



# *The Highlands Voice*

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

Volume 52                      No. 7                      July, 2019

## **West Virginia Supreme Court Stands Up for Surface Owners**

By John McFerrin

The West Virginia Supreme Court of Appeals has ruled that a gas company may not use surface of one landowner's land in order to extract gas from underneath nearby land. This will go a long way toward giving surface owners protection from gas drilling.

Since longer ago than anybody can remember, the law in West Virginia has allowed mineral rights to be separated from surface rights. One person could own the surface of land while another owned the minerals beneath that surface.

Along with ownership of minerals came the right to do what was reasonable and necessary to extract those minerals. When a mineral owner wanted to take the minerals, there was nothing the surface owner could do about it, so long as the mineral owner used methods that were reasonable and necessary.

This system worked, more or less, so long as the drillers were only after gas under a particular piece of land. So long as their methods were reasonable and necessary, they could drill. There may have been disputes over exactly what was reasonable and

necessary in a particular situation but the general rule was clear: mineral owners had the right to take the minerals; surface owners had to put up with it.

Then came horizontal drilling. With horizontal drilling, companies drill vertically for a mile or so, turn, and then drill in several directions for up to four miles. The result is that instead of extracting gas from beneath a piece of property, they are extracting gas from adjoining property as well.

The question before the Court in this case was whether a drilling company could use the surface to reach gas not just under that surface of that land but under neighboring land as well. The Court held that it could not.

The case before the Court arose in Doddridge County. The company moved onto the land, built various two-lane roads, and cleared about forty two acres. It also constructed a 19.7-acre well pad. It drilled nine new wells on the plaintiffs' land, and had drilled a

(More on p. 3)

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## Thoughts from our President

By Larry Thomas

June, in addition to providing another abundance of rain, has produced a flurry of information and actions that will be of interest to West Virginia Highlands Conservancy members.

### **Proposed Pump Storage Project in Tucker County, West Virginia**

Freedom Works, LLC has notified the Forest Service that they will be coming back with a revised plan for the pumped storage project wherein they will be proposing to go around the Big Run Bog National Natural Landmark. We have not found a filing on the FERC docket to date.

### **Proposed Black Rock Industrial Wind Project**

Black Rock Wind Force, LLC ("Black Rock") has submitted a request to the West Virginia Public Service Commission (the "Commission") to grant a Siting Certificate for the construction and operation of a 170 MW wind energy generating facility and associated interconnection and transmission facilities in Grant and Mineral Counties, West Virginia.

The 667 foot height of the proposed turbines are alarming because of the sheer dimensions - nearly twice as tall and, perhaps more importantly, they would have a blade sweep area (think plane geometry) of more than 4 times what the Laurel Mountain Wind Farm near Elkins - a blade sweep area of 16,512 square meters at Blackrock compared to only 3,930 square meters at Elkins. The potential for vastly increased numbers of bat and bird fatalities- especially for migrating birds- is enormous.

### **Planning for the 2020 Legislative Session**

Members of the WVHC board of directors recently attended a board meeting of the West Virginia Environmental Council. It was decided that the time to start for the 2020 legislative session is now. After a discussion of the finances the WVEC board voted to hire a part time interims coordinator starting July 1 to monitor interims as they are scheduled.

Preparations for the 2020 session were discussed along with the requirement to receive member group legislative priorities sooner than later. Based on that discussion, I will be placing WVHC legislative priorities on the WVHC board agenda for July 20 to enable submitting them ASAP.

WVEC fund raising activities for the coming year were also discussed.

### **Panther Ridge Wildlife Habitat Enhancement Project**

WVHC has filed a formal objection to the Forest Service's Panther Ridge Wildlife Habitat Enhancement Project. This is a pretty big step for us. Other than the pipelines, we have not formally opposed a Forest Service project in a very long time. Since the end of the West Virginia Wilderness Campaign in 2009, we have built a very good working relationship with the Monongahela National Forest, particularly in the area of spruce ecosystem restoration. So we did not take this step lightly.

We objected to Panther Ridge not because we oppose the project outright, but because the Forest Service chose to take some troubling shortcuts in the National Environmental Policy Act (NEPA) analysis. The Forest Service has embarked on an agency-wide effort to drastically increase the amount of timber that is harvested from National Forest lands across the country. Political appointees and agency executives have decreed that this increase should occur without additional funding. To make this happen, obviously some

costs are going to have to be cut somewhere. So, the agency has decided that it spends too much time and money on NEPA analyses, and it has launched an effort to "streamline" its implementation of NEPA. Part of this effort involves proposed new regulations (see this recent news release: <https://www.fs.fed.us/news/releases/usda-proposes-bold-moves-improve-forests-management-grasslands>). But even before the new regulations have been finalized, the agency is cutting back on the amount of time and effort that it puts into its NEPA analyses. It appears that Panther Ridge and other recently proposed projects on the Monongahela have been affected by this emphasis on doing more with less.

The proposed Panther Ridge project covers a 12,599-acre project area. The project seeks to increase young forest habitat and habitat diversity through the following activities:

- 1,218 acres of clear cutting
- 3,742 acres of thinning
- 1,145 acres of cutback borders around existing and new openings
- Use of a mulching machine on 282 acres
- 5,065 acres of prescribed fire (partially overlaps the timber harvest areas)
- Construction of 7.7 miles of new roads and widening of an additional 12 miles of existing roads
- Control of non-native invasive plants using herbicides
- A variety of other smaller scale activities, including decommissioning unneeded old roads, creating new openings, planting American chestnut seedlings in harvested areas, creating vernal ponds, and enhancing stream habitat through addition of large woody material.

We are not opposed in principle to these activities, as they are allowed and encouraged by the Forest Plan, and they have the potential to provide habitat for many wildlife species that are of interest to hunters, fishermen, and wildlife watchers. However, we identified the following critical problems with the proposed project and the associated NEPA analysis:

- Inadequate range of alternatives. The Forest Service highlighted a list of environmental issues, but then did not attempt to develop alternatives to address those issues. We think that reducing the total amount of activity would address most of the environmental issues that the Forest Service identified, while still providing the habitat diversity that they seek.
- Skid road decommissioning. The final EA falls just short of committing to decommissioning all the skid roads. Leaving them on the landscape (as the Forest Service has been doing for decades) disrupts watershed hydrology and causes sedimentation of streams.

(More on p. 4)

## More About Surface Owners' Rights (Continued from p. 1)

total of 9.7 miles (51,470 feet) of horizontal bores under neighboring properties. The longest individual horizontal bore was 8,450 feet. To do this required 95 million gallons of water which they trucked to the well site. In addition it trucked in almost two million pounds of sand.

The company said that the use of the Plaintiffs' surface was reasonable and necessary to reach all the gas that it planned to extract, including the gas that was all the way to the end of its long horizontal borings. The Plaintiffs agreed that the company had the right to do what was reasonable and necessary to reach gas under their land. Their complaint was with the company using their land to reach gas under other peoples' land. The Court agreed with the Plaintiffs.

One of the fundamental rights of ownership is the right to exclude others. Since the company did not have a right, under the reasonable and necessary doctrine, to use the Plaintiffs' property, its use of the surface was a trespass. The Court quoted Blackstone's Commentaries, "In every case where one man has a right to exclude another from his land, the common law encircles it, if not inclosed already, with an imaginary fence. And to break such imaginary fence, and enter the close of another, is a trespass." [Note: The *Commentaries on the Laws of England* are an 18th-century treatise on the common law of England by Sir William Blackstone, originally published in 1765–1770. They were once studied by all aspiring lawyers on both sides of the Atlantic. Citing Blackstone is a way of saying, "It has always been this way and we are not about to change it.]"

Since the company had no right to go onto the Plaintiffs' land, its doing so was a trespass and the Plaintiffs were entitled to recover whatever they had been damaged as a result. The Circuit Court had awarded the Plaintiffs damages of \$190,000; the Supreme Court affirmed that ruling.

### Question not decided

Courts typically do not decide every possible issue that arises in a case. This case is no exception. The lease that was at issue here was signed in 1901. At the time, the only gas drilling that anybody knew about was conventional drilling, a hole drilled vertically until they hit gas. Nobody imagined that we would one day be drilling a mile into the earth, turning, and drilling another two miles. Nobody imagined the surface occupied by the drills, the well pads, the water, etc. that would be required to do drilling on that scale.

It is a legal truism that courts enforce agreements only as contemplated by the parties to the agreement. The Court in this case could have considered the question of what the parties to the 1901 lease contemplated and allowed the company to do only the surface disturbance that was within the contemplation of the parties. It didn't do that. Its ruling on trespass, etc. was sufficient to resolve the dispute between the people before it. Whether modern day drilling should be limited because it was not within the contemplation of parties to turn of the 20<sup>th</sup> Century leases will have to wait for another day.

## Where You Stand Depends Upon Where You Sit

In its reporting on this decision, the Marcellus Drilling News opened with this graphic:



In its earlier reporting on this controversy, the *Marcellus Drilling News* had observed, "We certainly understand why surface rights owners would resist having a drill pad on their property, however, that's life."

The *Marcellus Drilling News* does not represent any industry group; it is not, for example, the official mouthpiece of the WV Oil and Gas Association. According to its website it "scours the available news about the Marcellus and Utica Shales each day Monday to Friday and culls from the stack the items that likely would be of most interest to landowners and to those with an interest in the shale gas drilling industry."

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

The West Virginia Highlands Conservancy web page is [www.wvhighlands.org](http://www.wvhighlands.org).

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

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



## **Groups Ask Corps to Not Let West Virginia Department of Environmental Protection Make Pipeline Permitting Easier**

By John McFerrin

As reported in the May, 2019, issue of *The Highlands Voice*, the West Virginia Department of Environmental Protection (DEP) has changed the conditions that are placed on permits for stream and wetland crossings for natural gas pipelines.

Under the federal and state Clean Water Acts, anybody who wants to cross a stream or a wetland must have a permit. The changes that the Department of Natural Resources made would make it easier for both the Atlantic Coast Pipeline and the Mountain Valley Pipeline to get that approval.

The changes are not, however, the end of the story. The United States Army Corps of Engineers must still decide whether it will use the changed conditions in its evaluation of the two pipelines. The West Virginia Highlands Conservancy has joined with Sierra Club, the West Virginia Rivers Coalition, the Indian Creek Watershed Association, Appalachian Voices, the Chesapeake Climate Action Network, and Appalachian Mountain Advocates in a request that the Corps not use the changed conditions in evaluating the proposed pipelines.

The groups argue to the Corps that its use of the changed conditions would violate Corps regulations.

In measured and lawyerly tones, the groups are also calling the West Virginia Department of Environmental Protection out. This matter has already been considered by the United States Court of Appeals for the Fourth Circuit. That Court ruled that the Mountain Valley Pipeline could not be constructed in the way its developers wished under the rules that existed at the time. Now the West Virginia Department of Environmental Protection wants to change its rules so as to avoid that ruling.

The applicable regulations allow changes of conditions when there are “concerns for the aquatic environment under the Clean Water Act section 404(6) (1) Guidelines or for any factor of the public interest.” The Department of Environmental Protection does not articulate any concern for the aquatic environment in making the changes. Instead, West Virginia speaks through Governor Justice, who made this statement:

While the WVDEP is not a party to this lawsuit we can say that [the Mountain Valley Pipeline] project is extremely important to West Virginia .... We will continue to monitor these proceedings closely to determine what role the state may play in expediting the construction of this pipeline.

Less than seven weeks later, the West Virginia Department of Environmental Protection made the Governor’s words come true. It changed the rules to accommodate the pipelines. The groups ask that this not be allowed.

### **More Thoughts from President Larry (Continued from p. 2)**

- Inadequate assessment of the total amount of timber harvest and road building relative to limits prescribed by the Forest Plan. The Forest Service is attempting to get around these limits by defining them out of existence. The proposed harvest may or may not actually be within the limits, but we’d like to see the agency do the analysis properly so we can be sure (and so they don’t set a bad precedent that can be used on subsequent projects).
- Inadequate analysis of the impacts of the total amount of timber removal on watershed hydrology. Again, they’re massaging definitions to make it look like they aren’t removing enough timber to affect watershed hydrology. Perhaps they are and perhaps they aren’t removing enough timber to affect hydrology, but they need to do the analysis the right way to be sure.
- Potential for fire lines to impact large wood in stream channels. We’d like to see them make a firm commitment to not cutting wood in stream channels.
- Inadequate analysis of effects on terrestrial and aquatic sensitive animal species. The analysis is basically just a series of conclusory statements. While the project might not have any appreciable impacts on these species, we won’t really know for sure unless they actually produce some evidence and a well-reasoned rationale.

Now that we have submitted a formal objection, the next step in the process is for a higher level of the agency to review our objection issues and determine whether those issues represent violations of law, regulation, or policy. The District Ranger of the Marlinton-White Sulphur Ranger District is the Responsible Official for the project, so our objection will be adjudicated by the Forest Supervisor, who has authority over the entire Monongahela National Forest. If the Forest Supervisor determines that any of the issues that we raised constitute violations of law, regulation, or policy, the project will be returned to the District Ranger to correct the issues. If the Forest Supervisor determines that the project does not commit such violations, the District Ranger will sign the final decision, and implementation of the project will proceed.

2019 continues to be another busy year for the Conservancy and the highlands of West Virginia and we will keep you informed, as events occur, through the Voice.

# Groups Trying to Enforce Clean Water Act

By John McFerrin

The West Virginia Highlands Conservancy has joined with the West Virginia Rivers Coalition, the Ohio Valley Environmental Coalition, Appalachian Voices, and the Sierra Club in a notice of intent to sue to the parent companies operating 15 coal facilities -- including mines, preparation and processing facilities, and a power plant -- and one chloride plant alleging violations of the Clean Water Act (CWA) and the Surface Mining Control and Reclamation Act (SMCRA). The letter informs the companies that the groups believe that the companies are in violation of conditions of their permits. If the violations are not corrected by the end of sixty days, the groups will take legal action.

Under the federal and state Clean Water Act, these companies were issued permits that allow them to discharge water with limited amounts of pollutants. A permit might say, for example, that the water leaving the site may contain up to 3 parts per million of iron, .5 parts per million of aluminum, etc. If the concentrations are greater, then the company is in violation.

At this point, referring to the violations as “alleged violations” is just a formality. The way the system works, companies are required to sample the water leaving their operations and report the results to the West Virginia Department of Environmental Protection. Some grumble that having companies do their own sampling and reporting is the fox guarding the chicken house. When, as here, that sampling shows violations, the proof (moving from alleged to proven) is much more straightforward. The companies can hardly deny the violations; it’s their data.

Some of the violations alleged are dramatic. One facility, the Harrison County Coal Mine, operated by Murray Energy, is discharging 220 times its permitted limit of aluminum into tributaries of the West Fork and Ohio Rivers. Another facility, the Red Fox Mine in McDowell County, is discharging twice as much selenium and 10 times as much aluminum as it is permitted into the Tug Fork River. That mine is owned by a subsidiary of the Justice Group, which is controlled by the family of West Virginia Governor Jim Justice.

If the companies do not correct the problems within 60 days the groups will sue them in federal court. There the companies face the possibility (and given the source of the data that establishes the violations, the probability) of orders to correct the problems and civil penalties.

The groups are represented by attorneys with Appalachian Mountain Advocates and Public Justice.

## The Miscreants (alleged)

### MURRAY AMERICAN ENERGY

- Marshall County Mine/ Conner Run Impoundment
- Arkwright Mine #1
- Marion County Mine (Loveridge)
- Harrison County Mine

### SOUTHEASTERN LAND, LLC

- Ike Fork #2 Surface Mine
- Taywood West Surface Mine
- Peg Fork Surface Mine
- Peachorchard Surface Mine No. 5

### LEXINGTON COAL CO.

- Low Gap Surface Mine #2
- No. 10 Mine BLUESTONE COAL/ JUSTICE GROUP
- Red Fox Surface Mine

### AMERICAN BITUMINOUS POWER PARTNERS

- Grant Town Power Plant MEPCO INC.
- Dana Prime #1 Deep Mine

### BLACK CASTLE MINING COMPANY

- Laxare East Surface Mine

### EAGLE NATRIUM LLC

- Eagle Natrium

### CONSOL

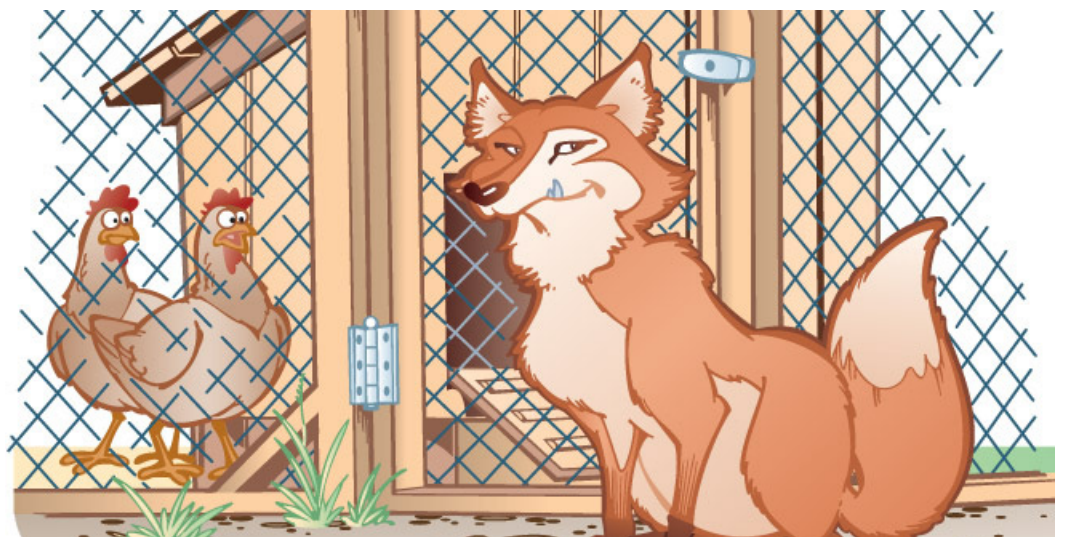
- Renton (Pennsylvania)
- Robena (Pennsylvania)

## Cliché Alert

The adjoining story uses the old phrase “the fox guarding the chicken house.” Some think the phrase goes back at least to 1580. For nearly 500 years we have been using “the fox guarding the chicken house” to describe a situation in which a job is assigned to someone who will then be in a position to exploit it for his own ends.

Phrases, like anything else, get worn out from overuse. Is it time for a change? Is there another phrase that would be fresher, more descriptive?

If you have an idea, please pass it along. Then I will have something to use in spots when I might be tempted to grab the old fox and henhouse cliché.



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Mountaineer	\$500	\$750	\$1000

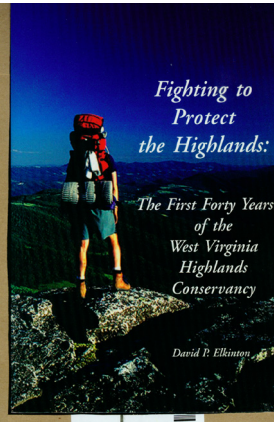
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GET A GREAT HISTORY BOOK

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](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.

SUCH A DEAL!  
Book Premium With Membership

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

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

Tell a Friend!

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

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

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

Email \_\_\_\_\_

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

Filling out the form, etc. is, of course, the old school way of doing things. If you prefer, just email the information to Dave Saville at [WVHC50@gmail.com](mailto:WVHC50@gmail.com).

The way it works: Anyone you refer gets *The Highlands Voice* for six months. At the end of the six months, they get a letter asking if they want to join. If they join, we're happy. If not, then maybe next time.



# Fire Damages the Highlander Center

By Dave Cooper

The Highlander Education and Research Center, located northeast of Knoxville, in New Market, Tennessee is the historic civil rights and labor training center where Rosa Parks received training several months before her historic actions helped launch the Montgomery Bus Boycott.

On March 29, an early-morning fire destroyed the main building at Highlander, and a white power symbol was later found spray-painted in the parking lot. Although no one was injured in the blaze, Highlander staff report the loss of their central gathering place, computers, files, notebooks, books, readings, folders, and letters. Fortunately, many of Highlander's archives had been previously relocated to safe storage in Wisconsin.

Highlander was founded in 1932 in Monteagle, Tennessee as the Highlander Folk School by Myles Horton, Jim Dombrowski, Don West and others. West would later go on to found the Appalachian South Folklife Center in Pipestem, West Virginia. Initially formed to train union organizers during the Great Depression, Highlander began focusing on civil rights in the 1950s and 1960s. Citizen Education Schools at Highlander led by Septima Clark helped Blacks register to vote throughout the south, and the civil rights anthem "We Shall Overcome" was adapted by Zilphia Horton, wife of Myles Horton, and was taught to attendees.

In the 1970s, Highlander worked to support anti-strip mining efforts in Appalachia, and today is well-known for its efforts to end oppression of minority groups and the LGBTQ+ community, offering leadership and organizer training. Participants at Highlander gatherings are invited to sit in wooden rocking chairs placed in a circle. Appalachian and folk music are an important part of Highlander gatherings - folksingers Guy and Candy Carawan kept the folk music legacy alive at Highlander for decades.

Federal agents from ATF and state officials with Tennessee Bureau of Investigation are currently examining materials from the

blaze to see if there is any connection to the recent string of church arsons, but no arrests have been made.

Posts from Highlander's staff:

*Beloved community:*

*We are here, standing strong, in our rightful place. The fire that destroyed our main office building on March 29 did not destroy us or our work. This was not the first attempt rooted in white supremacy, white nationalism, and white violence to uproot Highlander's 87 ½ years of building, supporting and accompanying liberatory movements by flanking and developing the leadership of directly-impacted people across*

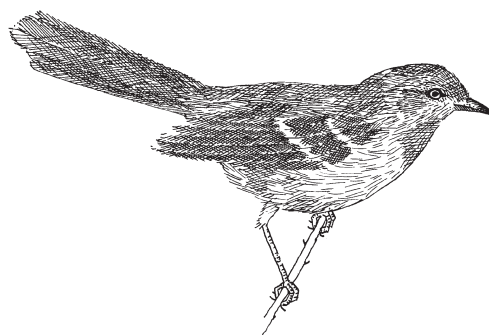
*issue, identity, and geography. We know that our work is vital, important, and impactful because we threaten the systems that are designed for our oppression and we obviously threaten the work of those who uphold those systems using a primary strategy of increasing divides through racism and violence.*

*...While we do not know the names of the culprits, we know that the white power movement*

*has been increasing and consolidating power across the South, across this nation, and globally. Since 2016, the white power movement has become more visible, and we've seen that manifest in various ways, both subtle and overt.*

When President Donald Trump stated after the Charlottesville attack that there were "good people on both sides" most Americans were outraged and dumbfounded. It seemed pretty clear to me that his words were intended to support and even encourage the white supremacists. Shamefully, the Highlander blaze has mostly been met by silence from elected representatives in Congress.

Donations to the Highlander Center can be made via their website [www.highlandercenter.org](http://www.highlandercenter.org)



# Paste This in Your Hiking Guide

By Hugh Rogers

Two pages in the front of the new edition of the Monongahela National Forest Hiking Guide alert the reader to “Changes in This 9th Edition.” Going beyond the headline, we included a map of a *proposed* trail system on Cheat Mountain (thanks to Greenbrier District Ranger Jack Tribble for the map). \*

This summer, the first trails will formally open. Although work began three years ago, and they are marked on the map as “constructed,” there remained final details, including trailhead signs. Lambert Ponds is an east-west trail linking the high country to Shavers Fork; Lambert Overlook is a short connector from Lambert Ponds to a forest road and reclaimed strip mines higher up on the ridge. (I haven’t hiked the latter trail.)

Traveling there in mid-June, I stopped at two kiosks on FR 227 that described logging and mining on the Mower Tract, which the Forest Service acquired in the late 1980’s, and current reforestation that required a major undoing of old-style mine reclamation. I learned that Don Gaudineer served as District Ranger from 1926 to 1934; a name that sounds like a certain type of Mountaineer now marks a high point east of the river, Gaudineer Knob. And I was pleased to see Devane Cussins’s recollection of logging in the 1930’s, from *Voices of Shavers Fork* (produced by Shavers Fork Coalition, 2002, under the direction of President Ruth Blackwell Rogers).

On Lambert Ponds Trail, mountain laurel was everywhere in bloom. Bullfrogs grunted from the cattails. A hooded merganser, agitated by my passing, steered her duckling zig-zag across a pond. Clear water poured down rocky overflow channels. Mountain bike tracks in a few wet places were the only signs of trail use. The views were wide and enchanting.

Here is a description to insert at p. 175 of the Hiking Guide. Two Forest Service roads mentioned here, FR 227 and FR 233, should be added to the list of Shavers Fork Area access roads on p. 174.

<b>LAMBERT PONDS TRAIL</b>	approx. 2.5 mi
SCENERY: exceptional	DIFFICULTY: moderate
CONDITION: good	ELEVATION: 3840/3620
MAPS: Snyder Knob, and p. vii in MNF Hiking Guide 9th edition	
SEGMENTS: (1) FR 227 to FR 233	approx. 2.5 mi

Lambert Ponds Trail runs from the Forest Service road south of US 250 on the western edge of Cheat Mountain to the road along the Shavers Fork. It begins south of and steeply above Lambert Run, follows embankments along old sediment control ponds below reclaimed strip mines, then drops to a former road beside the run and emerges at a designated camp site near Shavers Fork. Some of the ponds are completely filled in with cattails; most are open, home to ducks and frogs. For most of its length, the trail is grassy, passing through clumps of mountain laurel and occasional young spruce and maple, offering views to the north, east, and west. Hemlock, spruce, and hardwoods shade Lambert Run. The trail has blue blazes.

Access: the W trailhead is on FR 227, 3.2 mi S of US 250 (FR 227 is the road to the right where US 250, coming from Huttonsville, reaches the top of the mountain). A trail sign should be in place by August 1, 2019. Meanwhile, look for a parking area and a wooden stake just above the first pond.

The E trailhead is on FR 233, 3 mi S of US 250 at Cheat Bridge (turn off 250 just W of the bridge). Until August 1, 2019, when a trail sign should be in place, look for a faded sign marked “Camp Site.” There is room here for several cars. The trail begins where the old road is blocked by boulders.

Segment 1: From FR 227, a faint track leads through goldenrod on the left side of a pond. Halfway along the pond is a blaze on a small spruce. Cross a narrow overflow ditch, then turn right before the next pond and continue E beside it. Follow blazes past a third pond and enter woods. The trail emerges from the trees onto an embankment. For the rest of its course, the trail is always on the N side of the ponds.

Where the ponds seem to end at a cattail-filled wetland, a blaze beside the trail has an arrow pointing back W, the way you came. Watch for the trail veering left (NE) and descending into woods. Cross an overflow channel. After this descent, the pond-side dike resumes. Cross another overflow, and at the end of this pond is a short climb up a rocky slope. At the top, to your right, a blaze on a young maple marks the beginning of the Lambert Overlook Trail, which goes S uphill into forest. Lambert Ponds Trail continues straight ahead past more ponds.

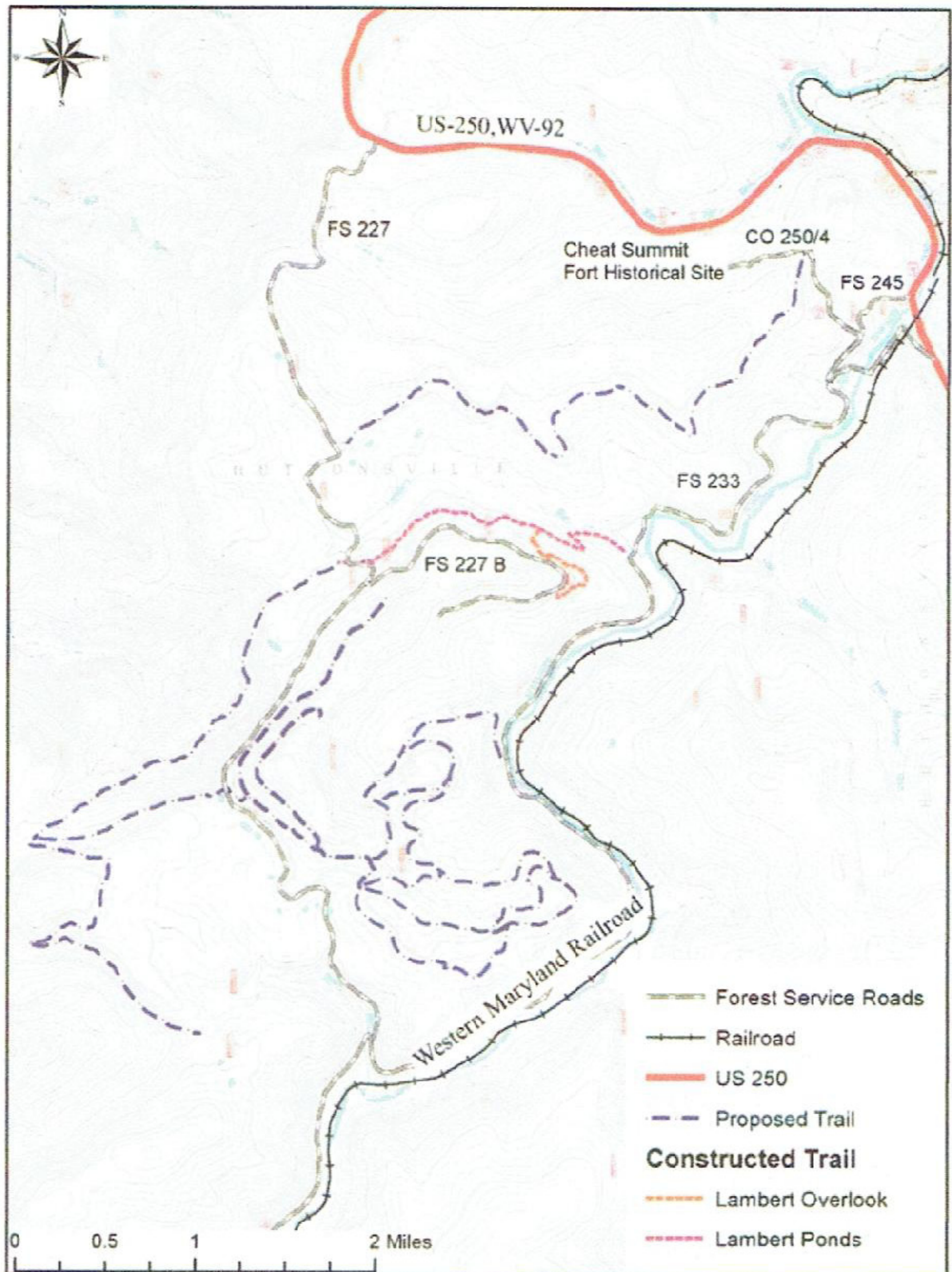
Near a large flat rock at the head of a pond, look for blazes facing back W shortly before the trail makes its final descent off the embankment and into thick forest. Cross an overflow run. As the map shows, the trail zigzags west and east again as it approaches Lambert Run. Follow the old road until it emerges into a cleared camp site on FR 233.

A short walk downhill will take you to a bridge across the run; on the N side, there is a path to the Shavers Fork.

\* Note: The map and summary of changes in the new edition are inserted as pocket parts in copies of the 8th edition that we are donating to local libraries (see photos in last month’s *Voice*). We want to keep the old Guide useful, not misleading!



# New and Proposed Cheat Mountain Trails



## Wool Gathering

I am watching shadow patterns  
move across the gray roof  
of my neighbor’s place,  
watching tips of winter trees  
begin to show spring’s ochre,  
their sharpness go soft, mauve.

I am remembering that today,  
driving back roads home, I saw  
black swaths of turned earth  
ribboning undulating fields  
ripe for planting summer wheat.  
And I saw jagged, festering cuts,  
the serpentine pipes declared safe  
for ground water they’ve harmed.

I am watching, remembering,  
wondering what will happen  
if the hillside’s trees don’t leaf,  
if farm fields aren’t fruitful,  
if the murmur of the creek  
across the road goes silent.

Bonnie Thurston

Bonnie Thurston is an award winning poet who has published a book of West Virginia poems called *A Place to Pay Attention*. She lives in Wheeling.

## (Non)Update

In October, 2018, and November, 2018, The Highlands Voice reported that the Circuit Court of Summers County had temporarily prohibited the crossing of the Greenbrier River by the Mountain Valley Pipeline. This was at the request of the Greenbrier River Watershed Association, Indian Creek Watershed Association, Ashby Berkley, and Ty and Susan Bouldin. These plaintiffs claimed that the crossing would be in violation of West Virginia’s Natural Streams Preservation Act. The Natural Streams Preservation Act allows the Legislature to designate certain “protected streams” which “shall be administered for the use and enjoyment of the citizens of West Virginia in such manner as will leave them unimpaired for future use and enjoyment as free-flowing streams, and so as to provide for the protection and the preservation of these streams in their natural character.” One of the streams designated by the Legislature is the Greenbrier River. In October, 2018, heard evidence in the matter and took the matter under consideration. While he thought about it, the temporary prohibition was still in effect. He is apparently still thinking about it; there has been no decision.

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

ADMINISTRATIVE OFFICES  
MEMBERSHIP SECRETARY: Dave Saville;PO Box 569, Morgantown, WV 26507; WVHC50@gmail.com; 304-692-8118

HIGHLANDS VOICE EDITOR: John McFerrin, 202 Van Tassel Court, Morgantown, WV 26508, (304) 291-8305, johnmcferrin@aol.com



## Mon National Forest Hiking Guide

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

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

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

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

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

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

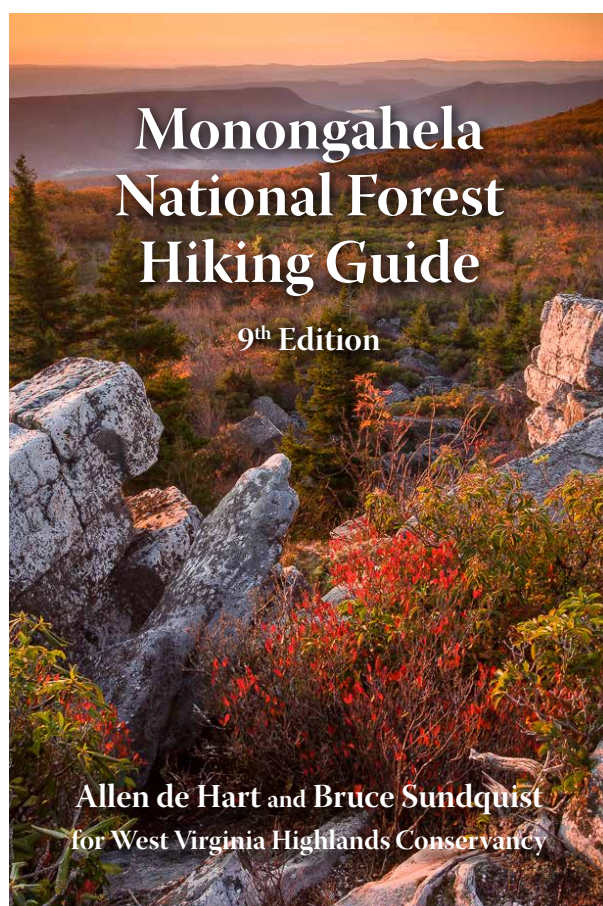
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**Order from our website at  
[www.wvhighlands.org](http://www.wvhighlands.org)**



### 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 Dave Saville at [WVHC50@gmail.com](mailto:WVHC50@gmail.com). With electronic delivery, you will receive a link to a pdf of the Voice several days before the paper copy would have arrived. 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 P. O. Box 306, Charleston, WV 25321. Slip a dollar donation (or more) in with the SASE and get 2 bumper stickers. Businesses or organizations wishing to provide bumper stickers to their customers/members may have them free. (Of course if they can afford a donation that will be gratefully accepted.)



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



## FOREST FORENSICS: Clues in the Woods to History

By Chris Bolgiano

“Good fences make good neighbors,” wrote Robert Frost in his poem, “Mending Wall.” He was being ironic, because the point of his poem was to question building walls between neighbors – except where cattle were concerned. Most old fences in the woods mean one thing: livestock. But were animals fenced in, or out? European settlers brought the ancient tradition of access to forests by common people, regardless of what aristocrat owned the land. Firewood, small game, and forage were essential, and rights to them were codified in England’s Forest Charter of 1217.

The forests that settlers found in the Appalachian Mountains were much more productive than in Europe. As farmers cleared valley bottoms, they turned out cattle and pigs to forage across the mountainsides. American chestnut trees and a variety of acorn-producing oak species, plus the diverse array of edible understory plants, provided high quality nutrition. Farmers set out salt blocks to keep the animals relatively close to home, remembered today in places named “Lick.” They used rot-resistant American chestnut rails to make zig zag “worm” fences that kept livestock out of gardens and crops.

Shortly after we bought our forested acreage in the early 1980s, we brought our elderly farmer friend Claude Hummel of Singers Glen, born in 1912, out for a walk. We asked him about the odd-looking fence sloping down a steep wooded hill into North Creek. The slats were axed by hand



out of American chestnut wood and wired together at the top and bottom.

“Looks like a pig fence,” Claude said. Pigs, being hardy and hefty, were basic to the food economy in the mountains not so long ago. Oak trees growing on the slope and ridge near the pig fence are roughly 80 to 120 years old. So the hillside was logged around a century ago, and it was then common practice to graze livestock on logged land growing up in brush. Maybe whoever owned the pigs was being a good neighbor by fencing his pigs in on his own land.

And maybe he would have had to pay a fine if he didn’t. Because by the time Frost’s poem was published, in 1914, most counties had passed ordinances requiring farmers to fence in their livestock. Barbed wire was patented in the 1870s, and by the 1920s was being nailed to living oaks as an estimated four billion American chestnut trees died from an imported fungus. Absence of this most productive tree in the forest for both humans and wildlife is an invisible clue to disaster.

Rail fences moldering in remote places can still be found, as can oaks in the process of digesting barbed wire. Old fences make good history lessons.

### A Milestone

According to data published by the United States Energy Information Agency, in April, 2019, for the first time ever, the renewable energy sector (hydro, biomass, wind, solar and geothermal) generated more electricity than coal-fired plants.

This news is not quite so gloomy for the coal industry as it appears. There are seasonal considerations. Of particular note, is the long-held practice of taking coal plants offline during the lower demand periods of the spring (and fall) to perform maintenance and upgrades to ensure that they are ready for the higher demand of the summer and winter seasons. In addition, spring tends to be peak time for hydro generation.

While this particular instance of coal being out produced by renewables is partly due to seasonal considerations, the long term trend lines reported by the Energy Information Agency show coal decreasing while renewables increase.



# Recovering the Natural Wealth of Our Rivers

By Chris Wood

In early 2019, while helping the Department of Natural Resources to stock trout in a stream, West Virginia Gov. Jim Justice said, “We dump a bunch of fish in one hole, then drive to the next big hole and dump a bunch of fish and hope they will disperse. It’s not a very good way to do it. What if the truck showed up with four guys and they all carried buckets of trout up and down the stream, dropping two here and three there until the whole stream was stocked.”

The Department of natural Resources followed up on the governor’s directive the next week.

The thing we want most as anglers is opportunity. We do not need a guaranteed trout because a hatchery truck just dumped it in our fishing hole. We want to know that around the next bend is another fish, and the combination of skill, guile, and especially, habitat, might lead to a fish on the line. But, as the Governor points out, we want to see trout distributed across the stream, not just gathered into a few pools closest to road crossings.

That is what happens on hundreds of West Virginia streams. The DNR does a great job, but nobody “stocks” trout streams better than Mother Nature. West Virginia is blessed with thousands of miles of high elevation trout streams with cold and clean water where trout naturally reproduce. These streams will continue to produce stream-born trout—for free—in perpetuity because they are equipped to withstand the challenges of development, increasing stream temperatures, more frequent flooding and prolonged droughts.

Not all of West Virginia’s streams produce an abundance of wild trout, and so stocked trout from hatcheries will always play a role in certain rivers in West Virginia. But what drives anglers to the Mountain State is the chance to catch wild and native fish that are born and raised in West Virginia’s streams, not released from a hatchery truck after being raised in concrete tanks.

And we have the chance to make our wild and native trout streams even better. There are unneeded dams and perched culverts that block fish from swimming upstream. Streams cleared of vegetation have lost shade, making the water warmer and leaving streambanks prone to erosion that muddy the water. Some streams have fewer deep pools, or not enough fallen trees for fish to hide behind. Brook trout, however, are remarkably resilient creatures, and given half a chance they will respond to restoration projects that fix these problems. Furthermore, the DNR’s native trout reintroductions provide additional hope for West Virginia’s future fisheries.

Trout Unlimited, the DNR and other partners have been hard at work improving native trout habitat. Consider

the case of the Greenbrier River. Over the past several years, Trout Unlimited has worked with the state, the U.S. Forest Service, the U.S. Fish and Wildlife Service, and the Natural Resource Conservation Service to restore about 100 miles of the Greenbrier on public lands open for all of us to fish. Anglers now report 70-80 fish days on restored sections of the river—practicing catch and release, of course.

70 fish days? Yup.

In addition, we have worked with over 400 farms across the state to help recover trout streams in the headwaters of the Potomac, Greenbrier, Lost, Cacapon and Gauley Rivers. Now, as these watersheds improve, it is not uncommon to find 15-inch native brook trout.

In many parts of the state, it is a lot cheaper to help recover a stream that is capable of supporting wild and native fish than it is to stock streams every year. By improving our streams so they are better able to support wild trout, stocking our streams wisely, and avoiding redundancy by not stocking fish into thriving wild trout streams that don’t need them, we can maximize our trout fishing opportunities.

Gov. Justice is right to promote West Virginia’s extraordinary angling opportunities. Fishing in the state generates more than \$580 million in total economic output every year. With continued investment in restoration of its native and wild trout, that number will only grow.

**Note: This story was originally published in *Trout* magazine, the publication of Trout Unlimited.**





## Celebrating 30 years as a West Virginian

By Sheila McEntee

This year, I celebrate 30 years as a West Virginian. I was born in Maryland and later lived in Massachusetts and North Carolina. But I've never lived anywhere as long as I've lived in the Mountain State.

I came here in 1989 as a young, married woman with two small children. We moved from Durham, North Carolina, to Charleston so my husband could take a management job with a computer company.

I remember the first time we drove into the city on Interstate 64 and passed the smoking, eerily lit DuPont chemical plant in Belle. Later, while scouting out housing, we saw acres of smoking stacks and pipes at the Carbide and FMC facilities in South Charleston. It was July, and the heat was sweltering. In all our travels, nowhere did I see the quaint, mountain town of my imagination. On our drive home, I cried.

Now, of the four of us, I am the only one remaining in West Virginia. Years ago, my father, who could be curmudgeonly, would pipe up, "When are you going to get out of that backwater state? Everyone is leaving there." And I would say to him, "Ah, but that is precisely why I want to stay."

I told my father there was work to be done in West Virginia — good work — and good people who were doing it. Early on, I had found some of those people at West Virginia Citizen Action Group, where I helped produce a newsletter that reached environmentalists across the state. I later found myself where I never imagined I'd be: inside the state Capitol, advocating for the environment and, in particular, state funding

for management of threatened species and other nongame wildlife.

After several years and, incredibly, passage of a constitutional amendment, we had a major success: the establishment of the nongame wildlife license plate, common on our roads today, which helps fund stewardship of species not covered by hunting and fishing license fees.

Through this good work, I met people who were deeply knowledgeable about nature. On walks in our state forests, they taught me about wildflowers and birds of the deep woods. I learned to recognize the fiery flash of the American redstart. I fell in love with the flute song of the wood thrush. I marveled at the breathtaking beauty of the dwarf crested iris.

Through the years, the forest became for me a place of both discovery and refuge. When I was grieving, angry, worried, unsure, I'd go to the woods. There, I walked and walked — through a divorce, through the deaths of my parents, through job losses, through my young daughter-in-law's cancer treatments.

Through many struggles I've kept walking. Each time, the tall beeches and pines, the soft mosses and ferns, absorb my worry and grief. Like the lifting off of a heavy pack, they are eased from my body. This relief is not so much from physical exertion, for often my hikes are just ambles. No, it is simply the embrace of the forest that offers me peace.

But there is something more. I've hiked with my children, who've returned

to North Carolina, to beautiful destinations along the Blue Ridge Parkway. The forests there are lovely, too, but they are peopled. On trails, we encounter many other hikers coming and going. We smile, nod and, sometimes, offer a brief hello.

Yet, in West Virginia, I most often find myself alone with my dogs on forest trails. This is part of the joy and healing. After 30 years, it's hard for me to imagine living any place where woodland solitude is not nearby and available anytime I need it.

On a recent hike in Kanawha State Forest, I stopped and stood quietly, turning to observe the trail behind me. The packed earth wound through tall trees and beside a rushing creek, swollen by recent rains. It was late afternoon and the birds were hushed. The creek's voice was the only one I could hear. In that moment, one word sprang to my mind: Home.

My father's words still echo sometimes. Indeed, West Virginia's out-migration continues to be of great concern. But in the forest, I do not worry about it.

**Sheila McEntee is a writer, editor and musician in Charleston. She was editor of Wonderful West Virginia magazine from 2006 to 2014. This article previously appeared in the *Charleston Gazette*.**

## SAVE THE DATE!

### West Virginia Highlands Conservancy Fall Review

When: Fri. 10/18, Sat. 10/19 and Sun. 10/20

Where: Elk River Inn and Restaurant, Slatyfork, WV

What: Outings, Programs, Panels and Fun

Theme: Seeking a sustainable future for West Virginia

For housing information: call Elk River Inn, 304-572-3741

For program information call: Marilyn Shoenfeld 304-866-3484 or [marilyn.shoenfeld@gmail.com](mailto:marilyn.shoenfeld@gmail.com)



## Hunting and Fishing Expanded on Wildlife Refuges

The United States Secretary of the Interior has announced a proposal for new or expanded hunting and fishing opportunities at 74 national wildlife refuges and 15 national fish hatcheries managed by the U.S. Fish and Wildlife Service (Service) across more than 1.4 million acres.

The proposal would increase the number of units in the Service's National Wildlife Refuge System where the public may hunt from 377 to 382, and the number where fishing would be permitted would be increased from 312 to 316. The proposal would also formally open lands on 15 hatcheries of the National Fish Hatchery System to hunting or sport fishing for the first time.

New proposed refuge opportunities include the opening of Green Bay National Wildlife Refuge in Wisconsin to hunting and fishing for the first time and the opening of Seedskadee National Wildlife Refuge in Wyoming to deer and elk hunting for the first time on lands already open to other hunting.

Proposed expansions of refuge opportunities include the opening of new acres at St. Marks National Wildlife Refuge in Florida to existing upland and big game hunting, and, at Great River National Wildlife Refuge in Illinois and Missouri, the expansion of season dates, times and methods for existing deer, turkey and other upland game hunting to align with state seasons. Proposed changes at hatcheries include the formal opening of lands on Leadville National Fish Hatchery in Colorado to migratory game bird, upland game and big game hunting, and the formal opening of lands on Iron River National Fish Hatchery in Wisconsin to migratory game bird, upland game and big game hunting. Inks Dam National Fish Hatchery in Texas and Little White Salmon National Fish Hatchery in Washington are proposing to formally open their lands to sport fishing.

The list of Refuges affected does not include the Canaan Valley National Wildlife Refuge. Hunting is already allowed on the Refuge.



The plan to donate Hiking Guides to public libraries continues. Here is President Larry Thomas delivering Guides in Franklin (left) and at Pioneer Library in Harman.



### Send Us a Post Card, Drop Us a Line, Stating Point Of View

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

### Leave a Legacy of Hope for the Future

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

# 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