 30,000 feet of pipe to the ACP construction corridor after the required Incidental Take Permit was voided by the Fourth Circuit Court of Appeals in May 2018.

# HIGHLANDS CONSERVANCY BOUTIQUE



- ▶ The baby shirts are certified organic cotton and are offered in one infant and several toddler sizes and an infant onesie. Slogan is "I ♥ Mountains Save One for Me!" Onesie [18 mo.]---\$25, Infant tee [18 mo.]---\$20, Toddler tee, 2T,3T,4T, 5/6---\$20
- ▶ Soft pima cotton adult polo shirts are a handsome earthtone light brown and feature the spruce tree logo. Sizes S-XL [Shirts run large for stated size.] \$ 25.00, 2XL \$26.50

To order by mail [WV residents add 6 % sales tax] make check payable to West Virginia Highlands Conservancy and send to West Virginia Highlands Conservancy, Online Store, PO Box 306, Charleston, WV 25321-0306

**The same items are also available at our on-line store: [www.wvhighlands.org](http://www.wvhighlands.org)**

## T- SHIRTS

White, heavy cotton T-shirts with the **I ♥ Mountains** slogan on the front. The lettering is blue and the heart is red. "West Virginia Highlands Conservancy" in smaller blue letters is included below the slogan. Short sleeve in sizes: S, M, L, XL, and XXL. Long sleeve in sizes S, M, L, and XL. **Short sleeve** model is \$18 by mail; **long sleeve** is \$22. West Virginia residents add 6% sales tax. Send sizes wanted and check payable to West Virginia Highlands Conservancy ATTEN: Online Store, WVHC, P.O. Box 306, Charleston, WV 25321-0306.



## HATS FOR SALE

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

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

The I ♥ Mountains The colors are stone, black and red.. The front of the cap has ♥ 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