The Highlands Voice

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West Virginia Begins Requiring Subsidence Control

by Richard diPrete

Underground coal mines in West Virginia are removing the support of the surface of thousands of acres every year, as they have for decades. In the course of this removal, they alter the natural flow of ground and surface waters in addition to causing damage to structures. These surface effects of underground coal mining are addressed by the Federal Surface Mine Control and Reclamation Act of 1977 (SMCRA). One of the more significant ways the Act attempts to ameliorate the impact of underground mining is to require submission and approval of a subsidence control plan by operators. These plans require:

1. a survey of structures and renewable resource lands along with an opinion on subsidence damage prospects;
2. a general description of the technique of coal removal;
3. location and extent of areas of planned subsidence, anticipated effects and damage prevention measures;
4. description of geologic and hydrologic conditions affecting subsidence and damage; and
5. mitigation and remedial measures, except where operator "possesses the right to subside without liability."

As many Voice readers are probably aware, the Federal Government administered SMCRA in West Virginia through its regional offices until it satisfied itself that the State had a program in place which was at least as effective as the Federal program. At that time, the State was said to have achieved "primacy" in implementing SMCRA. Because of a complex series of events involving decisions by the former Director of DNR David Callaghan and litigation by the coal industry at the State and Federal levels, no West Virginia mines have been required to file subsidence control plans unless permitted after July 15, 1983. This means, for instance, that a mine permitted in 1982 without a subsidence control plan would be allowed to operate without filing one until its 5-year permit renewal in 1987. According to a spokesman for the coal industry, there are approximately 900 mines in West Virginia in this position.

CHANGES

All this is changing thanks to the courage of a Monongalia County couple, Gene and Ginger Brookover, who this fall challenged Consolidation Coal Company and the DNR on the issue of subsidence control plans. Their modern white brick house which they built themselves is located on 1.6 acres at the edge of Consol's west longwall panel of the Osage No. 3 mine. Their land straddles the Jakes Run, a tributary stream of the Monongahela River in western Monongalia County.

Because of extensive damage that they had witnessed occurring in their community as a series of longwall panels marched up the watershed, they refused to sign a standard subsidence damage contract offered by Consol. Instead they sued under the citizens' suit provisions of the law, represented by Joshua Barrett of DiTrapano and Jackson, and Patrick McGinley, a WVU law professor. The types of damage and effect on their community that they witnessed included:

- domestic water wells drained and/or contaminated by methane;
- houses sagging, cracking and accumulating methane;
- their daughter's school structurally damaged and also threatened by methane in its two water wells;
- the capture of the stream by the mine at [a depth of almost 500 feet] in front of the school resulting in complete dewatering for a period of weeks;
- the death of catchable size fish in the dried up stream (the DNR was called in by a landowner who discovered the kill by the smell);
- the explosion of one house;
- dewatering of springs used to water livestock;
- pooling of water upstream from the areas over gate entries resulting in flooding of bottom ground;
- increasing frustration but also increasing fatalism on the part of community members, perhaps the most insidious effect of all.

Consol attempted to remedy the stream dewatering problems, first by using bentonite and grout in the stream bed and later by scraping and lining the stream bed with a black plastic sheet which would later be removed. The Brookovers decided to the emplacement of the liner in the stretch of the run on their property but Consol, operating on an emergency permit from the Public Lands Corporation, went ahead.

Consol minimizes the importance of private water wells because the area has a Public Service District but the fact remains that groundwater is a valuable resource. Its construction is a diminution of the value of the surface property. The drilling of gas wells could be more difficult in the future. Livestock farming and irrigation could be made impossible.

Consol has no permit from the DOH to undermine the Jakes Run public road and no agreement with the Monongalia County Board of Education with regard to the damage to the school. No finding was made by then Director of DNR Callaghan that minewater under the surface would not cause material damage as required by regulations.

Testifying for Consol at one of the hearings in this case, Callaghan stated: "The fact of it is, subsidence has never been a major problem in West Virginia. It has never been regarded as a major part of this entire regulatory program. With some few exceptions throughout the State, subsidence just has not been a problem."

Apparently, the types of conditions listed above, which are not confined to Jakes Run, only become problems in case of longwall mining. When citizens demand that they be treated as such and that the law requiring advance planning be enforced, Consol routinely files subsidence control plans for the Pennsylvania portions of four West Virginia mines which are almost identical to Osage No. 3.

The attorneys for the Brookovers have no witnesses in this case. On the basis of their cross examination of Consol's and DNR's witnesses, Judge Andrew MacQueen of Kanawha County issued an injunction prohibiting the operation of the longwall panel under the Brookover property. Later, he imposed a condition of dissolution of his injunction: Consol was to submit, and DNR was to approve, a subsidence control plan for the portion of the mine near the Brookover's property.

Public review, hearing and comment were to be accelerated because of concern for over 300 employees Consol chose to idle. The plan, which is more a legal argument than a technical document and is totally inadequate, has been submitted, the hearing held and public comment received. By the time this goes to press, the decision will probably have been rendered.

Although unfortunately produced "primacy" has not been a requirement of a subsidence control plan, particularly for a longwall panel, a step in the right direction. This case has triggered a review of West Virginia's program by USM. It is up to us to see that OSM's oversight is effective and that West Virginia's subsidence control plan requirements, as they develop, are as adequate as they can be to protect the future ability of our communities to support themselves.

Make Ski Tracks To Meeting

Wax up those skis and send reservations now for the Winter Meeting of the West Virginia Highlands Conservancy. On January 19th and 20th, WVHC members will gather at the Alpine Springs Motel at Bowden. With the field trip which begins Saturday at noon, folks will get a first taste of the new outings schedule now in the works under the direction of Conservation Chair John Purbaugh. Cross country skiing should be at its best, and Purbah will lead skiers through some beautiful territory.

For those planning a presentation on Corridor H for the Saturday evening program, followed by some ad hoc committee meetings, the Board of Directors meeting will begin Sunday morning at 9:00.

Since the hotel isn't your standard Ramada Inn, you'll have to act early to get reservations for one of its rooms. Some will have to share double rooms, but a few singles are available—first come, first serve. The cost is $11 per person. Lodging for children under three is free. (Other accommodations can be arranged in the area if you want.)

Saturday dinner at the Lodge is available for $7, Sunday breakfast for $4, and Sunday lunch for $5. Those wanting to come earlier can make arrangements for Saturday night lodging and the three meal reservations have to be made with the Conservancy. (Reservation form in this issue.) As before, we can only refund reservation costs if someone takes your place and we meet the costs of the weekend. If you haven't come to a WVHC meeting before and snow is your natural medium, why not try us. Ski rentals may be available if you don't have your own equipment, and some of our number will be glad to give appropriate tips on safe falls, telemark turns and how to make those sticks glide.

But reserve now for the best spot.
VOICES
Opinion from members

Some Observations On The Elections

by Perry Bryant

On November 6th the American people, by an overwhelming majority, re-elected President Reagan. The President, with the worst environmental record of any modern day President, is re-elected. The combination of the 1984 election and the 1986 Senate elections, where the Republicans gained 57 seats, has left the Senate in the hands of a few representatives who have consistently backed conservation measures.

Political Action Committee (GPAC), a group that supports candidates who have strong environmental records, was one of the few organizations that predicted an increase in conservative seats. GPAC's president, Steve Hargester, Jr., also predicted the election of an anti-environmental majority in the Senate.

The House of Representatives, on the other hand, has remained relatively stable, with a few new faces in the ranks of conservative representatives. The Republican Party has gained control of the House, but the environmental movement has not been completely shut out.

Don't Sign Without Advice

by Richard DiPretoro

The case brought by Gene and Ginger Brookover against Consolidation Coal Company has been well-documented. The couple is seeking damages for lost health and lost income due to the effects of coal mining on their health. The case is significant because it is one of the few cases that has gone to trial and resulted in a verdict for the plaintiffs.

The Brookover case highlights the importance of understanding the legal rights of coal miners and their families. Many coal miners and their families are unaware of their legal rights and may not know how to assert them.

The case also raises questions about the adequacy of the coal industry's response to environmental concerns. The industry has consistently resisted efforts to address the long-term effects of coal mining on human health and the environment.

There are many other cases that have been brought against coal companies, but only a few have resulted in verdicts. The success of the Brookover case is a reminder that coal mining has serious environmental and health impacts that must be addressed.

George Nominated To Coal Council

WVHC President Larry George has been nominated for appointment to the Coal Council by the 3rd District Congressman Nick Rahall. The only conservationist nominated so far, and one of the few representatives from West Virginia, Rahall will be the only coal company representative on the council.

Rahall has consistently backed conservation measures in Congress and is a strong advocate for the environment. His nomination suggests that the coal industry may be facing a challenge in the future.

The Coal Council is a key player in shaping the nation's coal policy. The council's recommendations have a significant impact on the industry and the environment. Rahall's nomination is a signal that the coal industry will need to take the environmental concerns of the West Virginia delegation seriously.
ACID RAIN IN THE NEWS

New Scrubbing Technology a Bright Spot

A Pennsylvania engineer is developing a device to take the acid out of acid rain. Instead of the old scrubbing method, which involves passing exhaust gases through a limestone-based spray to neutralize sulfur dioxide, Westinghouse engineer Irwin Kanter plans to use electricity.

Although he won’t divulge specifics, the new technique uses an electric arc to charge the gas molecules and make them unstable. The unstable molecules can be caused to react with each other to create new and possibly useful compounds. In experimental work, Kanter has produced substances which could become the basis for fertilizer.

The device is similar to a process developed by a Japanese company, Ebara International Corp., but federal officials hope Kanter’s technique will be cheaper and require less electricity.

The old process scrub only sulfur dioxide, not nitrogen oxides, while the Kanter process cleans both. It is one of five new processes being developed under the Environmental Energy grants, and the only one using electricity rather than chemicals to remove the acid-producing oxides.

reported in The Pittsburgh Post-Gazette, 10/1/84

Death in the Smokies

On its 50th birthday this year, the 5,200,000-acre Great Smoky Mountains National Park may not have much to celebrate. The nation’s most popular wilderness preserve, authorities say, is facing ecological disaster. The prime suspect is acid rain.

According to Dr. Robert Bruck, a North Carolina State University plant pathologist, trees which should live 400 years are dying after 45 years. “We’ve got to have answers,” said. “Acid rain is part of the phenomenon but we cannot say definitely by any means that acid rain is causing the problem.”

Fish kills of over 100,000 trout have occurred at adjacent trout farms, half of them in the past two years, according to the chief of resource management at the park, Stu Coleman said. “We have identified the effects of air and water pollution as our No. 1 problem. But it’s one of those things you just don’t know what to do about.”

The park was established in 1934.

reported in The Wheeling Intelligencer, n/a

Drawing Eyes to Acid Rain Issue

We’ve caved in on our loyal clippers, who’ve scoured their papers for stories of interest to environment-watchers. Help came from Dan O’Hanlon (Huntington), Doug Mowrey (Pittsburgh), Lois Rosier (Morgantown), Marilyn Costain (Wheeling), and Patti Mulken-Corley (Charlotte Town). We’ve room for more folks, too.

[Editor’s Note: A special thanks to our loyal clippers, who’ve scoured their papers for stories of interest to environment-watchers. Help came from Dan O’Hanlon (Huntington), Doug Mowrey (Pittsburgh), Lois Rosier (Morgantown), Marilyn Costain (Wheeling), and Patti Mulken-Corley (Charlotte Town). We’ve room for more folks, too.]

OSM Evaluates WV Mining

By John McFerrin

Mining Committee Chair

The Federal Office of Surface Mining has released its annual report on the West Virginia Surface Mining program. Although West Virginia has primary responsibility for administering the federal Surface Mining Control and Reclamation Act, the federal OSM performs annual evaluations of West Virginia’s performance as part of its oversight responsibility.

The report praises the West Virginia authorities for progress they have made in improving both the regulatory and abandoned mine lands programs. In the opinion of OSM, West Virginia has made the most improvement in dealing with underground mine operations. In the past, West Virginia’s inexperience in regulating this type of mining had caused problems. During the period covered by this report the West Virginia authorities had taken steps to alleviate those problems.

The Office of Surface Mining did, however, note several remaining problems with the West Virginia program. Several deficiencies that were noted include:

- Some sites may not yet be covered by performance bonds. (Performance bonds are necessary to assure that sites are properly reclaimed.)
- Agencies such as those responsible for local planning and public water supplies have not received the required notification of permit applications.
- Hydrologic and geologic information in applications was incomplete.
- The Special Reclamation Fund (established to pay for reclamation when bond money is inadequate) may not be adequate to cover the cost if a mine must be reclaimed by that fund.
- West Virginia Department of Natural Resources is not inspecting some mines frequently enough.
- Enforcement is inadequate for toxic materials and water monitoring. Failure to abate violations, mining without a permit, exceeding the 250 ton prospecting limit, and taking appropriate action when companies exhibit a pattern of violations.
- Civil penalties are not being imposed as West Virginia Statutes and regulations require.
- The Federal Office of Surface Mining considers West Virginia to have a “strong program.” Although the report urges West Virginia to take action to correct the problems cited, the report indicates no intention of action by OSM to require West Virginia to do so.

Join the Conservancy

The Conservancy

Needs You!
Small-Scale Hydropower—Alternative Energy?

(Editor's note: This issue brings you the third part of a four-part series on hydropower. The first two parts, published in the July and August issues, explained the fundamentals of hydropower technology, a brief history of hydropower development, and a review of the impact of power consumption trends on plans and project development. If you've missed part of the series, we'll be happy to send the missing segments.)

Until the early sixties, hydropower technology and development rolled along largely on its "successes"—big dams producing large amounts of cheap and reliable power. The bureaucracy built around dam construction added a bit of a push. With the government putting up the capital, the big western dams which provided flood control, irrigation and electricity appeared to be the ideal power source.

Large-scale development got a further push in the mid-sixties from enormous growth projections for electricity consumption, numbers which planners expected to double every eleven years well into the 21st century.

But this fever for grand hydro development cooled during the seventies as capital costs skyrocketed, energy demand slowed, and conventional sources expanded to create large excess capacity. Some big dam projects were shelved, others headed off by public pressure, and the rush for large-scale hydropower development slowed to a trickle.

Legislation for Change

Meanwhile, the energy crisis also sparked interest in alternatives to petroleum. Water, the imminently clean and "free" source, could not be ignored. To identify potential sources, the Carter administration in 1977 asked the U.S. Army Corps of Engineers to survey existing dams which might be rejuvenated to produce electricity. They turned up 50,000 of them.

Inspired by the Corps' study, Congress took a step in 1978 which paved the way for a shift in hydropower development trends. Enacting the Public Utility Regulatory and Policy Act (PURPA), Congress moved to stimulate alternative energy sources and producers and to adjust the energy market picture so these new kids on the block could compete with existing giant public utilities.

A keystone of the act for small producers was the requirement that large utilities buy power produced through small operations. The instant market and distribution system allowed innovators in wind, solar and other technologies to survive. At the same time, it created conditions which encouraged communities to take another look at their rivers and existing dams, with an eye for turning them into power.

Besides guaranteeing a market, PURPA also earmarked federal funds to stimulate small hydropower. The Department of Energy awarded grants for feasibility studies at 54 existing dam sites around the country, and provided 25% of construction and operation costs at eight demonstration projects.

Tax credits for alternative energy development provided additional incentives for private development, and municipalities found further incentives through their power to sell tax-free industrial development bonds.

All of a sudden, thousands of old dams built in the 19th and early 20th centuries for town water supplies, industrial uses, mills and logging took on a new appeal. People quickly translated the small dams' capacities into number of barrels of oil saved. Since many of the nation's existing small dams were located in New England, the equation made perfect sense. There seemed to be no drawbacks.

A 1981 article in Kiwanis Magazine, "The Rebirth of Hydro Power," stated the case with unflinching optimism. Writer Mildred Jailer quoted Winston Hickman, manager of the Small Hydro Power Program at the Idaho National Engineering Laboratory: "Now that energy prices have sky-rocketed, the small site has become economically viable. With the program zeroed in on existing dams, we can get power on line with the least amount of environmental impact."

Jailer concluded her report enthusiastically: "If the 50,000 dams that the Corps of Engineers has identified were revitalized, and each turned out an average of only 1,000 kilowatts, that would add up to 50 million kilowatts...That, no matter how you look at it, would be a lot of electricity, all generated without air pollution and without costly imported oil."

Licensing

Congress wanted to clear the administrative way for small scale hydro development, to allow these "low-impact" projects to avoid the protracted licensing process required of the big dams. By setting provisions in the Energy Security Act to allow the Federal Energy Regulatory Commission (FERC) to exempt certain projects, they hoped to speed the work of getting these new power sources on line.

They categorized the exemptions in three groups:

- pre-existing dams retrofitted or modified for hydropower to produce 5 MW of power or less;
- "natural water feature systems" used to produce power (5 MW or less existing dams were located in New England, the equation made perfect sense. There seemed to be no drawbacks.

- conduits retrofitted for hydropower.

A five megawatt dam would, in many cases, have about 80 feet of head (the vertical distance between surface water level and turbine), so the exemptions covered dams one could hardly think of as small intrusions on a stream.

Pre-Existing Dams

In the interest of deregulation, FERC adopted a broad interpretation of the "pre-existing" designation. According to Chris Meyer, Counsel at the Water Resources Program of the National Wildlife Federation and participant in the 1984 River Conservation Conference, FERC has allowed projects to qualify under the exemptions at sites where dams once existed, but which had been reduced to rubble.

Only recently has FERC slightly narrowed the definition, at least in its response to an inquiry by Rep. Richard Ottinger, Chairman of the Subcommittee on Energy and Conservation of Power. The 88-page document, dated February 17, 1984, cites the statutory definition of an existing dam as "one which was completed on
or before April 20, 1977, 'and which does not affect any existing or future use of a man-made water feature system project. (Fig. D)

As to the question of whether a breached dam could qualify, the FERC "had not formally addressed this issue." The agency cited the report of a Congressional conference committee report on PURPA. In particular, the Committee said that "an existing dam should be strictly construed to mean...existing impoundment." For the first time apparently, the Commission implies full reconstruction of a breached dam should not be allowed without the full licensing procedure.

Conduit Facilities

Another channel for exemptions from the lengthy procedures developed for hydroelectric projects which took advantage of man-made conduits rather than dam construction to produce the required head. To be eligible for exemption, the conduit had to be built and operated for the distribution of water for agricultural, municipal, or industrial use, with the ultimate outflow at the point of use. Most conduit projects are in the west, where irrigation and a number of cities have already established conduits which could be retrofitted.

"Natural Water Feature Systems"

The third exemption comes with a "natural water feature," referred to in Section 408(b)(2) of PURPA. A term which allowed significantly larger numbers of projects to qualify under less stringent standards. The FERC defined natural water features as a "natural configuration, such as a natural lake, waterfall, or the gradient of a natural stream, which can be utilized for the generation of electricity without the need for a 'dam and man-made impoundment.'

But the FERC allows for more intrusion than the term 'natural water feature' implies. In other words, as long as the gradient of the stream provides the necessary head rather than a dam, the project may be able to qualify. To get the water to follow the conduit route rather than the stream, project builders are allowed to build a diversion structure. This allowable diversion structure may include any structure 10 feet high or less (even if it spans over the water). Why is this not a dam? According to the FERC, a dam is not merely a structure for the storage of water. A dam becomes a dam when "the impoundment supplies all, or the substantial part of the total hydroelectric power expected to develop for such generation."

Although a diversion structure may have less impact on the upstream area than a dam (as it cannot be created by a 10-foot dam), it can have a serious impact downstream. The channel below the diversion structure can be virtually dewatered by the diversion of flow into a penstock. (Fig. A)

Outflows from natural lakes can suffer a similar fate if sufficient water is diverted through submerged intake lines. By definition, natural lakes take advantage of a natural depression between the inflowing and out-flowing streams. In a fully natural setting, outflow should equal inflow. If water is drained from the lake through a penstock and released at some point further downstream, the lake's natural outflow is reduced by an equivalent amount. The entire system of the natural feature, the outflow and the hydro plant may be totally altered by this "natural water feature system project. (Fig. B)

In the west, where water rights are a source of constant litigation, the problem of water diversion is further complicated by planned projects which transfer the water from one watershed to another during the diversion process.

A Piece of the Action

After the passage of PURPA, companies, towns, and others wasted no time in getting in line for a piece of the small hydro action. The first stage of getting a license, whether under the usual regulations or under an exemption status, is to apply. Application by the FERC is a company's place in line, and in the meantime he can refine his plans and alter his application as he gets closer to agency approval.

The total number of applications for preliminary permits, new capacity licenses and amendments, and exemptions increased an amazing 2000% in just two years following PURPA's enactment. (Fig. C)

Of course, the FERC was the first to feel the brunt of the new applications in its increased work load. In a cover letter to the Otinger subcommittee, FERC Chairman Raymond J. O'Connor reflected on his response to the problem:

"The internal processing problems resulting from the dramatic increase in actions filed with the Commission are being addressed. Reallocation of FERC staff have been made in an attempt to expedite the processing of the increased volume of filings. As part of the burden reduction program, the Commission has reviewed the application filing requirements for permits and licenses and made substantial modifications or reductions to ease the burden placed upon applicants and to reduce the Commission processing time without compromising the due process rights of all interested parties."

Just how does the FERC handle the licensing process? Permitted would be simplest to quote their own document in answer to that question. The answer applies only to small hydro projects, although there may be parallels for large projects.

"The offices involved in the processing of hydroelectric applications are (a) the Office of the General Counsel (OGC) and the Office of Electric Power Regulation (OEP) in OEP. The Division of Hydropower Licensing (DHL) in OEP. The Division is comprised of three entities: Project Management, Hydropower Analysis, and Environmental Analysis."

"The processing of applications for preliminary permit, exemption, and license is similar. When submitted, an application for one of these three purposes is reviewed by OGC and OEP to determine if it complies with the filing requirements of the Commission's regulations. Upon completion of this initial review, OEP informs the applicant that the application is either: (1) acceptable for filing; (2) deficient, in which case revisions are requested; or (3) patently deficient, in which case the application is rejected." If the application is accepted, public notice is given, and agencies are asked to comment if the project is over 5 MW. The FERC may grant a public hearing, but is not required to do so. Unless a project is "a major Federal action affecting the quality of the human environment"—in which case the FERC prepares a draft and final environmental impact statement—the agency can go ahead with licensing. Most of the applications for preliminary permits, exemptions, and licenses are acted on by the director of the OEPR. 80% of permits and exemptions, 60% of licenses. The rest are acted on by the Commission itself. Possibly the most worrisome of the FERC authorizations for hydropower projects on the current scene are the large number of exemptions granted. The exemptions generally receive a poorer scrutiny, are not necessarily referred to state agencies for comment, and are approved under a more accelerated time schedule. The deed may be done before the public realizes the potential for damage. In 1978, no exemptions were granted. Beginning with two in 1979, 12 in 1980, and 53 in 1981, the exemption approvals jumped to 238 in 1982 and 224 in 1983. While both applications and exemptions have again
The Compleat Outing Survey

Our thoroughly outfitted outdoor recreationists (shown within) are ready for the new WVHC outings schedule. But before we send him off to points wild, we'd like your input on the where/when/what/whow.

This is your chance!

If 60% of respondents want an underground mushroom expedition, we'll try to oblige. We know a mandate when we see one. Send your surveys to the WVHC office by January 5th. We'll publish the results, and some outing plans, in the February issue.

1. I would be interested in attending the following kinds of outings: (Check all that apply)
   - day hikes, easy
   - day hikes, average difficulty
   - day hikes, strenuous
   - winter hikes
   - 2-3 day backpacking trips
   - day canoe trips, ok for novices
   - day canoe trips, Class III experience
   - overnight canoe/camping trips
   - kayaking trips, intermediate
   - kayaking trips, expert
   - caving trips, beginner
   - caving trips, expert
   - cross-country ski trips, easy
   - cross-country ski trips, strenuous
   - fishing trips, warm water
   - fishing trips, cold water
   - field study trips
   - bird
   - wildlife
   - forestry
   - wetlands
   - wild flower
   - stream/river
   - other
   -issue-oriented field study trips
   - water pollution
   - deep mining
   - strip mining
   - river conservation
   - Gamaan Valley
   - wilderness
   - Corridor 11
   - gas drilling
   - other

2. The outings committee should assist with equipment rental arrangements (e.g. skis, canoes)
   - Yes
   - No

3. The outings committee should be involved in planning group meals for outings.
   - Yes
   - No

4. Outings should be scheduled: (check one)
   - only in West Virginia
   - some in WV, some in surrounding states
   - most in WV, some elsewhere

5. I would be likely to attend an outing in:
   - Kentucky
   - Ohio
   - Pennsylvania
   - Maryland
   - Virginia

6. I would be most likely to attend an outing in WV in:
   - the eastern panhandle
   - the central highlands (Preston south to Pocahontas)
   - the southern highlands (Greenbrier south to Mercer)
   - the northern panhandle
   - central West Virginia

7. Outings should be open to:
   - members only
   - the general public

8. When participation has to be limited, reservations should be:
   - on a first come, first serve basis
   - members only, non-members for remaining spots

9. I think outing fees should be: (check one under each letter)
   - just enough to cover the cost of the outings program
   - a source of income to WVHC conservation work
   - the same for all
   - lower for members than non-members

10. I would be interested in leading an outing of this type:

Landowners, Industry Seem Satisfied With Rights Bill

by Skip Johnson

The Surface Owners Rights Bill, which gave surface owners a greater voice in oil and gas drilling on their property, has resulted in a substantial improvement. Delegate Joe Albright, D-Doddridge, said November 14th following hearings on the legislation.

Burford agreed that the damage provision, which was passed in 1983, has been under review by a joint interim committee, of which Albright is chairman.

Albright said comments by landowners have led him to believe that "by and large the bill is doing what we wanted it to do." He said industry generally appears satisfied with it, also.

One area of disagreement, however, is location of drill sites. "There is no requirement that wells be drilled on the side of a pasture field, for example, rather than in the middle," Albright said. "But that was something we had to give up to get a bill."

He said the industry's contention is that the period of time involved in resolving disputes over well sites would be too long, and that the damage section of the bill provides a means for landowners to recoup damages for roads and other surface disturbance.

A possible weakness in the damage provision cropped up in the interim hearings, Albright said. A landowner related that when they couldn't reach agreement on damages with an out-of-state drilling firm, the company took the matter to federal court.

According to the provision, the two parties can settle between themselves, go to independent arbitration or go to court. The landowner complained to the interim committee that being required to pursue the matter into federal court was too great an inconvenience.

Albright said complaints were received that too few reclamation plans are being reviewed on site by Soil Conservation District personnel. "One plan was approved requiring water to run uphill," Albright said.

He forecast "perhaps a modest amount of correction or cleanup" in the legislation during the 1985 session. "But I don't think there is cause for any major changes," he said.

Rex Burford, secretary-treasurer of the West Virginia Oil and Gas Association, believes the surface owners' bill has been successful, with reservations. "I'm not trying to minimize the fact there are still problems in a few situations," he said.

Burford agreed on-site inspection of reclamation plans needs to be stepped up. "But I think that with a year's experience, this aspect is improving."

He said surface owners "have a misconception that they can force a well to be located where they want it, regardless of geology and other factors."

The damage provision is the major sleeper in the bill and is just beginning to be discovered by landowners, Burford said. "Landowners don't have to prove willful damage any more," he said, "and that's a major step."

Reprinted from The Charleston Gazette, used with permission.

Cranberry Minerals Bought

As part of the continuing resolution passed in the closing days, the 98th Congress authorized payment of $14.7 million to the Chesapeake System for title to the entire mineral estate underlying the Cranberry Wilderness and the outlying Backcountry.

The agreement completes the process of securing protection from development for West Virginia's largest wilderness area. The Cranberry Wilderness covers some 35,000 acres, including a rare wetlands ecosystem, and harbors the largest breeding population of black bear in the state.

Winter Meeting Reservations

I'm Coming—Sign me up for:
Sat. lodging ________ at $11._
Sat. dinner ________ at $7._
Sun. breakfast ________ at $4.
Sun. lunch ________ at $5._
Total Enclosed.

Name ________
Address ________
Phone ________

Please specify any special arrangements for rooms (sgl., dbl., share with)

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**The Highlands Voice**

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Hydropower...

started to decline since 1983, the quantum leap in that year is cause for concern, if not for alarm.

After the License, Then What?

Hydroelectric licenses run for a long period of time—generally 50 years. They have to, to make projects economically feasible. But the long-term license is not likely to be revoked, and if the licensee begins a project, the people and the stream wildlife will have to make do with the consequences.

Next month, in the last part of the series, we'll examine those consequences. Part IV will bring you excerpts of a study by David Olson and Richard Roos-Collins of Friends of the River Foundation—The Environmental Effects of Hydroelectricity. They have graciously given their consent to use this document and the Voice is pleased to use it as a conclusion to this study of hydropower issues.

'Mildred Jailer, "The Rebirth of Hydro Power, Kiwanis Magazine."

*Ibid.

*Ibid.


