



The Highlands Voice

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Peregrine Falcons: Triumph and Trauma Under the Bridge

By Cindy Mullens

What would inspire the birders of Monongalia County to visit the bridges that pass over the Monongahela River? The locations are noisy with the hollow, high-pitched whine of cars and the intimidating rattle and shake of big rigs. How might such places draw the interest of people who usually roam remote swamps and largely unstructured wildlife management areas? Only the fastest animal on the planet.

Peregrine falcons were listed as a federally endangered species from 1970 through 1999. In the 1980s, the state began establishing peregrine nesting sites with the National



The young falcon rescued from the river is returned to the bridge and flies to find her parents after rehabilitation. (Photo by Cindy Mullens)

Park Service, hoping the introduced falcons would return to those sites to breed. The program was reinitiated in the early 2000s to include the New River Gorge. The reintroduction sites included historical areas of peregrine nesting and bridges, as these had been successful nesting spots in other states. Now, the high-pitched, clear, loud calls of peregrines can be heard above traffic noise at a bridge in Monongalia County.

There is a difference between seeing an individual of a specific species and proving that reproduction is

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Thoughts From Our President

By Marilyn Shoenfeld

As July flows into August and the temperature rises, the West Virginia Highlands Conservancy continues its mission to protect and preserve the highlands. Our summer Board of Directors meeting was held virtually on July 16, and all committees reported actions and movement on their respective goals. I am awed by the level of knowledge and experience we have on our board and the cooperation between all participants.

The sad news is that Cindy Rank has retired from the board. She has served for 45 years—yes, that is 45. She will continue to chair the Extractive Committee, but her wisdom and common sense will be sorely missed. There are two new board members—Ashton Berdine and Andrew Young. Both bring excellent qualifications to our group and will be valuable members.

The Highways Committee, now chaired by Hugh Rogers, had its first article in the Voice relating to

Corridor H in 1972—how many years is that?

The committee has been reactivated by the West Virginia Division of Highway's push to complete the section of Corridor H from Parsons to Davis. Their preferred route goes between Thomas and Davis and over the Douglas Falls area. This would divide the two towns that have been working together for over 20 years. The committee is part of a larger group that is having some success in getting the West Virginia Division of Highways to consider a northern route.

Our Grants Committee has filed for two grants and is looking at other sources of lending. Led by Luanne McGovern, this, our newest committee, is off to a roaring start.

The Futures Committee is working on ways to attract new members and partners. This committee is leading the way for the Conservancy to set new goals and achieve new

heights in environmental activism.

Larry Thomas is leading the Public Lands Committee, which is involved with the United States Forest Service in many areas. All projects in the Monongahela National Forests are subject to their scrutiny and comments—both positive and negative!

The Dolly Sods Wilderness Stewards program is expanding. Training has been held for new members. More members are needed. There is an opportunity to participate in the Dolly Sods Wilderness Training on August 26 at the Seneca Rocks Discovery Center. There are more details and an opportunity to sign up on page 6.

This is just a fraction of what our committees do; please consider volunteering for one or more of them. We always need new folks and look to our membership for support.

Our Fall Review is being held on Oct. 13-15 at the Canaan Valley Resort and State Park. On Friday

night, there will be a meet and greet. On Saturday will have a day full of a wonderful program of talks and outings. It will be a “weekend of education, environmental activism and fellowship.” The theme is water—covering local and global issues. We hope you join us.

The Outings Program has a mushroom meander scheduled for Sept. 10. It will be a short hike through Canaan Valley State Park, led by local fungi expert Kristen Wicket.

Remember to volunteer and email me with any questions. Would the gentleman who emailed me about volunteering for the board please email me again? I cannot find your email.

Thanks for reading!

A FREE 45-MINUTE LEAVE NO TRACE COURSE

Leave No Trace, a national conservation nonprofit organization dedicated to promoting a set of outdoor ethics, referred to as the Leave No Trace Seven Principles, has announced a new 45-minute virtual course.

The course is designed to offer everyone the opportunity to learn about how to protect nature, from the backcountry to their backyard. The Leave No Trace 101 Course will give you a better understanding of recreation-related impacts, the Seven Principles, and how Leave No Trace skills and ethics can help protect the outdoor places we love. A person trained in Leave No Trace is five times more likely to protect nature.

It is an excellent introduction to essential skills for all people who are interested in being more environmentally aware and sustainable when they are outdoors. You can take the course online at learn.lnt.org

SAVE THE DATE FOR OUR FALL REVIEW: WATER IN WV

Mark your calendars for our annual Fall Review. Join the West Virginia Highlands Conservancy for a fun and informative weekend learning about water issues in West Virginia on Oct. 13-15. This year's event will be held at Canaan Valley Resort State Park.

The Conservancy's Annual Fall Review will be a weekend of education, environmental activism and fellowship. We will kick off the weekend with a meet and greet on Friday evening. Saturday will be a day full of speakers, panelists, and outings and will conclude with a square dance and live music. On Sunday, the Conservancy will hold its quarterly board meeting and election of officers.

We are very excited about this year's list of topics for Saturday's Fall Review on Water in West Virginia. Expect a list of speakers and an RSVP form soon.

We hope to see you at our Annual Fall Review. If you have any questions, feel free to reach out to info@wvhighlands.org

Triumph and Trauma Under the Bridge *continued from page 1*

taking place. Individual peregrines, which are migratory in West Virginia, are seen in the state annually. Many are the introduced falcons from previous seasons. A successful breeding pair was not recorded in the state until 2021 at Harpers Ferry, where a reintroduction program sought to return the species to a historic nesting spot.

In 2018, a single peregrine falcon was observed in Morgantown. Not until 2022 were a pair of peregrines seen copulating in Morgantown on a bridge. Local birders were already making the bridge a regular stop in their birding tours to look for the peregrine falcon seen near the river, but no evidence of a nest was seen.

Bridge maintenance throughout the spring may have disrupted a nest. No young were seen on the bridge, though the adults stayed on through mid-summer, helping each other hunt. I observed that one falcon would station itself in hiding on one end of the bridge while the other waited opposite until the pigeons became lackadaisical about the presence of the falcons. The second bird would charge at the pigeons, driving them toward the waiting falcon.

I and other area birders again watched for falcons in the spring of 2023. The pair were spotted in April taking up residence on the bridge and mating soon after. Several birders and photographers visited the bridge in the following weeks, hoping to catch sight of the nest or fledglings.

Joe Hildreth, a local birder, sighted the nest and four fledglings on May 17. These were the first peregrine falcons on record to have produced a successful nest in Monongalia County.

Though it's not known with certainty where they came from, the bridge on which they nested was not part of a reintroduction program. State ornithologist Rich Bailey sus-



The fledgling (center) receives a meal of pigeon, with her father (left) and mother (right). (Photo by Cindy Mullens)

pects that they wandered in from the central Appalachians. Peregrine means “wanderer,” so perhaps it's not unlikely that they found the location on their own.

In late May, the young birds were sighted again, away from the nest and learning to fly. Then, the most statistically likely tragedies befell two of the fledglings. One fell from the bridge and landed in the water—this is a common way for fledglings to die—but this fledgling had good luck when Johnny Yucha, fishing nearby, found her in the river.

A call was made to the Avian Conservation Center of Appalachia (ACCA), which accepted the young bird and determined her gender. She stayed with ACCA for several weeks, was banded by certified bander LeJay Graffious, and was successfully returned to the bridge in June.

Then a second, but no less miraculous, rescue occurred of a second fledgling. A trucker from Alabama reported a bird sitting along Route 79. Rescuers from ACCA again answered the call and picked up the fledgling. The volunteers rescued and rehabilitated this fledgling and returned it to the bridge in June.

I was at the bridge to see the first rescued fledgling released by ACCA veterinarian Jesse Fallon. The following days were worrisome as I was anxious to know whether the parents would accept the fledgling back under their protection, feed her

and teach her to hunt. The challenge would be to see a band on her right leg—this would distinguish her from the young ones that had stayed with their parents.

On June 19, I witnessed a peregrine hunt taking place, with the parents in flight and a young one in chase, as they frightened pigeons from protected roosts. I could not capture a clear view of the young one's leg.

On the next trip to the bridge, I found the adults hunting. They captured a pigeon but did not kill it. They deposited the injured bird on a bridge pier and called for the chicks. I could clearly see the leg band on a loudly-calling chick on this occasion. It was the river rescue baby since, at that time, there were no other banded peregrines at the bridge.

The young bird didn't know how to kill the pigeon, so her parents helped her and gave her the body. She jealously guarded it and fought with her father when he came back to her and tried to take some of the prey bird. Perhaps to build her strength and sharpen her focus on how important it is to dispatch food quickly, both parents challenged their chick. The parents eventually took the pigeon's body for their own consumption, much to the outrage of the young chick.

Later observations showed that the parents remain watchful of all of the chicks, often perching high

in the beams. They left dead pigeons on piers and beams for the young but also engaged them in the process of hunting. With the second rescued chick returned to the bridge, it's impossible to discern between the two rescued chicks. Still, the critical observation is that the parents accepted the rescued and rehabilitated chicks, fed them, and taught them to hunt just as the chicks that remained on the bridge.

Birders watching the training in July have noted that the parents are flying with the bodies of pigeons and pass the body to a chick in flight. This practice builds visual acuity, muscles used in flight, and an understanding of teamwork among the raptors. Soon these chicks may earn the regard of their species as the fastest animal on earth, but they need a lot of flight time and training before they can compete with adults.

The interest of area birders in the peregrine's 2023 nesting season has also opened an opportunity to watch the fledging process and the long, arduous training the young undergo to learn to care for themselves. It also reinforced the importance of weaving the wild into developed areas for the purpose of preserving this once-endangered species.

Without ACCA, two of the chicks would have perished. According to *A Season on the Wind* by Kenn Kaufman, the rescue and rehabilitation of raptors, adults and young, played an important role in re-establishing the populations of eagles post-DDT. The same may be true today for peregrines, nesting on bridges. Every bird counts.

In Monongalia County, the opportunity to see a nest site and watch the young peregrines is compelling. Not only have people with a lengthy interest in birds been drawn to this rare opportunity, but the community has also been involved in watching out for the birds.

Cindyology

By Hugh Rogers

Cindy Rank is retiring from our Board of Directors. We are taking a deep breath. For many people, Cindy and the West Virginia Highlands Conservancy have been synonymous, especially in the communities she has worked so hard to protect from predatory coal and gas corporations, but also in the offices of those corporations and in every branch of government that shirked its obligations. The larger public has known her name, and ours, from coverage of the existential struggle between our extraction-based economy and our people—even those who work in the industry.

Cindy became active with the Conservancy in 1979 when WVHC lent a hand to her community group, Friends of the Little Kanawha (FOLK), then came on the board in 1984 as organizational director, representing FOLK. She has remained in that position except for three terms, 1988-94, as the Conservancy's president. (To that point, no one else had served more than two terms.)

Now FOLK is disbanding. She wrote to the board that its membership was aging or gone, and equally important, “the immediate urgency of situations that spawned our creation have for the most part abated.” In the world we live in, that counts as a victory. We may smile through our tears.

Nearly 50 years ago, “the immediate urgency” threatened the life she had chosen with her husband, Paul. They had met at Wheeling College (now Wheeling University). After graduation, Cindy had gone to Marquette University for two years of graduate work in theology before returning to her native Pittsburgh. There she joined Paul on the staff of Duquesne University, where she taught theology, assisted the campus ministry, and got involved in social justice issues.

In the early 70's, the Ranks were drawn, along with other young couples, to settle deep in the mountains. They weren't expecting a fight. Their vision was a retreat for physical work and spiritual nourishment, where building a home and learning as they went, they could “front the essential facts of life,” as Thoreau put it.



But they got a fight—and rallied a community.

Word went around that four strip mines had been proposed for southern Upshur County. Mining the Kittanning seam inevitably generated acid mine drainage. What would happen to the pristine stream near their land on Eden Road?

With friends and neighbors, Cindy researched the chemistry, the laws and regulations that were supposed to protect clean water. They quickly organized FOLK. Although she was “not from around here,” her work at the medical clinic in Rock Cave gave her a foothold. Her gentle manner and willingness to listen went a long way, and sheer persistence won the day.

After a long, exhausting slog through the courts, the legislature, and local and state politics, they won at least a temporary victory. The permit applications were withdrawn. A clearer victory based on the same principle came some years later

when mining was prohibited in that highly acidic coal seam in the Holly River watershed.

Cindy saw then that all the state's rivers were threatened. Their survival would depend on constant vigilance. Given her personality, moral code, and training, she couldn't stop her volunteer work, and she couldn't do it alone.

Yes, the Conservancy had been involved in coal mining issues, but for the most part, they were secondary to campaigns for special places—our first wilderness areas, Dolly Sods, Otter Creek, and the Cranberry, were all underlain by coal that remained in private ownership when the Monongahela National Forest



was established. The Shavers Fork, threatened above and below the surface, occupied much attention until the Forest Service acquired Mower Tract. Convincing our congressional delegation that such places were worth the political trouble to protect them was an impressive achievement.

The campaign to abolish strip mining, a hot political issue, had been equally controversial within the Conservancy. Passage of the Surface

Mining Control and Reclamation Act (SMCRA) in 1977 seemed the best attainable outcome.

That law, and the Clean Water Act (1970), have been the foundation of Cindy's work for the past 45 years. They are not self-enforcing. The federal and state governments often revert to an absurd Alphonse-and-Gaston routine: “After you, sir... No, no, I insist.”

A measure of her success, though, is the perennial effort by coal and gas companies to make the laws more lenient. In speeches, lawsuits, and legislative committee hearings, she insists on the laws' clear meaning. Then the companies try to change them.

Cindy saw mountaintop removal mining and valley fills for the first time in 1994 on a tour of historic Blair Mountain. She said, “*Seeing that destruction only strengthened my resolve to do what I could to save our mountains, waters, and communities.*”

She has spent the past 30 years educating herself and others about the health and environmental impacts of that type of mining, and fighting to end it. With partners at Appalachian Mountain Advocates, Public Justice, Earthjustice, Ohio Valley Environmental Coalition, WV Rivers Coalition, and the Sierra Club, she has challenged, through the courts and agencies, the most egregious violations of the laws.

It was not a given that the Conservancy would follow Cindy out of what we generally think of as “the highlands” and into southern WV. Not everyone on the board thought it was our fight. For one of our most important meetings, she brought Joe Lovett, who had recently put together the public interest law firm now known as Appalmad, and together

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Cindyology *continued from page 4*

By Hugh Rogers

they convinced the Conservancy to act as plaintiff in the first citizen lawsuit to stop mountaintop removal mining.

That case, Bragg v. Robertson, was a high-water mark. On Oct. 20, 1999, United States District Court Judge Charles Haden II announced his long-awaited decision: valley fills were illegal; no more permits could be issued for mountaintop mines. That brought the issue to national attention, roused congressional interest, and spurred a continuing legal battle.

Judge Haden's strikingly clear and well-founded decision was reversed on appeal, not because he misjudged the law but because the Fourth Circuit Court of Appeals punt-ed the case to WV's state courts. And we were back in the muck. Under intense political pressure, the Clinton Administration quibbled. Of course, they would propose to redefine the word "fill." This was the president who famously told a grand jury, "That depends on what the meaning of 'is' is."

The research, lobbying, and litigation continued. "***We must keep fighting for good law and the political will to enforce that law,***" Cindy wrote. And just as she had originally approached the Conservancy for help, people in other WV communities affected by mountaintop removal, and longwall mining, and "fracking" for natural gas, and abandoned mine sites that continue draining and eroding, heard of her successes and willingness to help. To our meetings and in her regular pieces in the Voice, she brought news of those people as well as the coal companies' "cold and calculating" dealings with them:

Whether it was the Shaws or Zirkles or Russells at Tenmile on the Buckhannon River, or the Millers along the Mud, or the Barnetts in Artie, or the Weekleys and others in

Blair, or the Baldwins near Grafton, or the many other communities' folks . . . the story is still the same: communities are ripped apart, individuals harassed, property and the people who want to hang onto their property are devalued and cast aside like worthless pieces of trash.

Now, as she steps off the board, we know that in subtle as well as obvious ways, she changed us, individually and as an organization. From the beginning, we brought the energy of discovery and exploration and desire to protect the special places—the "highlands"—of this state. And, of course, the many species, endangered or not, who live here with us. We say it's "all one." But Cindy made us care about the Mud River as well as the Shavers Fork. She showed us human communities that are as endangered as the Cheat Mountain salamander. And year after year, she did the hard human work to help them.

I'll conclude with two bright notes. First, many of our legal challenges to mountaintop removal mines over the past 20-some years have aimed at the pollution they can't seem to eliminate. The requirements of state and federal law regarding discharges of selenium and other chemicals that impair local streams are clear.

The resulting settlement agreements with the Conservancy and our co-plaintiffs, acting to enforce the law as "private attorney generals," have run into the millions of dollars. Some of these companies, already failing in a dying fossil-fuel economy, have gone out of business. And the money?

The money has been directed to non-profit organizations working to protect WV's land and water, prevent pollution, and increase awareness of these resources. For instance, the WV Land Trust received more

than ten million dollars at a crucial time. It was able to increase its staff and conserve more than 10,000 acres for recreation, drinking water protection, family farms and historic sites. Also, a new Land Use and Sustainability Clinic at WVU Law School. And Appalachian Headwaters, which develops sustainable economic opportunities while restoring damaged ecosystems in central Appalachia. That's legal alchemy!

Final note: Cindy told us she's willing to continue on the Extractive Industries Committee to maintain ongoing legal actions and negotiations she's involved in. What else would we expect?

She passed along this overview of current activity:

COAL

- Surface Mine Act and Clean Water Act actions re: treatment and/or bonding at mine sites with water problems (selenium, conductivity, and biologic impairment).
- Dealing with entities that have taken over forfeited sites and now find themselves equally unable to continue required levels of treatment.
- Some Conservancy-led suits going back to at least 2005 still involve legal wrangling, court filings, and conversation among plaintiffs about strategy and approval of actions in the interim.
- Supporting and working with local organizations when appropriate—Kanawha State Forest Coalition, Coal River Mountain Watch, Save the Tygart
- Supporting letters re: Coal Combustion Waste and other coal-related issues

GAS

- Pipelines: challenges to federal and state agencies for inadequate permits and assessments. (Army Corps, U.S. Fish and Wildlife, WV Department of Environmental

Protection, Federal Energy Regulatory Commission, Forest Service.)

- Drilling concerns and water issues involving wastewater from fracking, drilling sites, treatment facilities (e.g., Antero in Harrison County)
- Supporting letters initiated by regional and national groups re: gas industry

WATER QUALITY

- Following our decades-old pursuit of adequate TMDL (Total Maximum Daily Loads) for 'acceptable' levels of pollutants from mining and other industrial activities. We are currently involved in conversations and negotiations for establishing criteria for ionic pollution, conductivity, narrative standards, etc. It's like a ten-year-long ping-pong match with state and federal agencies and legislative committees. (The Conservancy was the lead plaintiff in the original lawsuit that finally forced WV Department of Environmental Protection to establish the TMDL program required by the Clean Water Act.)
- Also working with other state groups in the WV Water Policy Workgroup facilitated by WV Rivers Coalition.

N.B.: Thanks to John McFerin for his help with Cindy's and the Conservancy's history with coal and gas for the past 40 years. He remarked that it could all be called "Cindyology," which gave me a title. I hasten to say she would deny that, citing Frank Young, Julian Martin, and John himself, among others. Never mind.

Readers interested in more detail about just one of the many issues should turn to John's story and background in these pages. John is never boring, but he clues you in to the wearisome experience of holding coal companies to account.

Are “Wilderness Trails” an Oxymoron?

By Dave Johnston

Nothing seems more fundamental to a visit to a natural area than a trail. We have come to take for granted that trails and nature go hand in hand. Trails provide access to areas that roads and other “civilized” transportation don’t penetrate and literally provide a means for us to “get away” and experience locations, unlike those of our day-to-day lives. They have become our muscle-powered roadways to the natural world.

We have become so accustomed to trails that we simply assume they belong wherever there are wild places, and we expect them to deliver us to the cool stuff and provide entertainment, or at least a pleasant experience, along the way. To a certain degree, we’ve come to feel entitled to trails and expect them to be designed for our convenience and pleasure.

This was not originally a given for our wildest and most primitive lands, the special areas set aside as designated wilderness in the National Wilderness Preservation System. In the early years after the passage of the Wilderness Act of 1964, there was considerable debate over whether designated wilderness should have—or even permit—established backcountry trails.

It was pointed out that the key provisions of the Act called for wilderness to be “untrammeled [free of human control],” “retaining its primeval character and influence,” “managed to preserve its natural conditions” “with the imprint of [human’s] work substantially unnoticeable” and providing an opportunity for “a primitive and unconfined type of recreation.” All of these seem to point to a vision where any evidence of human improvement or “infrastructure” must be strictly absent. And if you factor in the principles of Leave No Trace, what is more literally a “trace” than a well-worn pathway created by human visitors through



A hiking trail in Dolly Sods Wilderness Area (Photo by David Mong)

the natural environment?

Under this philosophy, humans would be allowed in the wilderness, but no particular provision would be made for their access. Hikers would be free to roam—subject to limitations for sensitive areas—and enjoy a primitive experience without the benefit or intrusion of human installations such as trails. This was a result of the “purity doctrine,” a concept advanced, principally by the United States Forest Service in its early consideration of areas eligible for wilderness designation, that held that only locations that were pristine and previously untouched by humans could be designated as wilderness and that they must be managed and maintained that way.

Though not always acknowledged, one of the goals of the purity policy was to limit the number and extent of areas that could become

wilderness, both by making initial selection highly restricted and by painting maintenance of such areas as impractical, expensive, and undesirable for visitors. One proposal would have excluded recreational uses of wilderness altogether and instead created a separate system of wild recreation areas.

The purity policy did not prevail, of course. In 1975 Congress decisively rejected it by establishing a number of wilderness areas in the eastern US, including Dolly Sods and Otter Creek, that had previously been degraded, even devastated, by human activity. It was confirmed that the intent of the Wilderness Act was not to exclude areas that humans had touched but ensure that they remained “untrammeled” and allowed nature to take its course going forward.

But what of the Wilderness

Act’s apparent injunction against human control and evidence of human presence? Would that not preclude human-constructed and maintained trails?

The Wilderness Act is many-faceted and contains subtleties that sometimes defy a casual reading. It is also necessary to understand the intent, both that of the drafters of the Act and the legislative history and with the context of the words themselves. Above all, we need to recognize that the Wilderness Act represents not only lofty ideals but also pragmatic realities.

The Act provides, in several places, that wilderness areas shall be administered to preserve their “wilderness character,” and management agencies are mandated to make this their highest priority. Though the Act does not explicitly define “wilderness character,” it is generally recognized that the opening sentence of the definition of “wilderness” represents the essence of the character to be preserved: “A wilderness, in contrast with those areas where man and his own works dominate the landscape, is hereby recognized as an area where the earth and its community of life are untrammelled by man, where man himself is a visitor who does not remain.”

Note that the language does not exclude the presence of humans but provides that the “earth and the community of life” and not controlled, confined nor directed by humans; though humans are recognized as visitors, neither do they remain nor does their presence interfere with the expression of nature and the free operation of natural processes.

The purpose statement of the Act is more explicit: the National Wilderness Preservations System is created “to secure for the American peo-

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West Virginia Legislature Interims: Six Months to Go!

By Luanne McGovern

The West Virginia legislative interim sessions have been relatively quiet this year but will likely get busier as the fall progresses. Interim sessions are planned for every month, starting in August. As they say, the “Bad Idea Factory” will be gearing up. The West Virginia Highlands Conservancy will keep you informed as issues of concern arise in the coming months.

2024 Planning

The Conservancy will again partner with the West Virginia Environmental Council, West Virginia Rivers, and other aligned organizations to plan for the 2024 regular legislative session. Like last year, a legislative planning forum is scheduled for early November to set priorities for our lobbying efforts. If you would like to join us, here is the registration link: <https://bit.ly/3OaqVYa>

Our priorities for 2024 are expected to be similar to 2023—all issues impacting public land use, Off-Road Vehicles, community solar, PFAS in drinking water, orphaned and aban-



doned oil and gas wells, aboveground storage tanks, etc. We had a great lobbying and member engagement effort last year and plan to repeat and enhance this in 2024. We would love to add members to our Legislative Committee. If you are interested, please reach out to me at lmcg32@yahoo.com

PFAS in Drinking Water

Last year the legislature passed House Bill 3189 to provide the

next steps for the West Virginia Department of Environmental Protection to conduct follow-up studies and create action plans to address these “forever chemicals” at their source. There are over 130 public drinking water sources with Per- and polyfluoroalkyl substances (PFAS) levels over the Environmental Protection Agency health advisory limits. These follow-up studies and action plans are vitally important to ensure clean drinking

water for all West Virginians, and we must hold the Department of Environmental Protection accountable to ensure that they follow through.

PFAS is not just a problem for those residing around industrial areas. PFAS has been found in multiple drinking water sources in the West Virginia Highlands, including the town of Davis in Tucker County. A PFOA + PFOS level of 11 parts per trillion (ppt) was recorded at Davis, many times the EPA health advisory limits. To find out about the PFAS testing in your town, check out this link: <https://bit.ly/3OvukCe>

Contact Your Legislators

The most important way that you can do to help in 2024 is to reach out to your legislators and make your voice heard! It can be intimidating at first to visit, call or email your Senator or Delegate, but they are working for us and need to listen. If you need help finding who represents you, here is a quick link: <https://bit.ly/475DBbn>

I hope to see you in Charleston in 2024!

JOIN US FOR AN OUTING

2023 Mushroom Meander

Join us to identify West Virginia’s mushrooms along a short hike through Canaan Valley Resort State Park led by local fungi expert Kristen Wickert on **Sunday, Sept. 10, 2023**.

The 2023 Mushroom Meander will comprise a short, intermediate hike exploring the woods and seeing what sort of fungi are nearby at Canaan Valley Resort State Park lodge.

At last year’s mushroom meander, we barely made it out of the parking lot and found numerous fungi!

Our trip leader, Kristen Wickert, Ph.D., is a professional entomologist, botanist, and plant pathologist who also has a lot of knowledge about fungi. Check out her Instagram [@kdubsthehikingscientist!](https://www.instagram.com/kdubsthehikingscientist/)

Please note: this event is limited to 30 participants and spots do fill quickly. If you would like to join us, please register at bit.ly/mushroommeander2023

Follow us on social media!   [@wvhighlandsconservancy](https://www.facebook.com/wvhighlandsconservancy)

THE WAY THE VOICE WORKS

The Highlands Voice is the official publication of the West Virginia Highlands Conservancy. While it is the official publication, every story in it does not represent an official position of the Conservancy. While all of our members share the general goal “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,” our members often have differing views upon the best way to do that.

As a result, stories in The Voice often reflect different points of view. The Conservancy itself, however, only speaks through its Board. The only stories that reflect the official policies of the Conservancy are those reporting Board actions, including litigation positions we have taken, comments on proposed regulations, etc.

Exploring Watoga State Park's Old-Growth Forest

By Larry Thomas

The Conservancy's second old-growth outing took place on July 9, when more than thirty individuals met ecologist/naturalist Doug Wood at Watoga State Park's Ann Bailey Overlook Trailhead. Although we weren't sure the weather would cooperate, the outing turned out to be another wonderful opportunity to learn and experience "up close and in-person" old-growth trees in several hollows within the park boundaries.

Doug explained the events of the day along with a narrative of how the stand of old-growth trees had survived the efforts of three different logging companies who logged the area. A mistake on the loggers' part has left the trees standing in the forest, which everyone can now experience.

Doug first explained the characteristics we should look for when trying to find old-growth forests. Doug's long list includes:

(1) scattered, dominant canopy trees greater than 20 inches diameter-at-breast-height, known as dbh (>120-150 years old),

(2) dominant canopy trees have "stag-headed" crowns with large horizontal or near horizontal branches (> 45-degree angle from the main trunk),

(3) canopy, sub-canopy, understory trees, and shrubs of varying sizes, reflecting multiple ages,

(4) multiple canopy tree species, but very few shade-intolerant tree species, except in canopy gaps,

(5) large logs on the forest floor,

(6) scattered, large dying trees and standing dead snags,

(7) usually, small canopy gaps created by standing dead and fallen trees as well as other natural phenomena, like insect infestation, soil slips, and windfall,

(8) few, if any, cut stumps



The Conservancy's Watoga State Park old-growth forest outing in July.

(rotting or otherwise) can be seen,

(9) few, if any, visible signs of old logging roads or skid trails,

(10) 100% ground cover by leaf litter, except on large rock faces, and except soon after a fire,

(11) the presence of wildlife species that are mature-forest specialists

Knowing the distant-past disturbance history of an old-growth forested watershed that currently provides high-quality water and aquatic habitat is unnecessary. So long as the eleven old-growth characteristics typify the watershed, and so long as the forested watershed provides the typical ecosystem services and ecological functions of old-growth, then the category of old-growth is not so important. To further determine if an identified old-growth tract has never been cut, not even selectively in the distant past, Doug recommended researching courthouse deeds, interviewing old-timers, and looking for the following characteristics:

(12) no CUT stumps (rotting or otherwise) are visible,

(13) rotting stumps that appear to have been uncut have an associated uncut rotting log next to them (remnants of the naturally fallen tree),

(14) no visible signs of old logging roads or skid trails.

We then hiked about a mile and a half to the head of the hollow, where we would find the old-growth trees that had been missed by the loggers so long ago. Along the way, Doug continuously pointed out many interesting facts about things we found along the trail.

Of particular interest during the hike were trees that had contracted what is commonly known as the Oak Wilt fungus. This was pointed out to us by the fallen diseased leaves around and close to the affected trees. *Bretziella fagacearum* is the new name for the Oak Wilt fungus. Oak Wilt fungus is another invasive alien species considered one of several significant diseases that threaten the health of forests worldwide. On a positive note, Doug also pointed out many other interesting finds along the trail

as we proceeded to our destination. His vast knowledge of our natural world is amazing. As we approached the area, the old-growth trees were quickly evident.

We were immediately able to identify trees that appeared as old growth. We stopped at each tree, and Doug pointed out the species of each tree and performed the measurements and observed other characteristics which confirmed that the tree qualified as old growth. We found trees that measured up to 48 inches in diameter at breast height. They were certainly giants.

During our exploration for more big trees to examine, we got a big surprise when Doug shouted Rattlesnake. Sure enough, there lying behind a log was a Rattlesnake. I wondered what the snake thought as everyone crowded around to look and take photos.

Doug also pointed out the importance of high-quality soil in carbon sequestration. Read more on soil and carbon sequestration at: <https://bit.ly/30pib1F>

We then found a fallen giant Oak, and Doug pointed out that it was very important to leave it where it fell as it was still storing carbon. That tree measured 41 inches at the point we determined was breast height. Some of us thought it was much bigger until the tape confirmed the measurement. It just looked so huge lying there.

Participants certainly learned the importance and benefits of our forests and the soils in carbon sequestration as we work hard to mitigate climate change.

WVHC thanks Doug and everyone who made this outing a huge success as we endeavor to provide meaningful outings for our members, supporters and the public.

Spotted Lanternfly Basics

By Patricia Gundrum

Spotted lanternflies (*Lycorma delicatula*) are native to China and other regions of Asia. First detected in Berks County, Pennsylvania, in 2014, they have managed to spread within a decade to most of the counties in Pennsylvania and Maryland. All counties of New Jersey have reported the presence of spotted lanternflies. New York, Massachusetts, Connecticut, Rhode Island, several counties in Ohio, Indiana, Virginia, North Carolina, one in Michigan, and seven in the eastern and northern panhandle area of West Virginia have all reported sightings of the insect.

Despite their rather rapid dispersal, the adult insect is not a particularly good flyer and can only fly short distances. The immature nymphs cannot fly but are powerful jumpers. So, how did they manage to move so far? Human transport! Egg masses laid on surfaces moved to new locations, and adults and nymphs hitchhiking on vehicles are the prime reason for their spread.

The spotted lanternfly is not a fly. The insects are planthoppers in the order Hemiptera. This order contains insects with stylet-type mouthparts that pierce and ingest liquid sugars from a plant's vascular phloem cells. Among the other more common Hemiptera are stink bugs, aphids, cicadas, hemlock woolly adelgids and leafhoppers.

The spotted lanternfly produces one generation per year. The life cycle begins with the egg stage. Egg masses are deposited in one-inch-long segmented rows containing up to 50 eggs. The masses look like grey mud and are difficult to detect—the female deposits egg masses from September through November, depending on the first killing freeze. The nymphs emerge from the eggs in late April to May.

There are four stages of nymphal development, referred to



as instars. The first three instars are black with white spots. Their long, powerful jumping legs are rather distinctive. Each instar increases in size. By the fourth instar, the nymphs are larger—approximately 3/4 inch—and bright red with black spots with long jumping legs. The fourth instar is active now—from July through August. However, these stages may overlap as early as July and extending through December. The adult is rather colorful with gray polka-dotted forewings and red and black striped and dotted hind wings. The abdomen is yellow.

All life stages (nymphs and adults) feed on plant tissue, “sucking”

the sugary sap from the phloem tissue with their stylet mouthpart. The first three instars do not have stylets that are strong enough to penetrate woody tissue, so they will only feed on succulent growth. The fourth instar nymphs and adults can penetrate woody tissue and have a broad host range. However, the fourth instar and adult stage have certain preferences. The tree of heaven (*Ailanthus altissima*) is the preferred host plant for feeding and egg-laying.

Since the tree of heaven is considered a noxious, invasive weed tree, why should it matter if they feed on this plant? For one, this host plant is crucial in the spotted lanternfly's

development and preference for egg-laying. However, the tree of heaven's reduced sap flow later in the season will initiate movement to other host plants to obtain other plant sap sources. The other host plants include grapes, hops, maple, and black walnut, with an assortment of additional “secondary” hosts. The spotted lanternfly is known to feed on over 70 host plant species!

Fortunately, spotted lanternfly is not likely to actually kill host trees. Some stylet feeders are known vectors of plant diseases, but the spotted lanternfly is not. The primary impact of the insect feeding is the prodigious amount of sticky substance known as honeydew which is excreted through their ingestion of plant sap. The sticky honeydew is a prime substrate for black sooty mold fungi growth. The black mold can cover the leaf surfaces, thereby reducing the ability of the plant to photosynthesize. Honeydew can also land on surfaces underneath trees, such as picnic tables, creating a big mess! Bees, wasps, and other insects are also naturally attracted to this sugary substance.

The grape vineyards are most severely and economically impacted by the spotted lanternfly. Exclusion netting over the grape rows has been shown to reduce spotted lanternfly populations by 99.8 percent (Penn State University extension data).

Recommendations for the public include:

- Scraping off and destroying the difficult-to-detect egg masses.
- Squashing all life stages of spotted lanternflies.
- Inspecting shoes and vehicles when traveling to and from infested areas.



Unhatched egg masses (left) mass with some hatching.

The Highlands Voice: It's Not Just for Reading Any More

The Highlands Voice is the main way that the West Virginia Highlands Conservancy communicates with its members. But we would like to communicate with more than our members. We have a valuable perspective and information; we would like to communicate with everybody. We still offer electronic delivery. If you would prefer to receive it electronically instead of the paper copy please contact Crys Bauer at membership@wvhighlands.org. With electronic delivery, you will receive a link to a pdf of the Voice several days before the paper copy would have arrived.

No matter how you receive it, please pass it along. If electronically, share the link. If paper, hand it off to a friend, leave it around the house, leave it around the workplace. It's not just for reading. It's for reading and passing along.

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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 two 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.)



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

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Board Highlights

By John McFerrin

In some ways, the July meeting of the Board of the West Virginia Highlands Conservancy was an ordinary Board meeting. Yet while we didn't make any momentous decisions, the meeting itself was both momentous and inspiring.

It was momentous for two reasons. First, it was Marilyn Shoenfeld's first meeting as president. Great job, especially for a rookie. Second, it was momentous for the bombshell that Cindy Rank dropped near the end. All good things have to come to an end sooner or later; we just wish it could have been later, a lot later.

The meeting was inspiring because of all the stuff we are doing. Most of the meeting was taken up with reports from committee chairs about what committees are up to. It is a lot. It makes us feel good about the organization.

We kicked things off with Membership and Fulfillment Secretary Cristyn (Crys) Bauer reporting on our membership and the inventory in the store. Of the things we are tracking (members, new members, donations), it appears that all are flat or rising. We are on track to meet our budgeted goal revenue from memberships for the year. She also laid out the timeline for our fall fund appeal. The planning begins in early September, with the goal of the fundraising letter going out in mid-November.

Communications Director Olivia Miller reported that the engagements on our social media pages continue to grow. (21st Century, here we come!) For example, 33,959 individual accounts saw a post on our Facebook page in the last three months. We nominally had a page on LinkedIn (a page with our name

but nothing else). She has filled that out. We have 1,666 people who have signed up to get emails from us; they are opening the emails at a rate that is about the industry average. The Voice still comes out every month; as always, she would like contributions. She has spiffed up the website, including adding a form where people may join.

Program Director Cory Chase reported on what he has been doing. He has been doing some administrative things, such as upgrading our Slack account, helping set up a point-of-sale system, and doing succession planning (organizing our records so that as Board members and personnel change, things are not lost). Cory has also helped organize outings and is working with the Central Appalachian Spruce Restoration Initiative and the Choose Clean Water Coalition. He is also helping plan the Fall Review.

Treasurer Bob Marshall reported on the state of the treasury. He reported that revenue from memberships remains strong, something he sees as a sign of organizational strength. He also reported that, while we had budgeted for a deficit, he does not think the deficit will be as bad as we thought it might be.

Luanne McGovern was absent but had sent a report on legislative matters. We are meeting monthly with our partners at the West Virginia Environmental Council. They are starting to pencil in priorities for the next legislative session (Community solar, PFAS, orphaned and abandoned gas wells, and anything public lands.)

Luanne had also sent a report on the new Grant Committee. This

is a new committee. It had its first meeting on July 3, has nine enthusiastic members, and has high hopes of securing grants to address shortfalls in funding that could be addressed through grants.

George Hack presented a report on the work of the Futures Committee. We had the facilitated meeting in April, focusing on the organization's future and how we might improve. The Futures Committee has been focusing on implementing the suggestions from that meeting. It paid particular interest to making us financially sustainable. Our current budget is a deficit budget. While we can cover the deficit from our savings now, we cannot do that forever.

Dave Johnston reported on the Dolly Sods Wilderness Stewards. To read more, see page 12.

Rick Webb reported on the activities of the Allegheny-Blue Ridge Alliance. It maintains and organizes a mountain of information on conservation-related issues, most of which are of interest to the Conservancy. It is considering expanding with pages devoted to coal waste impoundments and the proposed NIOSH experimental mine near Mace. Building capacity is always a goal, seeking to provide as much information as possible while still maintaining quality.

Larry Thomas reported on public lands. He is still active in the West Virginians for Public Lands. One of their primary interests remains the threat of off-road vehicles on public lands.

Susan Rosenblum reported on the activities of the Rivers Committee. It continues its work on water monitoring on Corridor H, establishing a baseline before and during

construction. There will be a picnic with Friends of the Cheat in August. The Committee is also looking at proposed routes of Corridor H very close to Big Run Bog and how we might best protect that asset from construction damage. Finally, the West Virginia Department of Highways has a manual of best practices that, if used, will control sediment from construction projects. The first difficulty is that the Department of Highways does not always insist that its own recommended practices be followed. Second, what are considered best practices in West Virginia are not as effective at preventing erosion as those in nearby states. The Committee is looking at ways to address both of those problems.

Cindy Rank had submitted a written report on ongoing activities. Not much is new; we are just progressing slowly but surely.

The bombshell announcement was that the Friends of the Little Kanawha, which Cindy represents on the Board, is dissolving. As a result, Cindy will no longer be on the Board. This announcement resulted in much weeping, wailing, and gnashing of teeth.

Hugh Rogers reported on Corridor H. The Department of Highways is still stubbornly clinging to its routing decision. He did not have much to say besides what he had already said in the Voice.

Buff Rodman reported that the Nominating Committee is springing into action. It is seeking suggestions on new Board members and would welcome any ideas. Committee members are Marilyn Shoenfeld, Buff Rodman, Cindy Ellis and Larry Thomas.

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.

Another Small Step Forward *Making Sure Old Mines Are Reclaimed*

By John McFerrin

The West Virginia Highlands Conservancy has joined with the Sierra Club in another step in the long march toward making sure that mines which are forsaken are cleaned up, including assuring that there is money to pay for that cleanup.

Boring stuff you need to know for this story to make sense

Strip mining is regulated by what bureaucrats call a system of “cooperative federalism.” Under the federal Surface Mining Control and Reclamation Act, which passed in 1977, states could either enact their own program, which is just as effective as the federal act or sit back and allow the federal Office of Surface Mining to step in and regulate mining in their state. West Virginia chose to enact its own program. The Office of Surface Mining would have to approve the program by determining that it was as effective as the federal statute.



The Hobet Mine in Lincoln and Boone counties, West Virginia. Originally owned by Patriot Coal and now owned by ERP. (*Appalachian Voices*)

The program had to include some system—whether performance bonding or something else—that ensures that old mines are cleaned up. West Virginia’s system is described

in the adjoining story; see the background information below.

When a state has its own program, the federal Office of Surface Mining has an obligation to conduct

what it called “oversight.” This means that it reviews state programs, including West Virginia’s, to ensure that the state’s program is as effective as the federal law and that the state is enforcing its law.

This “cooperative federalism” is the reason that the federal Office of Surface Mining is routinely involved in controversies over how West Virginia is regulating strip mining. When West Virginia is not adequately regulating strip mining—because its law is inadequate or it is not enforcing its law—citizens enlist the aid of the Office of Surface Mining. Through letters, comments, lawsuits, or threats of lawsuits, citizens try to enlist the Office of Surface Mining’s help in seeing that West Virginia does an adequate job of regulating strip mining.

That is what is going on here.

continued on next page

Background

Note before you read: The accompanying story is only the latest chapter in a controversy that has been going on for decades. For at least 36 years (depending upon how one counts), the West Virginia Highlands Conservancy has been saying that the system West Virginia uses to assure that coal mines are reclaimed is inadequate. The Highlands Voice has had several stories describing the system. If you already know how that system works, skip this story.

The 1977 federal Surface Mining Control and Reclamation Act (SMCRA) included provisions that required companies to post a bond sufficient to complete reclamation if the company couldn’t or wouldn’t meet reclamation obligations.

West Virginia met this re-

quirement through an ‘alternative bonding system.’ Under this system, companies would post a flat per-acre fee designed to be relatively low. The bonds were always designed to be inadequate to do the reclamation. At least in theory, these inadequate bonds would be sufficient because West Virginia had its Special Reclamation Fund. All coal companies would pay into this fund based on the tons of coal they produced. If a company went under or disappeared, the Department of Environmental Protection could forfeit the inadequate bond and then take whatever it needed from the Special Reclamation Fund to pay the rest of the cost of reclamation.

For example, consider a company that had posted a \$5,000 per

acre bond, disappeared, and left unfinished reclamation work that would take \$8,000 per acre. The Department of Environmental Protection would forfeit the \$5,000 per acre bond and then take the additional \$3,000 per acre from the Special Reclamation Fund.

This system only worked in theory. In actual practice, the rate at which companies pay into the Special Reclamation Fund has always been too low to fund all the reclamation at bond forfeiture sites.

The Department of Environmental Protection has made it possible for the Special Reclamation Fund to limp along using various techniques. Sometimes it would do inadequate or incomplete reclamation. Occasionally it would stretch out the

Fund’s obligations by pretending that a mine was only temporarily idle instead of deserted and ready for reclamation, paid for by the Fund. Mostly they kept their fingers crossed that they wouldn’t have to make several large payments from the Fund at the same time.

The spectre that has always hung over the Special Reclamation Fund is the possibility that a big operation will fail and the Fund will have to reclaim several large mines. So long as the mines the Department of Environmental Protection was reclaiming were small, it could juggle its obligations, delay some reclamation, etc., and keep the Fund going. If big mines started to go belly up, no amount of juggling could cover the Fund’s insolvency.

Another Small Step Forward *continued from page 12*

The West Virginia Highlands Conservancy and the Sierra Club don't think West Virginia is up to snuff in assuring that the money is available to clean up mines that are deserted. They are trying to get the Office of Surface Mining to do something about it.

What's going on now

The current difficulty began in March 2020, when it became clear that a company called ERP Environmental was in trouble. It had over a hundred mines, but it was laying off workers and not doing its reclamation. Were the system working correctly, West Virginia would simply forfeit its bond and hire someone to do the reclamation. If there was not enough bond money, West Virginia could dip into the Special Reclamation Fund.

The system was not working. Bonds are posted by insurance companies; forfeiting that many bonds

all at once would likely swamp the insurance companies that put up this type of bond. Even if West Virginia forfeited the bonds, the bond money would not be sufficient. The rest would have to come from the Special Reclamation Fund. The difficulty was that taking the money for a reclamation project this large would swamp the Special Reclamation Fund.

West Virginia responded by arranging for ERP to be placed in receivership.

This is where the West Virginia Highlands Conservancy and Sierra Club came in. Specifically, they noted that receiverships were not what the Office of Surface Mining approved as West Virginia's method of assuring that mines were reclaimed. More broadly, they recognized that this is such a mess that West Virginia could not, or would not, solve it on its own. It needed the attention and encouragement from the Office of Surface

Mining.

There was litigation over whether the Office of Surface Mining had to get involved. That was resolved, and now the Office of Surface Mining is involved. In the meantime, the West Virginia Legislature passed a statute requiring the Department of Environment Protection to establish a database showing current and future reclamation obligations.

What is on the table right now is the Office of Surface Mining's decision on whether or not to approve West Virginia's program to ensure that old mines are reclaimed. The groups say no. They say that while the database is a nice first step, unless the database is made public, it won't be effective. The groups also want West Virginia to make a written determination whether the Special Reclamation Fund is financially sound.

What you really need to know

West Virginia's system for as-

suming that coal mines are reclaimed is a mess and always has been. The performance bonds are not big enough; the Special Reclamation Fund is insolvent. When the coal industry was thriving, West Virginia could paper over the problem. If few mines ever failed, it didn't matter that the bonds were inadequate.

Now that the industry is declining, papering no longer works. A database, even a public one, will not fix the underlying problem. Neither will an actuarial study.

They will, however, document the scope of the problem and provide the state and groups with information they need for further advocacy and to work on solutions.

Thanks to the West Virginia Highlands Conservancy and the Sierra Club (and a big thanks to their lawyers), the rock is a little bit farther up the hill than it was a month ago. It is still a long way to the top.

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Supreme Court Chief Justice Clears Way for Mountain Valley Pipeline Construction to Resume

By Mike Tony

The Mountain Valley Pipeline's legal saga took an extraordinary turn Thursday (July 27) morning.

The chief justice of the U.S. Supreme Court lifted a lower court's holds on key federal project approvals as the latter court heard oral arguments covering cases that led to those holdups in a Richmond, Virginia, courtroom.

In a one-paragraph order, Chief Justice John G. Roberts Jr. lifted the stays issued by the 4th U.S. Circuit Court of Appeals that temporarily barred construction on the gas pipeline crossing through 11 counties in West Virginia into Virginia.

The 4th Circuit issued its stays as it considers challenges of the constitutionality of a provision in a law enacted last month that was designed to force completion of the long-delayed 303.5-mile pipeline.

Roberts' order stopped short of deciding whether the provision of the debt limit suspension law, the Fiscal Responsibility Act, was constitutional. Roberts gave no reason for his ruling.

4th Circuit Judge James A. Wynn acknowledged Roberts' freshly issued order during oral arguments, calling it "not unexpected."

"But that doesn't affect the arguments that we are currently hearing in this case, as I see it," Wynn said. "The stay is simply an extraordinary type [of] relief that just pauses while something is being decided."

Environmental groups' challenges of the constitutionality of the law fast-tracking the roughly \$6.6 billion pipeline's completion remain unresolved, but Roberts' order clears the way for project construction to resume.

Mountain Valley Pipeline LLC, the joint venture behind the pipeline, told the Federal Energy Regulatory Commission, the lead fed-

eral agency overseeing the pipeline project, the company would resume "forward-construction activities" in response to Roberts' order. Mountain Valley spokeswoman Natalie Cox has said that involves advancing the project toward completion, rather than maintenance work.

Sens. Joe Manchin, D-W.Va., and Shelley Moore Capito, R-W.Va., and Rep. Carol Miller, R-W.Va., all of whom voted for the Fiscal Responsibility Act and applauded the law's pro-pipeline provision, hailed Roberts' decision Thursday.

"The Supreme Court has spoken and this decision to let construction of the Mountain Valley Pipeline move forward again is the correct one," Manchin said in a statement.

Manchin, Capito, Miller, Rep. Alex Mooney, R-W.Va., Gov. Jim Justice and Attorney General Patrick Morrisey were among those who filed briefs in support of Mountain Valley's request for Roberts to lift the 4th Circuit holds.

"The American people are tired of politics interfering with domestic energy production in the name of climate change," Miller said in a statement. Miller had encouraged pipeline developers to ignore the 4th Circuit rulings that put project construction on hold.

The 4th Circuit issued an order on July 10 staying U.S. Forest Service and Bureau of Land Management approval of the pipeline crossing through the Jefferson National Forest. The next day, the court put on hold a U.S. Fish and Wildlife Service approval applying to the entire project. The court gave no reason for its orders.

Mountain Valley Pipeline submitted an emergency application to Roberts last week to lift the holds. Mountain Valley attorneys said the stays must be thrown out by Wednes-

day if the pipeline is to be operational this year.

Roberts is the Supreme Court justice assigned to consider requests for emergency action coming from the 4th Circuit, which covers West Virginia, Virginia, Maryland, North Carolina and South Carolina.

The Fiscal Responsibility Act, HR 3746, prohibits legal challenges of any federal or state agency authorization for construction and initial operation of the gas pipeline, which has faced many legal setbacks rooted in water pollution and erosion issues.

The 4th Circuit's withering questioning of Mountain Valley and federal attorneys arguing the Fiscal Responsibility Act's pro-pipeline provision is constitutional Thursday suggested the court may block the pipeline yet again.

"What substantive change do you have in the law other than a license for Mountain Valley to complete this without any guardrails that were put in place and still in place?" Wynn asked Kevin McArdle, a U.S. Department of Justice attorney representing the federal agencies. "You didn't change any federal law. You just gave a license, and then told the court, 'You can't do anything about it.'"

McArdle argued that Congress can make changes to law applicable to pending cases — a topic on which Wynn said the Supreme Court has been "somewhat unclear."

Project opponents argue that the provision of the Fiscal Responsibility Act designed to force the pipeline's completion violates the separation-of-powers doctrine. That doctrine refers to the division of powers among the executive, legislative and judicial branches of government, with each branch given certain powers to check and balance the other branches.

The Fiscal Responsibility Act gives the U.S. Circuit Court for the District of Columbia jurisdiction over any claim challenging the legislation fast-tracking approval of the pipeline — not the 4th Circuit Court, which has had jurisdiction over such claims.

The law compelled the U.S. Army Corps of Engineers last month to issue all permits needed to finish construction of the pipeline within three weeks.

The Fiscal Responsibility Act's introduction in late May came after another court, the D.C. Circuit, sent FERC orders allowing the project to proceed back to the agency. The court found that the agency hadn't sufficiently explained its decision not to prepare a supplemental environmental impact statement addressing unexpectedly severe erosion and sedimentation along the pipeline's right-of-way.

"Isn't it true that [Mountain Valley] can violate any environmental law and it's ratified until they get to full capacity?" Wynn asked Mountain Valley attorney Donald B. Verrilli Jr.

"I would phrase it differently," Verrilli said.

"No, you don't get to phrase my question," Wynn shot back.

The 4th Circuit combined challenges covered by Thursday's oral arguments in which project opponents challenged the Fiscal Responsibility Act's pro-pipeline provision.

In one of the cases, environmental groups, including three West Virginia-based organizations, are challenging Fish and Wildlife's approval issued for the project in February. The agency found the pipeline isn't expected to jeopardize endangered species.

The 4th Circuit threw out two

continued on next page

Dolly Sods Wilderness Stewards Update

By Dave Johnston

Here's a quick update on current activities, plans, and things you can get involved in with the Dolly Sods Wilderness Stewards.

Trailhead Stewards:

The Trailhead Stewards continue to meet visitors at trailheads and help them learn how to have a rewarding and low-impact experience of the wilderness. We are able to cover most of the major trailheads during a significant part of each weekend, but we can always use more volunteers.

Trailhead Stewards TRAINING:

We will be offering another training for new Trailhead Stewards this summer on August 26 at the Seneca Rocks Discovery Center. This three-hour classroom training covers the fundamentals of wilderness, the history and major features of Dolly Sods, the most significant impacts affecting Dolly Sods and our key messages about them, and the techniques we use for constructively engaging

visitors at the trailheads.

After the classroom training, new Stewards meet up with an experienced Steward at a trailhead at a time of their convenience. They have the opportunity to observe the Steward in action and then gain experience with their own engagement with visitors under the guidance of the veteran. You will come away with your own distinctive Wilderness Stewards green vest and a supply of resources to share with visitors, and the ability to schedule your trailhead time whenever it works for you.

Advanced Training while Hiking!

We have implemented a new training opportunity just for Trailhead Stewards, combined with a fun hike! Current Stewards who are experienced with the Dolly Sods backcountry will lead short guided hikes to help those who are less familiar with Dolly Sods experience firsthand the things we talk about at the

trailheads. Along the way, the guides point out examples of natural features, the ecological and human history of Dolly Sods. We also visit some examples of heavy impact on trails and campsites. With the added training and experience, Stewards can be more confident in sharing their knowledge and advice with visitors at the trailhead.

Solitude Monitoring:

An "outstanding opportunity for solitude" is one of the key characteristics of wilderness called out by the Wilderness Act. Agencies that manage wilderness areas are tasked with monitoring the status of this opportunity on a regular basis. The Dolly Sods Wilderness Stewards have been regularly monitoring solitude since 2021, and we provide the data to the Forest Service to use for management decisions. This year we will conduct a monitoring project in the fall, from mid-September through late October.

Volunteers will hike a specified trail on randomly chosen dates for four hours. Along the way, they will note the number of groups, people, and dogs or horses they encounter and report the results. This has been one of our more popular projects, as you get to do a nice hike while compiling and reporting important information. We will hold a training for this online in late August or early September.

JOIN US:

You can become a Trailhead Steward or participate in the solitude monitoring by signing up as a Steward and joining us for the training on August 26. Go to the Conservancy's website (wvhighlands.org) and follow the Dolly Sods Wilderness Stewards links to read more about what we do and access the online signup form. Once you sign up, you will receive more information about the training opportunities.

Are "Wilderness Trails" an Oxymoron? *continued from page 6*

ple of present and future generations the benefits of an enduring resource of wilderness" and "shall be administered for the use and enjoyment of the American people in such manner as will leave them unimpaired for future use and enjoyment as wilderness." In the section addressing uses of wilderness, the Act provides that "wilderness areas shall be devoted to the public purposes of recreational, scenic, scientific, educational, conservation, and historical use."

The Wilderness Act is not built around the notion that the mere presence of humans is incompatible with Wilderness. To the contrary, the ability of humans to access wilderness and thus gain the benefits of wilderness character is the very pur-

pose of setting aside areas of special value and mandating that they must be maintained as wilderness. Understood this way, trails themselves, though they may be evidence of human presence, are not inherently incompatible with the purpose and nature of wilderness so long as they advance the overall purpose of the Act.

The challenge it presents is how can the opportunity for humans to access, experience, and appreciate wilderness be preserved while also preserving the character of the wilderness as wilderness. That is, how can the intended value to humans be realized through trails while also avoiding the "trammeling" of "earth and the community of life" that resides there?

The Wilderness Act itself provides clues for how this is to be implemented, and a great deal of scholarship and practical policy development has led to well-accepted standards and techniques for best achieving the goals of the Act. We will take a closer look at how this plays out in a second installment of this article next month.

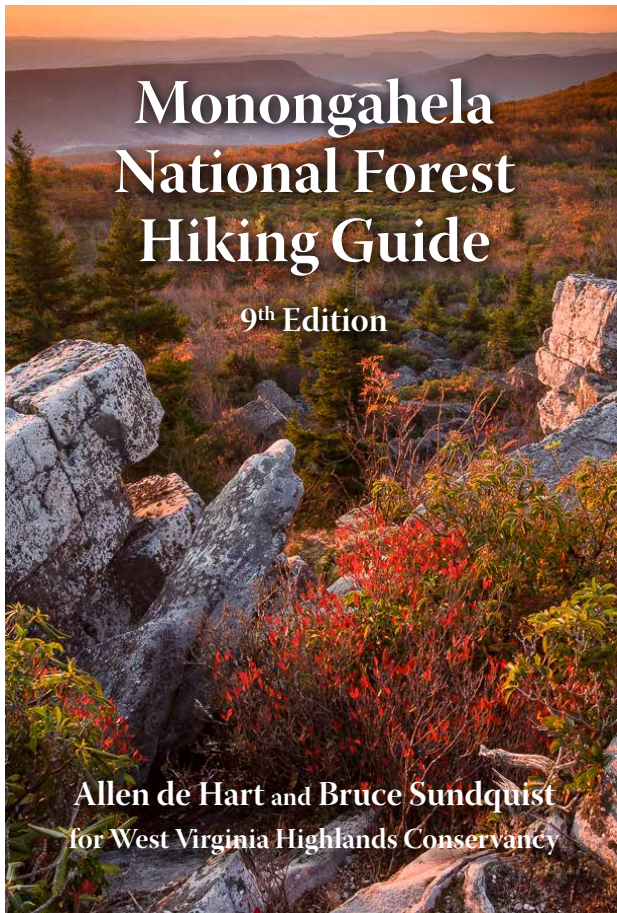
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such Fish and Wildlife approvals for the project issued in 2017 and 2020. In throwing out the latter approval last year, the court found that the agency failed to adequately evaluate environmental stressors, such as impoundments and off-road vehicle tracks and future effects of climate change, jeopardizing endangered fish.

The West Virginia Rivers Coalition, the West Virginia Highlands Conservancy and the Monroe County-based Indian Creek Watershed Association are among the environmental groups contesting the latest Fish and Wildlife approval.

This article originally appeared in the Charleston-Gazette Mail on July 27, 2023.

Hit the trails with our 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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