

# A blind crustacean, at least for now, is stronger than Dominion's drive for a gas pipeline



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**Bobby Whitescarver, an Augusta County farmer and soil conservationist, uses a surveyors rod to measure a sinkhole on Scott Miller's farm in Swoope. He investigates the sinkhole, which is 2.6 miles from the route for the proposed Atlantic Coast Pipeline, at the request of his neighbor on Wednesday, Nov. 14, 2018. (Photo: Mike Tripp/The News Leader)**

Dominion and Duke Energy lost yet another federal permit to build the ill-conceived Atlantic Coast Pipeline. For the second time, the U.S. Fourth Circuit Court of Appeals vacated Dominion's permit to take, kill, and destroy habitat for federally listed endangered species.

A bumble bee, a bat, a mussel, and a half-inch, blind crustacean are in the proposed path of the 42-inch, fracked-gas pipeline. All four species are on the brink of extinction.

According to the Endangered Species Act, if a project like the ACP is going to kill or harm a species on the brink of extinction, or destroy its habitat, they must have a permit from the federal agency in charge of protecting the endangered species – the U.S. Fish and Wildlife Service. The permit must list how many endangered species the project can kill or harm or list how many acres of the species' habitat it can destroy without jeopardizing the survival of those species.

On July 26, the federal appeals court, for the second time, vacated the permit for the beleaguered Atlantic Coast Pipeline. The court found that the FWS was "arbitrary and capricious" in its decision that the construction of the 605-mile fracked-gas pipeline would "not likely jeopardize the existence" of the four endangered species: the Rusty-patched Bumble Bee, the Madison Cave Isopod, the Clubshell mussel, and the Indiana Bat.

But, wait. Aren't there also hundreds of people in the path of the pipeline that don't want Dominion to take their land through eminent domain? Won't thousands of streams and rivers be damaged by sediment pollution during construction? And what about the environmental injustice in Union Hill where a toxic compressor station for the pipeline is planned in a community of descendants of freed slaves? Isn't all that enough to stop the pipeline? I am thankful for the law but how does the Endangered Species Act wield so much power?

Some background on the law. The Endangered Species Act of 1973 was passed unanimously by the Senate and 390 to 12 in the House. It was signed into law by President Nixon.

Representative Leonor Sullivan (D) stated the reason for the law succinctly on July 27, 1973, on the House floor when she introduced the bill: "From the most narrow possible point of view, it is in the best interest of mankind to minimize the losses of genetic variations. The reason is simple: they are potential resources. They are the keys to puzzles which we cannot solve, and may provide answers to questions which we have not yet learned to ask."

Aldo Leopold, the father of wildlife conservation in the U.S. said it this way: "The first law of intelligent tinkering is to save all the parts."

In other words, it is not wise to wipe off the face of the Earth a species that could hold the cure for cancer or any number of human ailments.

Today one-fourth of all pharmaceuticals come from, or are derived from, plant and animal material. Examples abound, such as the rare plant in Ecuador, *Diplostephium rhododendroides*, which contains compounds active against Hepatitis C, and diabetes. The drug Taxol, a compound found in the bark of the Pacific Yew, once considered a weed is the standard treatment for advanced stages of ovarian cancer. The blood from horseshoe crabs, used without the loss of the crab, is widely used in the pharmaceutical industry to test drugs.

I have three friends that have a glioblastoma, the deadliest of brain tumors and the one that took the life of Sen. John McCain. Maybe the cure for that tumor lies in the genetic material of the isopod in the path of the pipeline. Is it worth wiping out a species so a corporation can make more money from their captive ratepayers?

The permit for allowing the elimination or "taking" of an endangered species or its habitat by Dominion was first vacated on Aug. 6, 2018 and in a mere 19 days, FWS reissued the permits, which the Fourth Circuit just tossed out with gusto.

"In fast-tracking its decisions, the agency appears to have lost sight of its mandate under the ESA: 'to protect and conserve endangered and threatened species and their habitats,'" wrote Chief Judge Gregory in the decision.

The facts didn't add up. Or were they facts? A unanimous, panel of three federal judges didn't think so. The decision was that the FWS was arbitrary and capricious in issuing the permit, suggesting the decision to issue it in the first place was politically calculated.

If a bee, a bat, a mussel or a crustacean can stop Dominion's pipeline, I'm all for it. I wish the people in its path had as much standing in court as the critters.

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**Bobby Whitescarver, a retired field conservationist with 31 years of experience with the United States Department of Agriculture's Natural Resources Conservation Service. (Photo: Submitted)**