



Shawnee Trails



<http://www.sierraclub.org/illinois/shawnee>

Sierra Club – Shawnee Group

March – May 2021 QUARTERLY

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Migratory Bird Treaty Act

by Jeffrey K. McCrary

*“I realized that if I had to choose, I would rather have birds than airplanes.”
Charles A. Lindbergh*

One of the pillars of the legal framework of protection of the environment in the US is also one of the oldest: The [Migratory Bird Treaty Act of 1918 \(MBTA\)](#). This [law](#) has an enormous reach in the protection of birds and their habitats throughout the country, but its application has varied throughout its long history, and is currently facing a dramatic reduction in its scope, which obliges all of us to offer our [public comments](#) regarding the [proposed changes](#), as will be addressed below.

By the beginning of the twentieth century, wildlife hunting was already voracious in America. It was not only a sport; it was a lifestyle and a livelihood for many. Even Teddy Roosevelt’s uncle wrote an influential [guide to hunting shorebirds](#), an activity that would irk most hunters today. The [Great Auk](#), a penguin-like species ranging throughout the North Atlantic, had already been wiped from the planet half a century before, to provide down for bedding. Even the birds of Illinois were dramatically affected. A rapidly growing country with ever-increasing demands for food brought the [Passenger Pigeon](#) to extinction by the second decade of the twentieth century; even the unpalatable [Carolina Parakeet](#) was extirpated, by a combination of hunting to protect crops from predation, and by habitat loss as forests were cut to grow crops. Both species, once found throughout the state, were doomed before legislation could control hunting and other activities on a nationwide basis.

Birds were also targeted by the hunters of the day to supply bird feathers for women’s attire. The targeted birds included ducks, gulls, terns, sandpipers, egrets, and herons. The fashion frenzy captured New York and London milliners. Feathers, and even body parts such as wings were incorporated into hats and other clothing. Even hummingbird beaks were used in earrings! Among the most affected birds was the [Snowy Egret](#); its [feathers sold for 34 dollars an ounce](#). This elegant species continues to [nest in the wetlands in southern Illinois](#), but its numbers still have not recovered to levels noted before the impacts of feather hunting more than a century ago. Another migrating visitor to Illinois, the [Eskimo Curlew](#), never recovered from the hunting of this period, and has [since been declared extinct](#).

The evolution of activism and legal wrangling within the US that led to the MBTA is itself a worthy read, which can be found in several sites, such as [here](#). A fundamental issue with the inadequacy of the first attempts at restricting the mass slaughter of birds was that the great majority of the birds targeted for the fashion industry were migratory, so state-level, and even country-wide, laws were not sufficient to stop or regulate the trade in birds. The MBTA became a law that is backed by four international treaties with four countries— Russia, Japan, Canada, and Mexico —to protect all migratory birds in each respective country. *(Continued on Page 2)*

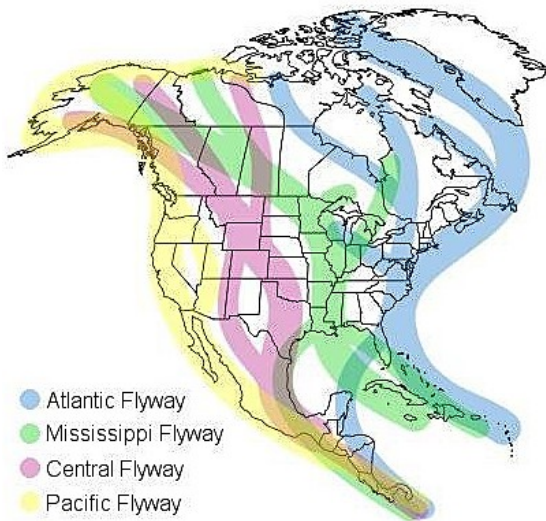
(Migratory Bird Treaty Act, Continued from Page 1)

This legislation likely would have never come about without a groundswell of activism to propel the issue into the governmental consciousness across the continent and into Europe and Asia. The principal actors in bringing the plight of birds to protection were women. Some names must be mentioned: Florence Merriam Bailey composed a book entitled [Birds through an Opera-Glass](#) and other ornithological books to promote the cause of appreciating birds in their natural habitat; [Harriet Hemenway and her cousin Minna Hall](#) organized among socialite circles in Boston against the slaughter of birds for the millinery trade.

The impact of the MBTA on hunting over its first years was direct, with measurable success noted on several birds, including the Snowy Egret, Wood Duck, and the Sandhill Crane, all of which migrate along the [Mississippi Flyway](#) through southern Illinois. This flyway is basically the path of the Mississippi River, a straight route, uninterrupted by mountains, connecting Canada to the southern US, and where many birds fly onward to Central and South America. This flyway is occupied by as many as 40 per cent of the migrating waterfowl and shorebirds in the United States. As birdwatchers know, the complex of protected areas along bottomland the Mississippi River and its tributaries make for great viewing of migrating birds. Along this route are areas protected by a range of municipal, state, and federal laws. It merits mentioning the names of some of these wonderful natural places that have been made public lands for conservation purposes: Shawnee National Forest; Big Muddy National Fish and Wildlife Refuge; Middle Mississippi River National Wildlife Refuge; Cypress Creek National Wildlife Refuge; Cache River State Natural Area.



Feathers were fashion, ca. 1900. [Wikimedia Commons](#).



Bird Migration Flyways.

The scope of land management strategies that have been implemented to benefit migratory birds is immense, incorporating public and private lands throughout the state. But, regardless of the regulatory or management status or ownership of the land in question, the MBTA applies. Its text bears repeating: “it shall be unlawful at any time, by any means or in any manner, to pursue, hunt, take, capture, kill, attempt to take, capture, or kill, possess, offer for sale, sell, offer to barter, barter, offer to purchase, purchase, deliver for shipment, ship, export, import, cause to be shipped, exported, or imported, deliver for transportation, transport or cause to be transported, carry or cause to be carried, or receive for shipment, transportation, carriage, or export, any migratory bird, any part, nest, or egg of any such bird, or any product”.

Migratory bird species in the US today, recognized and defended by this law, number [1093](#) strong today. Two other substantive laws currently protect birds in a similar way: the [Endangered Species Act](#) which protects some [35-40 bird species today](#), about half of which inhabit only Alaska or Hawaii; and the [Bald and Golden Eagle Protection Act](#). As a result, the MBTA is monumental, as only a few of the migratory birds

protected under it would receive relief otherwise. All of these three laws which protect specific bird species in the US differ from laws and regulations concerning protected areas and conservation easements, because they protect birds on all US territory, regardless of the ownership or disposition of the land. Exceptions and/or permits are provided in MBTA for certain activities, however, such as for hunting of traditional game birds, eagle feathers for certain Native American uses, some military activities, and for certain special purposes such as relocation of animals in a property undergoing development and control of threats to airplanes by birds such as geese.

As could be imagined, this law has found plenty of use and has encountered fierce objection since its inception. The MBTA decisively took the rights of legal interpretation and enforcement on migratory birds (*Continued on Page 3*)

(Migratory Bird Treaty Act, Continued from Page 2)

away from states and into the hands of the federal government under the [Treaty Clause of the US Constitution](#). Decades after its implementation, its reach advanced from hunting to other activities that incidentally kill birds, as well. Industrialization of the country had created numerous death-traps for birds. Beginning in the 1970's, this law was used to penalize companies for activities such as [pesticide spraying](#) where birds were killed even though the killing was unintentional and ancillary to the activity penalized. Indescribably horrible oil spills such as the [Exxon Valdez](#) in 1989 and the [Deepwater Horizon](#) in 2010 were prosecuted using the MBTA, resulting in huge penalties.

Birds are killed in enormous numbers today by such monuments to modernity as power lines, oil tanks and ponds, shrimp and fish farms, wind farms, solar energy farms, farms, glass-and-steel buildings, air traffic, and pet cats. Some of these activities have become regulated, with guidelines being developed in consensus between the respective sectors and government (for example, this guideline exists for [wind energy](#)). However, we all know that industry does not implement even an inexpensive fix to save birds just because birds are nice to save. The guidelines and participation are the direct outcome of liability to companies and individuals for their behavior. When millions of dollars are at stake, one can only expect a company to act against the greater good of the public interest, unless forced otherwise. In the interest of a proper environment in which more migratory birds do not end up on the Endangered Species Act rolls, or worse, we need good laws to protect them.

And many companies have challenged the MBTA, with considerable success, on the issue of intent. As stated above, companies and individuals whose behavior kills birds must be found to include one or more of the verbs, “*pursue, hunt, take, capture, kill,*” with respect to migratory birds to be prosecuted under the MBTA. Several defendants have argued that the MBTA does not hold them responsible because they never aimed a gun at a bird; they simply conducted an activity whose objectives did not include killing birds, and hence, none of the verbs mentioned above applied to them. Sometimes, courts have sided with the accused that their actions which prejudiced birds were not intentional toward the birds, but rather that the bird deaths were incidental and thus, not within the purview of the MBTA. Numerous law analyses have been made on this complex issue, dating back at least into the 1970's, some of which can be found [here](#), [here](#), [here](#), and [here](#). It is interesting that several defendants over the years escaped liability under this law, but not the two Big Oil violators mentioned above, perhaps because of the overwhelming environmental consequences and other kinds of liabilities that limited their capacity to argue this angle sufficiently. However, until the previous presidential administration, the US Fish and Wildlife Service maintained consistently that industrial and commercial activities lay within the purview of MBTA, in spite of disagreements in the courts.

The recently concluded presidential administration maneuvered to [stop all MBTA-related prosecutions for incidental impacts on birds](#) in 2018; the Fish and Wildlife Service [attempted to change the regulations on MBTA implementation](#) during its last week in office in 2021 to exclude incidental impacts on birds. Your [Sierra Club has worked hard to oppose](#) the dismantling of this law. This seemingly dismal turn of events, however, could be regarded as a black cloud with a silver lining. The current presidential administration has temporarily blocked the implementation of this suspension, which was to begin February 8, and has lengthened the call for **public comments** until **March 1, 2021**.

Please submit your online [comments](#) by **March 1st**, and consider an online [webinar hearing](#)! Go online to the Federal Registrar: www.regulations.gov. Enter into the Docket Search space (or just click on the link): [FWS-HQ-MB-2018-0090](#). Click [Comment Now!](#) Enter your pre-written, original, signed, letter, with the following heading/address:

Public Comments Processing

Attention: FWS-HQ-MB-2018-0090

U.S. Fish and Wildlife Service, MS: JAO/3W

5257 Leesburg Pike, Falls Church, Virginia 22041-3803

1. Request the **withdrawal of the proposed rule** to limit the effects of the MBTA to bear only on “intentional” takes of migratory birds.
2. State the importance to you that the MBTA has provided protection of birds from “**unintentional**” takes.
3. Request that the law be strengthened to include language that unequivocally ensures accountability for all actions that harm migratory birds, whether for sport or commercial activity, without regard to the primary intention of the action.



Snowy Egret.

Jeffrey K. McCrary, 2019

SPRING 2021: SHAWNEE GROUP SIERRA CLUB VIRTUAL MEMBER PROGRAMS

Information for joining these online Zoom webinar meetings will be shared later by Shawnee Group email, [Shawnee Group of the Sierra Club Facebook Page](#), and at <https://www.sierraclub.org/illinois/shawnee>. **No in-person Shawnee Group member programs will occur through July 4th, per national Sierra Club directions, because of COVID.** Do also consider Illinois Sierra groups' virtual presentations: www.sctrips.org.

Date & Time: Thursday, March 18, 2021, 7 pm

Presenter: Jacob Cooper, Univ. of Chicago, Evolutionary Biology PhD Candidate; Research Affiliate, The Field Museum, Chicago, IL

Program Title & Description: "A New Lease on Birding."

Jacob will speak on the new appreciation he gained for local birds during his birding experience during his 2020 extended pandemic quarantine in southern Illinois. He has adapted his skills from global ornithology (with particular focus on Afromontane birds) to birding locally near his apartment in Carbondale.

Location: via Zoom link—registration access to be shared later by email and on Shawnee Group's Website (<https://www.sierraclub.org/illinois/shawnee>) and FaceBook page (<https://www.facebook.com/SierraClubShawnee>)

Date & Time: Thursday, April 8, 2021, 7 pm

Presenter: Dr. James Lovvorn, SIU Professor of Zoology

Program Title & Description: "Changing snowpack, wet-dry cycles, and wetland types for birds in an irrigated Wyoming landscape."

In this presentation, Dr. Lovvorn will talk on how changes in snowpack in the Rocky Mountains affect the food webs supporting birds in complexes of wetlands throughout a semi-arid landscape in Wyoming.

Location: via Zoom link—registration access to be shared later by email and on Shawnee Group's Website (<https://www.sierraclub.org/illinois/shawnee>) and FaceBook page (<https://www.facebook.com/SierraClubShawnee>)

Date & Time: Thursday, May 13, 2021, 7 pm – 8 pm

Presenter: Chris Evans, Forestry and Extension Research Specialist, University of Illinois, Natural Resources & Environmental Sciences

Program Title & Description: Invasive Species in Restoration and Management.

Location: via Zoom link—registration access to be shared later by email and on Shawnee Group's Website (<https://www.sierraclub.org/illinois/shawnee>) and FaceBook page (<https://www.facebook.com/SierraClubShawnee>)

Volunteers Needed to Help Protect Shawnee National Forest

Protecting Shawnee National Forest involves frequent communication with the Forest Service, research on issues, and educating others about those issues. We especially need help in keeping oil and gas wells out of the forest - including fracking wells. Please contact Barb at babitaji@aol.com if you are interested in helping in any way.

Concerned about fracking?

Contact Barb McKasson at babitaji@aol.com if you are interested to help. Bills to support in Springfield, include [HB282](#) (fracking transparency bill) and [HB1562](#) ([People's Property Protection Act](#), concerning subsurface trespass), so do contact your legislators. However, Barb can alert you of many action, outreach and planning opportunities that come up.

FYI, to receive more timely alerts from the Illinois Chapter of the Sierra Club, sign up online at their state website: https://secure.sierraclub.org/site/SPageNavigator/Chapter/il_newsletter_signup.html?jsessionid=84420F4C49A5A8CD264E1E3C3F131E25.app205a

Call for articles and photographs for Shawnee Trails! The next issue will be published in June. Please send your Word, PDF or JPG files to sabrina@midwest.net by **Monday, May 3rd**.

SPRING 2021 – NO SHAWNEE GROUP SIERRA CLUB OUTINGS

Because of Governor Pritzker's [Executive Orders](#) and their direction to shelter-in-place during the COVID-19 pandemic, related [Illinois Department of Public Health](#) and [CDC](#) guidelines, and Illinois Chapter and national Sierra Club [response](#), we will not have organized group outings for a while. Still, the governor's orders do recognize the health benefits of allowing individuals to exercise outdoors (e.g., walking, hiking, running, bicycling), so long as one is not sick with COVID-19, avoids crowded places (possible at trailheads), and follows social-distancing guidelines of staying 6 feet apart from other people. Those at higher risk of negative COVID-19 outcomes, including the elderly and those with pre-existing health conditions, are advised to stay at home. In southern Illinois, some federal and state park land has reopened for socially-distanced use such as hiking. However, some park facilities like bathrooms, playgrounds, campgrounds and shelter houses may still be closed because they attract a crowd, and they have commonly touched surfaces where one could transfer the COVID-19 coronavirus.

Check the Shawnee National Forest and Illinois Department of Natural Resources' state park websites for updates and **rules** about hiking trail and waterway closures and openings during the COVID-19 pandemic.

IDNR state parks: <https://www2.illinois.gov/dnr/closures/Pages/ParksOpenDuringCoVID19.aspx>

General US Forest Service COVID-19 advice: <https://www.fs.usda.gov/about-agency/covid19-updates>

Shawnee National Forest: <https://www.fs.usda.gov/shawnee>

Crab Orchard NWR: https://www.fws.gov/refuge/crab_orchard/

Visit our older Shawnee Group Sierra Club blog page, lower right side (Index), for a list of weblinks to local hiking trail descriptions, and directions about how to get there: <https://shawneegroup.blogspot.com/>



Male Prothonotary Warbler, Lower Cache River
Buttonland Swamp, July 12, 2020, by Jeffrey K. McCrary

Service Outings – Help Save High Quality Natural Areas

Shawnee Group is committed to helping rid high-quality natural areas of non-native invasive plants (NINIS) that are threatening to crowd out our native plant communities at La-Rue Pine Hills Research Natural Area (Snake Road) and at Fern Rocks Nature Preserve (Trillium Trail) in Giant City State Park.

COVID-19 pandemic guidelines restrict group activities, but service outings will eventually occur again.

Please consult our web page sierraclub.org/illinois/shawnee or our Facebook Page ([Sierra Club Shawnee Group](#)) for further developments in 2021 or contact Barb at 618-549-9684, babitaji@aol.com or text 618-534-7440.

Piasa Palisades Group Outings Chair:

Carol Klinger, 618-288-5506, ciklinger@yahoo.com
<http://www.sierraclub.org/illinois/piasa-palisades>

Eastern Missouri Group Outings Chair:

Doug Melville, 636-288-1055
douglas.k.melville@gmail.com
<http://sierraclub.org/missouri/eastern-missouri>

Future Outings TBA:

Updates listed on our or Illinois Chapter websites:

<http://www.sierraclub.org/illinois/shawnee>

<https://www.sierraclub.org/illinois/events-calendar>

Other short notice outings and events may be announced on our Facebook page:

<https://www.facebook.com/SierraClubShawnee>

The Clean Energy Jobs Act Can't Wait!

The Illinois Clean Jobs Act – CEJA – is ready to go and is supported by a strong [coalition](#) of enviros, consumers, businesses, social justice advocates, unions and others. One year ago, Governor Pritzker said that urgent action is needed on climate and that he was committed to passing clean energy legislation that would create good jobs and protect our planet. Sadly, Governor Pritzker is missing in action! He has not endorsed CEJA nor proposed any substantive climate legislation. We need to remind him that the climate cannot wait, and the need to protect our planet and create clean jobs is greater than ever!

CALL TO ACTION: Call Governor Pritzker's office to voice your support for CEJA and urge him to help this bill pass. The phone numbers are: 312-814-2121 or 312-814-2122. Call with your own message of why you want the Governor to ACT NOW to help pass the Clean Energy Jobs Act or follow one of the scripts below.

- ✚ **JOBS:** Hello! I'm (your name), a registered voter from (town). I want to urge Governor Pritzker to get the Clean Energy Jobs Act passed this spring. CEJA would create thousands of jobs and would build more than 40 million solar panels and 2,500 wind turbines across Illinois by 2030, generating more than \$30 billion of new infrastructure across the state. And it would not cost consumers any more money. It would create workforce hubs to train people for new jobs, including one here in Southern Illinois. What is the Governor going to do to help this bill pass?
- ✚ **PUBLIC HEALTH:** Hello! I'm (your name), a registered voter from (town). I want to urge Governor Pritzker to get the Clean Energy Jobs Act passed this spring. CEJA would remove the equivalent of 1 million gas and diesel-powered vehicles from Illinois roads. This would improve our air quality and help people all over the state who have respiratory problems. What is the Governor going to do to help this bill pass?
- ✚ **CLIMATE CHANGE:** Hello! I'm (your name), a registered voter from (town). I want to urge Governor Pritzker to get the Clean Energy Jobs Act passed this spring. CEJA will ensure that 100% of Illinois' energy is from renewable sources by 2050. It would also increase energy efficiency. It's an important law that helps Illinois fight climate change and would attract investment to Illinois as a top renewable energy state. What is the Governor going to do to help this bill pass?
- ✚ **ECONOMIC OPPORTUNITY AND SOCIAL JUSTICE:** Hello! I'm (your name), a registered voter from (town). I want to urge Governor Pritzker to get the Clean Energy Jobs Act passed this spring. CEJA would help disadvantaged communities get the benefits of clean energy. Over \$100 million dollars/ year would be dedicated towards Illinois Solar for All and workforce development. What is the Governor going to do to help this bill pass?

FURTHER ACTION: Join the Shawnee Group effort to call Pritzker every Friday (other Illinois groups are calling on the other days of the week, but you can call any day, of course).

For more information, go to:

<Illinois.sierraclub.org/legislation/priority-legislation> or <ilcleanjobscoalition.org/resources>

To sign a petition, go to: <ilcleanjobs.org/clean-energy-jobs-act>



Illinois Fracking Committee Update

by Barbara McKasson

Since the state passed the regulations for high volume horizontal fracking (HVHF) there have been very few permit applications for such oil or gas wells. There have been medium horizontal fracking operations. The last high volume (HVHF) permit application was by Woolsey Co. in White County. Woolsey had to re-submit their application to the Illinois Dept. of Natural Resources three times, during which time the company found out that the new HVHF law is tougher than they anticipated. In addition, Southern Illinoisans Against Fracturing Our Environment (SAFE) appealed the permit, which slowed down the process. Woolsey dropped their efforts by 2018 and even closed their White County office.

Environmentalists, including Sierra Club, are still monitoring the permit process and are still concerned because a rise in gas and oil prices may again make HVHF projects seem lucrative. We are also still concerned about medium level horizontal fracking, landowner rights, frack fluid disposal wells and other concerns related to fracking. Methane leaks from wells are a main concern because methane is a potent greenhouse gas responsible for climate change.

Solar For All Income Eligible Community Solar Opportunity

The Carbondale Community Solar Working Group, a local nonprofit formed in 2017 to bring affordable solar to our area, is partnering with Nexamp and [Trajectory Energy Partners](#) to offer eligible Carbondale residents who are Ameren customers an opportunity to save 50% on their Ameren Purchased Electricity Supply Charge (not transmission or delivery fees), while also supporting local solar energy generation. No upfront investment or long-term commitment is involved. The [Illinois Solar For All](#) program is administered by Elevate Energy on behalf of the Illinois Power Agency, an independent state government agency. See: <https://www.illinoissfa.com/app/uploads/2019/10/0919-ILSFA-infosheet-low-income-community-solar-v11.pdf>

Contact [Trajectory Energy Partners](#) at 309-839-4985 with questions about subscribing. To know more about the Carbondale Community Solar Working Group, one of the local non-profit groups supporting this initiative, contact Jane Cogie (jane.cogie@gmail.com) or Karen Knodt (pastor@cdalefcc.org).

Illinois Legislative Contacts: CALL YOUR LEGISLATORS TODAY!

State Dist. 109 - Rep. Darren Bailey: 618-665-4109 or 217-782-2087; <http://www.ilhousegop.org/contactbailey>
State Dist. 115 - Rep. Terri Bryant: 618-242-8115; 217-782-0387; staterepterribryant@gmail.com
State Dist. 116 - Rep. Nathan D. Reitz: 618-282-7284; 217-782-1018 repnreitz@gmail.com
State Dist. 117 - Rep. Dave Severin: 618-440-5090; 217-782-1051; www.ilhousegop.org/contactseverin
State Rep. 118 – Rep. Patrick Windhorst: 618-294-8703; 217-782-5131; www.ilhousegop.org/windhorst_contact
Senate Dist. 55 - Senator Dale Righter: 217-235-6033; 217-782-6674; dalerighter.com/Contact
Senate Dist. 58 - Senator Paul Schimpf: 618-684-1100; senshimpf58@gmail.com
Senate Dist. 59 - Senator Dale Fowler: 618-294-8951; 217-782-5509; senatorfowler59@gmail.com
Governor JB Pritzker: 217-782-6830; <https://www2.illinois.gov/sites/gov/contactus/Pages/default.aspx>
Speaker of the House Emanuel Chris Welch: 217-782-8120; 708-450-1000; repwelch@emanuelchriswelch.com
Senate President Don Harmon: 217-782-8176; 708-848-2002; <http://www.donharmon.org/contact-senator-harmon>

Congressional Contacts: CALL YOUR CONGRESSMEN TODAY!

Senator Dick Durbin: 618-351-1122; 202-224-2152; <http://www.durbin.senate.gov/>
Senator L. Tammy Duckworth: (202) 224-2854; <https://www.duckworth.senate.gov/>
Representative Mike Bost: 618-457-5787; 202-225-5661; <https://bost.house.gov/>
Representative Mary Miller: 618-240-3155; 202-225-5271; <https://marymiller.house.gov/>

Has Your Email Address Changed?

To receive notification when the latest Shawnee Group newsletter is posted online, be sure to inform the Group when you change your email address. Send email address updates to: crusso1957@yahoo.com.

Read current and past newsletters on our website: <http://www.sierraclub.org/illinois/shawnee>. The website also lists information on upcoming local programs and outings, plus state and national Sierra Club issues.

Leadership Opportunities

Run for the Board! We need a few good women and men. Join the board of directors (the executive committee, also known as the ExCom) in overseeing the Shawnee Group's strategic direction and economic health. Board members meet monthly for about 2 hours. Board terms are for two years. We are always interested in potential candidates.

We need Hospitality team members

Provide refreshments for one monthly meeting each year (2nd Thursday). Be the Hospitality Chair to organize refreshment providers and greeters OR Act as a greeter for a monthly meeting or welcome and assist our speaker OR Select and make reservations at a local restaurant for our monthly "Dinner Before the Meeting." Contact Jane Cogie, 618-549-4673, jane.cogie@gmail.com.



Annual Native Plant Sale – TBA

Despite COVID, we're trying to plan a safe, socially-distanced native plant sale. Watch for announcements on Facebook and the website.



Shawnee Group Sierra Club T-Shirts for Sale!

Show your support for our local group's activities.

Contact Barb McKasson at 618-549-9684 or ba4ba5lu@aol.com.

White logo on blue T-Shirt \$15
Medium Large or X-Large