**Impasse At Corricks Ford**

by Hugh Rogers

Millions of dollars have been spent to draw Corridor H, an indelible ink on the map of Wild, Wonderful West Virginia. But opponents keep smudging the line.

In Tucker County, upstream from Parsons, the Shavers Fork slips between Chest, Fork, and McGowan Mountains on a long narrow floodplain that has hardly changed since 1861. It's no place to fit a four-lane highway; the mountains are steep; Otter Creek Wilderness is directly above; and the river itself is so pristine it has been proposed for designation as Wild and Scenic. Much of the land lies within the Monongahela National Forest.

The Department of Transportation (WVDOT) and its consultant, Baker Inc., were under fire. They drew a “Line A” for the Corridor that plowed down Chest Mountain and spanned Shavers Fork on a 1700-foot-long bridge, 92 feet above the river. At Porterwood, two lower bridges intersected a road. The line occupied two miles of the river’s east bank.

But the highwayermen faced another obstacle: history. Along the Shavers’ banks and bluffs, in July 1861, Confederate forces retreating from Rich Mountain were destroyed at the Battle of Corricks Ford. This part of Virginia remained under Union control for the rest of the Civil War.

In late December, the Keeper of the National Register of Historic Places determined that the site was eligible for protection and its boundaries were larger than Baker had contended. (Moorefield Battlefield, also in the Corridor, was found eligible and its boundaries will be set.) The long bridge at Kalaxa Ford, where the troops first clashed, had to go. Streamside construction was out. This part of West Virginia remained unpaved, for the time being.

Now we have this sketch of a new alignment (see page 6). The consultants looked at the battlefield’s boundary and simply looped the line around it. This route, on average, is a half mile farther from the river, and the big bridge has been pushed nearly three-quarters of a mile south.

More wrinkles will follow. The Keeper, Carol Shull, deserves our thanks for her courageous decision on the Corricks Ford boundary. She and her colleagues must now deal with issues of effect and mitigation.

The rerouted Corridor H would not run over the battlefield, but its sights and sounds would overwhelm it.

On other grounds, this proposal may be worse than the original. It veers outside the 2000-foot corridor where all the studies of cultural resources, wetlands, and habitats were done. Pushing the line south and east puts it closer to Otter Creek Wilderness, in sight of Turkey Run Trail along the crest of McGowan Mountain; the road’s noise and air pollution would reach all of Otter Creek. Fernow Experimental Forest would be even closer and more drastically affected. More National Forest land would be lost. Since the line would cut deeper into the mountains on both sides of the river, the shear devastation would be greater. Similar objections have always been dismissed by the highwaymen.

Our values are far apart. The last point, though, gets closer: we are devastated, they are different. The highwayermen came after the Corps.

The Good, The Bad, and The UGLY

**Mining Matters**
by Cindy Rank

Brief updates on a few mining matters that matter...

**THE GOOD**

The Federal Office of Surface Mining (OSM) has rejected an innucent sounding (but dangerous) definition that WV recently added to its surface mining regulations.

Every year the state of West Virginia makes changes to its surface mining law and regs, often in response to complaints by OSM, often inserting so-called “Clean-Up” amendments - and often crafting new ideas from the minds of the Office of Mining of the Division of Environmental Protection (DEP)... and at times, it seems, at the behest of the coal industry.

According to the Federal Surface Mining Control and Reclamation Act of 1977 (SMCRA) each change in an approved state program must be reviewed by the FOM and evaluated whether or not the new language and provisions are no less stringent than and at least as effective as Federal law and regulation. On February 21, 1996, OSM issued a ruling on a number of changes in the WV program. Several are noteworthy, but one in particular has direct bearing on many of WVDEC’s concerns.

During the spring 1995 session of the WV Legislature, DEP introduced several items that had not been proposed during the state’s normal process of regulations and revision. One addition was a definition of “chemical treatment.”

The new definition means the treatment of water from a surface coal mining operation using chemical reagents such as but not limited to sodium hydroxide, calcium carbonate, or anhydrous ammonia for purposes of meeting applicable state and federal effluent limitations. Chemical treatment does not include passive treatment systems such as but not limited to limestone drains, wetlands, alkali addition, application of flyash, agricultural time, or injection of flyash, lime or other minerals into underground coal operations.*

As innocent as it sounds, there are several flaws inherent in the definition itself: e.g., passive treatment systems may require less human intervention than active treatment systems but human attention is needed at some intervals; some elements of the passive systems may be considered “chemically”; and, to date, all passive systems have limited life spans, and require maintenance, repair or replacement, at some future time.

However, the big problem arises when you use this definition in connection with the bond release provisions of the surface mining regulations.

Currently, state and federal law prohibit full release of bonds where chemical treatment is necessary to bring water discharges into compliance with effluent limits and water quality standards. If the “chemical treatment” definition was to be accepted in its entirety, an operator of an acid producing mine could install alkali drains, wetlands, flyash covers, etc., and if the treatments were successful for a certain amount of time the bond could be released and the operator relieved of any responsibility for repair of the system say 10, 15, 20 years down the line when the treatment system fails (as even industry experts admit they all do).

The state would have no bond money to repair/clean/replace the system; acid would flow freely; one more acid discharge would be added to the ever expanding list of harmful discharges from Post-Art mining sites (mine permits held)...
knee jerk reaction

by John McFerrin

Can anyone look at Marlinton without weeping? Although I didn't go after the most recent flood, I helped in the cleanup in 1985. The place was a mess. From the pictures on TV, it was a mess this time.

The natural human reaction is to want to do something to help other human beings in trouble. Being human beings and all, the West Virginia Legislature immediately appropriated money to help with the cleanup. Private groups, including the West Virginia Rivers Coalition, helped with cleanup.

The next reaction was a thunderous shout of "Never again. Let's dam that sucker." If the Greenbrier River was going to put large parts of Marlinton under water every ten years, why not just build a big dam upstream. That would take care of it.

Again, this is a natural human reaction. When something causes such a problem the knee jerk reaction is to strike at the most immediate and visible part of the problem.

Maybe we ought to think about that a minute. Before everybody jumps to the conclusion that we should address Marlinton's problem by damming the Greenbrier River, let's spend a few minutes thinking about whether that is the sensible thing to do.

In the first place, some flooding of some sort is inevitable. Rain falls. More rain falls at some times than at others. That is the way it has been for at least all of human history; that is the way it will be for the future.

The only thing mankind can do is control to some extent where it floods and when. If we leave things alone then the areas near the river with the lowest elevation will periodically flood. If we dam the river we permanently flood that part of the land above the dam. If we build a series of smaller dams on tributaries of the Greenbrier, we move the permanent flood there.

One reaction to the inevitable flooding somewhere is to accommodate society to the River. If the land near the river floods, then they simply cannot use land near the river. For the buildings which are in those areas, there are floodproofing techniques which would make a flood less damaging.

The other reaction is, of course, to accommodate the River to society: build a big dam and create a permanent flood in one particular area. Because the River has just done so much damage to Marlinton, the knee jerk reaction is to do just that. Since the river has just struck at us, we want to strike back at the river. We want to constrain it so that it can never damage people again.

So what is the Conservancy's role in all of this?

We are the oldest environmental group in West Virginia. Our role is the same as the older members of society as a whole. When the young bucks are lusty for the scent of fresh concrete, ready to launch an armada of cement trucks to slay the dragon, our role is to say, "Wait; let's think about this for a minute. Let's decide whether spending millions of dollars just so the inevitable flood will happen someplace else is a good idea."

If we are to be truly wise, we have to remain open to all possible solutions. Although at this point I am not convinced, sober reflection might show that a dam or series of dams is the wise solution. Such reflection might show that accommodating society to the River is the better solution.

At a minimum, however, we have to insist that society stop and think about this. No matter how much we may weep for Marlinton, we have to avoid a mindless, headlong rush toward what may in the long run prove an unwise solution.
Make Reservations for Spring Review Now

Darn the Greenbrier? Dam the Greenbrier?

by Frank Young

Forest was established Sunday, January 28, 1966, for an upstream dam or miles north of Marlinton. The Elk River beside U.S. end outdoors we are un::.

The topic of focus this weekend will be dams. With these recent flooding, we will get together for various outings. A bag lunch ($5.00) will be available. We are planning a hike, cave trip, canoe trip, and bicycling (bicycle rentals available at the touring center - call 304-572-3771).

For information on the canoe out call Skye Rodman at 412-828-9663. Leaders for the other outings will be announced in the April/May VOICE.

Accommodations at the Elk River Touring Center include: a five room farmhouse with three shared baths that sleeps from two to five people per room; two cabins one sleeping six people and the other sleeping eight and five private rooms, each with a private bath. These five totally private rooms will sleep from two to four people. The cost of from $16.00 to $37.50 per night per person (double occupancy) includes breakfast. The hot tub, located on the back porch of the farm house is included for all guests. There is no "campground" but tents are permitted.

For room reservations call 304-572-3771 before May 1st.

Saturday evening dinner (vegetarian and non-vegetarian will be served) will cost $12.00 for adults and $5.00 for children eleven and under.

Sunday will include the quarterly board of directors meeting from 9:30 a.m. until about 3:00 p.m. A Sunday lunch buffet will be $8.00 for adults (including vegetarians) and $4.00 for children eleven and under.

Those desiring family accommodations (indoor pool, sauna, etc.) may call the inn at Snowshoe at 304-572-2900. It is located five miles north of the touring center near the junction of Rt. 219 and state Rt. 66, at the bottom of Snowshoe Road.

The discussion about dams will actually be two programs. On Saturday afternoon, at about 2:30 p.m., those who are back from outings may attend a panel discussion about dams in general and dam(s) on the Greenbrier river and/or on its tributaries, particularly. Then at 8:00 p.m. Brian Long will be in concert with the Dam Safety Section of the W.Va. office of water resources, will give a 10 minute presentation with basic information about dams, their design, and how they work. This will be followed by a question and answer session.

Music and other merrymaking will follow (please bring musical instruments) for further information contact: Frank Young 304-572-3945 (home) or 304-372-9329 (work) (fax 372-3946) or call Richard diPretoro at 304-296-8935 (fax 296-8623) or email: ofdiPretoro@wsxh.wvnet.edu

***Note: Elk River Touring Center will hold rooms for WVHC members and guests only until May 1st. Please make your room reservations and bicycle rentals directly with them soon by calling 304-572-3771. For best rates, and for our count, be sure and tell them that you are with WVHC Spring Review.

The Flood of January 1996

by Don Gaspar

As much as 3' of snow in the mountains melted quickly with temperatures near 50 and new rain. Water levels crested only about 2' lower than the record November 1983 flood.

It is a good thing the Superbowl was not held in Pittsburgh that Sunday, January 28, 1966, for Three Rivers Stadium was said to be flooded.

The Monongahela National Forest was established right after the logging of the original forest. Loss of tree canopy due to timbering resulted in loss of evapotranspiration, and consequently the loss by fire of the forest floor and soil that served as a sponge; both increased flooding. Stream channels adjusting to carry flows regularly twice as great before timbering caused much flooding. In 1911 the Wicks Law, in response, created the National Forest System that began in 1916 to acquire these damaged watersheds.

Over the years, the canopy has closed with a generally rapidly growing and evapotranspiring young forest. This process can reduce flows regularly by 1/3. Not much cutting went on until the 1950s. Since then a lot of cutting and other disturbance has been taking place on the National Forest. Recent settlement elsewhere on these watersheds have further increased flooding, making the National Forest canopy that much more important.

Is there a coincidence that an essay on flooding has increased? Aren't these watersheds primarily dedicated to flood prevention? Is this then receiving inappropriate emphasis among multi-user? What could be done to restore those damaged watersheds? How badly damaged are they? What should be done?

Think this is a bit of hyperbole? Think again. For the pollen part you'll have to read the EPA study that finds that dioxin is even more toxic than previously thought. And it was previously thought to be the most toxic substance created by man - well maybe except for plutonium.

For the green part listen to what Parsons & Whitleman (P&W) the folks attempting to build this moth of all pulp mills) and lawyers for the WV Manufacturers Association (WVMA) and Chamber of Commerce (WVCC) have to say about anyone trying to set ANY limits on how much of this stuff they can dump in our water and land.

"Parsons and Whitlemore request that all dioxin limits and stack testing on process or combustion sources be removed from the permit," FRW vice president C. Kenneth Goddard wrote. Goddard continued to say that the WV has no right to set any limits for Dioxin.

Lawyers for the WVMA and the WVCC said that the WV Department of Environmental Protection "has set a dangerous precedent by setting a permit limit for a substance like dioxin."

WV-CAG Benefit Concert

Folk singer and songwriter, Charlie King, will host a benefit concert for West Virginia Citizens Against Genocide (WV-CAG), Friday, April 26, 1996 at the University of Charleston Auditorium at 8 p.m. Charlie King's music is an excellent mix of singing satire, snippets of blues, reggae, folk and talking blues. His songs are not fictional or fictional but often tell the story of someone who refuses to be victimized.

Pete Seeger calls Charlie King, "One of the finest singers and songwriters of the 70's and 80's." According to Solidarity Magazine, "His messages are non-preachy, the music is first rate, and his songs are laced with humor, good will and a well deserved job or two at the Establishment."

The benefit will kick off WV-CAG's homecoming tour of West Virginia and Ohio. Tickets are $10 in advance or $12 at the door and can be purchased by calling WV-CAG (304) 346-3891.
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The Seventh American Forest Congress

Three Perspectives

Thanks to Don Garvie for writing this intro and putting together this whole section - bill r

Introduction

The Seventh American Forest Congress was held February 20th - 24th in Washington, DC. It was historic in the sense that these congresses have occurred at critical periods of man's activities in the forest. The first was held in 1882 with the only scientifically trained forester in the country after a call from the American Association for the Advancement of Science to protect forest resources. The second in 1905 was convened by President Theodore Roosevelt and resulted in the creation of the US Forest Service and the establishment of the National Forest System. The first Chief, Gifford Pinchot, led to the repeal of many environmentally abhorrent laws of the time. The third was held in 1946 in response to wartime demands for lumber. The fourth, in 1953, was attended by the President, Chief of Staff and Secretaries of Agriculture and Interior, stated some limited and brief excursions beyond sustained yield in this housing emergency would be permitted in the National Forests.

The fifth was held in DC in 1963 just after Rachel Carson's book "Silent Spring" and the birth of the environmental movement. The Wilderness Act was signed the next year. The sixth in 1975 resulted in the National Forest Management Act. In an official greeting to participants of this Congress US Forest Service Chief Jack Ward Thomas said: "The nation is in the midst of contentious times for forest management. In the last decade, there has been increasing demand for products and services from our private and public forests, that have come from increasing population and economy. These increased demands have produced increased polarization among different forest users as to the appropriate management of the nation's forest... especially its National Forests. The time has come for the Nation to turn away from polarization and toward consensus. I hope that this Congress will lay the foundation for an emerging spirit of cooperation and partnership, that will usher in a new era of forest management..." These words fairly set the stage for the Seventh American Forest Congress, which was conceived in January, 1995, at a roundtable meeting of forest stakeholders in Nebraska. What emerged from that meeting was a call to convene the Seventh Congress, the purpose of which was "to develop, implement and agree upon principles to guide forest management practices in the next century, and the next step toward better forest policies." The process chosen to achieve the stated purpose was one of "consensus building, an interactive process that would attempt to bring all the interested parties together to seek areas of agreement. Participants are actually asked to leave their disagreements at the door... hijack approaches to be the new rage in conflict resolution these days, particularly where government agencies are involved. To begin the process, a series of pre-Congress state and local roundtables and collaborative meetings were put together. I strongly recommend that we adopt a new slogan by William Shakespeare-"Pardon me, my lord, I must be out." Because of a pre conference propaganda should have known that all that rhetoric about a consensus... and many voices was a real job by the timber industry and their media lackeys. A real flag shot up instantly when I read OVCE's favorite Margaret Mead quote on the front of the registration packet: "Never doubt that a small group of thoughtful, committed citizens can change the world. Indeed, it is the only thing that ever has." (OVCE's next board of directors meeting I'll strongly recommend that we adopt a new slogan by William Shakespeare-"Pardon me, my lord, I must be out." Because of a pre conference propaganda should have known that all that rhetoric about a consensus... and many voices was a real job by the timber industry and their media lackeys. A real flag shot up instantly when I read OVCE's favorite Margaret Mead quote on the front of the registration packet: "Never doubt that a small group of thoughtful, committed citizens can change the world. Indeed, it is the only thing that ever has." (OVCE's next board of directors meeting I'll strongly recommend that we adopt a new slogan by William Shakespeare-"Pardon me, my lord, I must be out." Because of a pre conference propaganda should have known that all that rhetoric about a consensus... and many voices was a real job by the timber industry and their media lackeys. A real flag shot up instantly when I read OVCE's favorite Margaret Mead quote on the front of the registration packet: "Never doubt that a small group of thoughtful, commit..."

The Seventh Forest Congress-Please Leave Your Brain At The Door

by Janet First

It's hard to imagine that my vision for our nation's forests could ever have been in common with the vast majority of the Seventh Forest Congress attendees. From the outset I had a feeling I was being used. By the end of the meeting, I KNEW.

The list of "collaborators" and organizers of the conference read like "Who's Who" in the forest exploitation business- USDA Forest Service, Weyerhaeuser, Westvaco Corporation, International Paper, Louisiana Pacific, Georgia-Pacific, and others. Why would greedy earth predators spend over a million dollars to assemble environmentalists with forest users and abusers in the same place? The answer seemed clear enough for me from the get-go, environmentalists were there to support a process, an opportunity to state what I am moot and get off with these butchers.

Let's see the earth systems to try to have their disagreements at the door. This process, however, was being used to present another option to the people by redirecting the process, putting forth the idea that we would enter the forest in charity, humility, service, respect, and with relative scientific uncertainty. From these pre-Congress meetings, the Forest Congress staff prepared a Draft Vision Statement. Accepting or revising that vision would be the first step for the participants in the full Congress. The second step in the process was to reach agreement on a set of management principles (reinforce the vision)

Final Draft of Vision Elements - Seventh American Forest Congress

"In the future our forests... will be managed and enhanced across the landscape, respecting... will be shaped by natural forces and by human actions that reflect the wisdom and values of the informed and engaged public, community and social concerns, scientific principles, local and indigenous knowledge and the need to maintain options; will be managed consistent with strategies and policies that foster forest integrity and maintain a broad range of ecological, economic, and social values and benefits; will be acknowledged as vital by citizens, whose knowledge, experience, and collaboration in stewardship and who appreciate the contribution of forests to the economic and environmental quality of life; will provide a sustainable level of products and benefits that satisfy society's needs because forests are managed for multiple uses; will contribute to strong and vital rural and urban communities that benefit from forests; and enhance the forests in their vicinity; will be managed on the basis of a holistic, scientific, sustainable, economic, social, and spiritual perspective, reverence, and humility."
Forest Congress Dominated by Northwest Issues

by Don Gasper

The Sixth Congress in 1975 stated, "The accelerating momentum of change belies our abilities to even describe what it would be to us as it is today." This has continued to increase in these last twenty years (recent diligence has decreased) with increasing conflicting demands placed on our finite forests. Just recently, the use of computer tools to help, but dialogue for understanding and trust to reduce already existing diversity, was to be the challenge of this diverse citizen congress. A broadly shared ground or in the teachable moment, your average concerned citizen would likely have found it difficult to come up with the $275 registration fee, $100-plus per night to stay at the hotel, and transportation costs to get there from wherever. Your average concerned citizen would likely not be able to justify to his/her family taking a week's vacation to attend.

But it was a surprise to me that the出席e (attendee) by industry and environmentalists, as well as the focus of the issues were so heavily dominated by interests from the Pacific Northwest. In fact, after sitting through three-fourths of a two hour discussion group on fisheries issues in the Pacific Northwest, which I suddenly never moved off the northwest salmon issue, I finally got up the nerve to suggest that other areas of the country also had important fisheries issues to discuss, such as the loss of Eastern native brook trout populations to siltation, acid rain, and habitat destruction.

Most of the environmentalists who attended, both from national organizations and smaller grassroots groups, felt that the Forest Congress should publicly repudiate the "timber-saver rider." The timber-saver rider is an insider's piece of legislation which was attached to the budget决议s bill last fall. Nearing the final days of protecting "forest health," it has opened for logging large tracts of previously protected old growth timber on public lands again, primarily in the Pacific Northwest. In addition, it has exempted these so-called "salvage" sales from complying with all environmental laws and regulations and eliminated judicial review of these sales. I, too, would have liked to see the Seventh American Forest Congress in the wake of the sal­va­ge rider. But given the make-up of the Congress, I felt it was unrealistic to expect that to happen. And it didn't happen.

But other things also did not happen. Trout Unlimited, as well as other conservation and environmental groups, was concerned that the Congress might be used by industry to push its agenda for weakening important environmental laws and regulations. Who would have thought the make-up of the Forest Congress, we might have expected major evolutions to support funding the Endangered Species Act, the National Environmental Policy Act, the Endangered Species Act, and the National Forest Management Act.

However, the Congress organizers, the same people who effectively prevented the Forest Congress from taking a stand against the salmon rider, also effectively prevented industry from using the Forest Congress process to advance its agenda, which is to drop salmon rights.

And believe me, at this Sev­enth American Forest Congress, pro­gres­sion was nothing. For three of the four days, most of us started at 7:00 AM and worked almost non-stop until 7:00 or 7:30 PM. During that time we left the hotel only to grab a late dinner, then returned for more "strateg­y" sessions. It was the most mentally and physically draining confer­ence I have ever attended, and this half-dead congress to the certainty of being unable to reach its goals.

A National Citizen Forest Conference

by Don Gasper

"One thing that everyone agrees on is that the American Forest and Wildlife Foundation will soon run out of money to support itself, and they want to pass it on to their children." The staff of the Forest Foundation gathered the independent votes from each of the more than one hundred working table groups, and grouped them into a consensus vision. The Congress participants then voted on them. Some vision elements got 75% approval, but all got suggestions for improvement. The next day an improved vision statement was voted on, and this time a few of the now thirteen vision elements got 90% approval. After attending a series of in­formational sessions dealing with specific forest issues, the partic­ipants reconvened in their working table groups to develop a set of prin­ciples for action. The staff refined the working table results into wondrous­ly worded principles. Nothing was lost, but there were 61 of them and there was a lot of overlapping. The Congress did manage to consolidate those 61 elements down to 19 gener­al­ized themes, but these remain to be finalized by the Congress.

The principles are a very im­portant work in progress. For in­stance, principle #28 recognizes the importance of old-growth forests to insure a reservoir of genetic diver­sity, to provide unique habitat, to main­tain a full range of options for the future, and for their intrinsic value as a national resource. These prin­ciples could become an important leg­acy of the Congress.

The vision itself is to be de­veloped into an attractive, effective, widely-circulated document. These and the supporting de­liberations are the legacy of this citi­zen Congress — as is a return to local Congresses. There will be sev­eral continuing committees: educ­ation, policy, research, management, community forests, etc., to complete the business and to reach the public with other products of this Seventh American Forest Congress.

Offers of volunteer time and/ or money to further this monumental
case for the remainder of the year could be sent to The Seventh Amer­ican Forest Congress, 205 Prospect Street, New Haven, CT 06511; or to your local State Division of Forest­ry, State Capitol.

The Congress is not another periodic policy assessment. This citizen dialogue may lead to a new era of cooperation changing the con­flicting ways America now manages its forests, and charting forest policy for the 21st Century.

Some attending recommend an evaluation of the Congress' legacy a year from now. This might, like Aldo Leopold's "hatch ethic" of a generation ago, produce now a "forest ethic." A real "forest ethic" could evolve from this historic and heroic attempt to craft consensus from di­versity, if all citizens work together to make it so.
Impasse At Corricks Ford

(from page 1) Shavers Ford. Based on the following reasons, neither shift proved to be prudent or feasible. (A-SDIES at p. III-491)

Their reasons were in three categories: (1) the bridge across the Shavers Ford would have to be even higher and more expensive; (2) shifting the four-lane highway higher up the mountain would make it physically impossible to connect with any roads on either side of the river, "thereby eliminating access to and from the community," (3) "constraining the shifted alignment in this location would likely be impossible" due to the severe terrain and the excavation required.

The Final EIS must be approved by the Federal Highway Administration, the DOT and Baker, FHWA officials speak the language of engineers.

They can tell this plan won't fly. It won't drive. It won't scrape, blast, burn, gouge, spray, drain, dump, channel, fill, compact, fence, pave, paint, sign, or open to traffic.

It's time to improve the roads we have. When highway engineers had less money and equipment, they felt less temptation to overrule their own judgment. Their highways bypassed Shavers Ford, Otter Creek, Corricks Ford, and other remote special places. That's another lesson from history.

The Highlands Conservancy has set up a legal defense fund to protect the Highlands from Corridor II. Tax-deductible donations, marked "Corridor II Legal Fund," should be sent to Tom Michael, WVEC Treasurer, at his address on the masthead. Other contributions for this cause will be used effective­ly by Corridor II Alternatives, P.O. Box 11
Kerens, WV 26276

WV Legislature in Review

by Norm Steenstra

If you followed the media ac­counts of the 1996 West Virginia Legislative Session you likely were left with the impression that there was very little news on environmen­tal issues. Don't believe everything you read in the newspapers.

The West Virginia Environ­mental Council, the Green lobby at the Capitol monitored over 75 bills, 33 of which can now be put into a win - lose - draw - category. Mirror­ring Congress, this Session was marked not by major envi­ronmental initiatives but rather by the successful defense of existing policy.

Five WVEC supported legis­lative actions passed both Houses. 1. A Joint Resolution to Cong­ress requesting that States be given the authority to control solid waste streams was approved by the WVEC.

2. A bill banning the construc­tion of nuclear power plants in WV until it is demonstrated that it is economically feasible to state rate payers and that nuclear waste dis­posal is safe. Our state thus became the third state in the nation to effec­tively ban nuclear power.

3. The Greenbrier Act which creates a grant program to local watershed protection groups and the WVEC to look at new approaches to water quality issues. 4. Stronger election rules that force more aggressive funding sources and prevents the mass distri­bution of anonymous campaign ma­terials.

5. The preservation of the DNR Non-Game/ Natural Heritage pro­grams which will continue.

The bill that got the most press and legislative attention this year was the Greenbrier bill. The last year the bill backed by the WVC Cham­ber of Commerce and the WV Man­ufacturers Association, was killed in the House. Presumably that the bill was sure to be passed in 1996, the WVEC lobby entered into extensive negotiations with industry and the DEP. The result of that process was an agreed to a compromise measure that basically took an industry wish list for avoiding cleanup and turned it into a neutral economic develop­ment tool.

We didn't want the bill, it wasn't our idea, so we won't claim it as a great victory but in reality it now provides a responsible vehicle to re­develop abandoned contaminated industrial sites. The passage of a consensus "brownfields " law did much to dispel the myth of environ­mentalists opposing economic de­velopment.

A quick summary of other bills that the lobby team worked on (or against) is included by category. As you can see these bills represent­ed an all out assault on existing policy.

Good Government:
The WVEC worked to kill or re­peal important three industry backed bills. A bill that would have required railroads and public utili­ties to form political action commit­tees (PACS) was defeated. An at­tempt to abolish the two year old office of the Environmental Advo­cate within the DEP was also defeated. A coal supported bill to re­create the infamous Public Energy Authority was killed in Committee.

Three "good government" ini­tatives supported by the WVEC also died. The West Virginia Jobs Act, a bill mandating the hiring of West Virginians for projects receiving tax credits and state loans, never made it out of the House. This bill was aimed at the Mason County Pulp Mill project.) The House killed a bill that would have provided for easier ballot access for minority po­litical parties. Perhaps the most bid­der defeat of the Session was the "Open Meetings" bill that would have forced all levels of government to conduct business in a more open manner. This bill passed the House but was killed in the Senate.

Conservation and Water Quality

Three separate Land Man­agement bills pushed by the tim­ber industry died in Committee. These bills would have required State Agencies to develop timber­ing plans on state owned lands. A foolish resolution calling for the repeal of the acid rain provisions of the Federal Clean Air Act passed the Senate but the WVEC lobby saw it as a controversial that the House never even considered it. There was an attempt to permit motorized vehicles and oil drill­ing rigs on the North Bend and Greenbrier Hike & Bike trails. In­tense green lobbying efforts were successful in neutering this DNR backed bill.

In addition to the passage of the Stream Partners bill, five other water quality bills were monitored. Cost's attempt to reduce the stream mitigation fee for filling in streams caused by Valley fill operations was defeated. As awful bill that would have allowed oil & gas drill­ers to avoid aquifer plugs died in Committee. The infamous "flood thy neighbor" bill also died in Committee. This bill would have allowed for individual landowners to conduct their own flood control projects without DNR approval. A portion of the rules bill would have done away with the "3 mile rule" for protecting public water sup­plies from toxic discharges. After much debate, the rule, although somewhat weakened was retained.

The WVEC sponsored a bill to authorize the DEP to test for back­ground levels of dioxin in soil and water. This bill was aimed at slow­ing down the Mason County Pulp Mill. Despite some significant grassroots lobby efforts, the bill never made it out of the House Judiciary Committee.

Solid Waste

At least 6 bills designed to undermine the Comprehensive Sol­id Waste Act of 1991 were intro­duced. These bills attacked every­thing from the certificate of need process, tire disposal, sewage sludge, local approval process, and landfill extensions. None of the bills passed either House but there was some weakening of solid waste regulations in the Rules bill. We anticipated a major assault on sol­lid waste law during the session but the defeat of all 6 of the bills was a major victory.

Industry Agenda

The WV Manufacturers As­sociation had 7 bills on their agen­da. Only a watered down version of The Brownfields bill passed. Regulatory Reform, Pollution Pre­vention, Self Audit, Jobs Impact, Pollution Credits, and the "Bubble Bill" all failed to pass both Houses.

These defeated bills were ma­jor policy battles that consumed much of the WVEC's time. The strong chemical company lobby should have done a lot better. The leadership of retiring Speaker of the House, Chuck Chambers was the most important factor in dodd­ging these bullets.

The worst industry initiated bill to pass both houses was Coal's Cranes Transport bill. It's being called the "Stop Frizz" bill because it takes away the power of the executive to enter into multiple state agreements regarding ozone emis­sions. The bill squeaked by in the last hour of the session despite some gallant procedural moves by Senator David Grubb (D- Kanawha). The good news is that the Governor is considering a veto of the measure.

It's hard to tally up the score of wins and losses. A strong Green presence during the 60 day Ses­sion was our greatest asset. That presence enabled us to react to a variety of issues. The blend of ex­perience, personalities and talents of our lobby team members con­tributed greatly to our efforts. What was anticipated to be a pretty dis­astrous Session due to the political climate in Charleston, actually turned out to be pretty darn good. We all a debt of gratitude for the selfless of Mike Withers, Gary Zuckett, Tom Dagen, Denier Poole, Pam Nixon, Chuck Wyrostok, and Jim Kotton.
The Good, the Bad and the Ugly

(from page 1) after the passage of SMCRAct which guaranteed all operators would be held responsible for the full cost of reclamation, making the Interstate Mining Compact Commission and the states underfunded special reclamation fund/bond pool would be even more underfunded, etc., etc., etc.

To understand how something like this gets through the WV legislature is a long, involved and tedious story about a tortuous and daunting process... which I mercifully leave for some other article, some other day. Suffice it to say, WVHC did not address the problem at the late hour it was introduced to the legislature, but chose rather to comment to OSIM in the hope that more level heads would prevail.

To their credit, OSIM personnel recognized the dangers inherent in this definition. They have approved the definition of "chemical treatment" EXCEPT to the extent that it would allow bond release. In the February 21, 1996 Federal Register Notice, OSIM has stated in no uncertain terms that "if treatment is necessary to maintain compliance, whether it be active or passive treatment, then the hydrologic protection standards of SMCA have not been satisfied and bond cannot be released.

Also, "the Director is requiring that West Virginia further amend the West Virginia programs to require that bond may not be released to any party where passive treatment systems are used to achieve compliance with applicable effluent limitations.

I've not yet seen the memo, but I do understand a directive was sent to DEP field personnel informing them of OSIM's ruling in this matter.

Apparently the WV Mining & Reclamation Association will continue to try and get a decision as WVHC's. Association president Ben Greene sent a letter to OSIM Director Uram stating if Uram would be taking back the Trailblazer award OSIM presented to John Falta last year for his work on Green's Run in the 1980s, the award was being returned to Falta by the Agreement Council because of the "nuisance law since OSIM still have no language for non-technical methods to be acceptable for reclamation.

In that same letter, Greene suggested that this issue looks like another 'Colombo' trip -- as in the Colombo Amendment that was adopted by WV in the early 80's and used as the basis for bond release even though it was not a part of the OSIM approved state program and therefore not enforceable under Federal law.

Colombo was one of the concerns in WV/IA's major Citizen's Complaint RE: water issues, and has been the main focus of several individual Complaints, i.e. at Kittle Flats and elsewhere.

THE BAD

Remember the Cubin/Bennett Bill discussed in the WV Gas last Fall? The bill was originally introduced into the U.S. House of Representatives by Barbara Cubin, Representative from Wyoming, and would have altered SMCA so that direct enforcement by Federal officials would in effect be eliminated in states with primary for regulating coal mining. Citizens' rights would be severely limited and many of the actions taken by WVHC and other citizen groups over the years would no longer be possible.

Well, the bill didn't go far. I suspect enforcement in some states like WV is already so greatly influenced by industry that there was less support for the Bill than originally hoped for by the Interstate Mining Compact Commission (IMCC) and some of the Western states that provided the main push for the bill.

The bad news is that though Cubin/Bennett didn't move far this year, a recent initiative by OSIM Director Bob Uran would achieve the same ends with relatively flat (especially when compared to many southern WV areas) mine sites.

To my annoyance, mining had taken place not only up to the streambank, but under, around and through what had once cradled the flowing waters. Dumbfounded, I questioned the scenario. The stream, I was told, had been "temporarily released" as part of the permit.

I have no idea where the stream ended up after reclamation, nor what the streambed looks like today after more than a decade, but I can still feel the hot sun and see the glare on that small but barren bit of wasteland as I rejoined the group to proceed with the tour.

I heard very little else after that, or for that matter for the rest of the afternoon. My mind kept asking questions that had no answers. I had only read the basic laws, heard the basic "we must protect our earth" lines...

That afternoon I discovered that I had yet to comprehend the myriad of exceptions, exemptions, variances, and special conditions that define the true reality of law and regulation.

...As they say, the devil is in the details. Where we are today in these matters is even further away from the basic assumptions of the Clean Water Act, i.e., that streams are to be protected, that waters of the nation are not to be used as treatment ponds or cesspools, nor are they to be filled in or trashed over.

Historically it's a sad story. The common sense goals of the CWA have been whitewashed away bit by bit until today the once-ground reality bears little resemblance to the initial intent of the Act.

For years WVHC and others have argued in favor of the original goals of the CWA and against aberrations of the law that allow in-stream treatment, dumping and mitigation for those actions by fixing some other stream, creating some other lake or payment into some fund.

For years the coal industry has whined about how it can't provide energy to the world without getting the coal out, and it can't get the coal out without putting the overburden somewhere. Mining in steep slope areas like southern West Virginia presents particularly troublesome dilemma for there is little choice of disposal sites. Newer mining (see page 8)

Monongahela National Forest Hiking Guide

The Monongahela National Forest Hiking Guide is bigger and better than ever, with 368 pages, 96 pages of maps, 49 photographs, 177 trails totalling 812 miles, and a full color cover. West Virginia Highlands Conservancy is the publisher. Authors are Allen de Hart and Bruce Sundquist (same as edition 3). Allen has hiked all the trails of the Monongahela NF over the past few years. Bruce was the editor for the first four editions. The hiking community and the U.S. Forest Service provided trail reports and photographs. The Guide, also provides information for ski-touring and backpacking.

The growing throngs of visitors and the public at large regard the Monongahela National Forest as a 'Special Place'. And indeed it is. The hiking, backpacking, and ski-touring opportunities it provides are among the best in the eastern U.S. The more spectacular areas are becoming known far and wide - Otter Creek Wilderness, Dolly Sods Wilderness, Flatrock Plains, Roaring Plains, Blackwater Canyon, Spruce Knob, North Fork Mountain, Shaver's Mountain, Laurel Fork Wilderness, Cranberry Back Country, Cranberry Wilderness, among others.

Profits from the sale of these guides support a wide variety of worthy environmental projects in the West Virginia Highlands Conservancy. To order your copy of Edition 6 of the Monongahela National Forest Hiking Guide, send $12.95 (this includes $3.00 first class shipping) to West Virginia Highlands Conservancy PO Box 306 Charleston, WV 25321

I have included a check or money order for the amount of $__________ to WVHC for copies of the Monongahela National Forest Hiking Guide.

Name:
Address:
City, State, Zip:

The Highlands Voice, March/April 1996 - Page 7
Federal Affairs - Takings!!

On December 21, 1995, the Senate Judiciary Committee voted 10 to 7 to send S. 605, Sen. Dale's extreme takings measure, to the Senate floor for consideration. S. 605 is a radical takings bill that would mandate sweeping federal payments to corporations and other property owners whenever public interest safeguards threaten to decrease profit margins.

S. 605 HAS NOW BEEN SCHEDULED FOR FLOOR ACTION ON 3/25/96.

Despite the final vote, Senate Judiciary Committee members on both sides of the debate expressed deep concerns regarding this particular piece of legislation. Sen. Hatch (R, UT), chair of the Judiciary Committee, was able to get all the Republican committee members to vote in favor of the bill with the notable exception of Sen. Specter (R-PA), who was not present and did not choose to vote by proxy. However, this vote does not represent full Republican endorsement of S. 605 by the Report Card for Senate and Congress.

We can be proud of these achievements. We will! encourage continued strong efforts. For those already at the 100% level, perhaps opportunities for extra-credit work are on the way.

Our members in both houses have some of the best rankings in the country. But don't you have to wonder: What in the world has gotten into both houses? His work full 49 points in one term. Has he just given up?*

Bonus Points for Nick Rahall

Hurray for Nick!!!

But the Whole House was unimpressed points for still pushing Corridor II. Why doesn't he just forget about visiting the last Four-Lanes area in West, Virginia and get back to shoring up the diek bursting under the Ginchick feeding frenzy?*

Join the West Virginia Highlands Conservancy

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Membership Benefits

* 1 year subscription to the Highlands Voice

Special meetings with workshops and speakers

* Representation through WVHC efforts to monitor legislative and agency activity

The WVHC, at age 29, is the oldest environmental group in West Virginia. The Conservancy has been influential in protecting and preserving WV's natural heritage. Your support will help WVHC to continue its efforts.

Cynthia Schiffer, district ranger for the Marlinton district, has announced she is planning to sign the decision document for the East Gauley Mountain timber analysis in April and that the Environmental Assessment would be available by March 21. Her wide range of alternatives' features cuts of 15.5 to 18 million board feet of lumber. The preferred alternative is:

*Clearcut timber harvest- 75 acres
*Shelterwood harvest (a euphemism for clearcut)- 176 acres
*Two-age harvest (delayed clearcut)- 459 acres
*Overstory removal (clearcut all big trees)- 55 acres
*Thinning- 3,386 acres
*Road construction (and reconstruction) somewhere between 14 and 20 miles.

Her announcement declares that "This modified proposed action is to develop commercial and harvest program in the East Gauley Mountain Timber Analysis Area that manipulates vegetation to meet the underlying need for the management area." The primary management for this 6.1 area, according to the out land areas - to provide habitat for wildlife species sensitive to human disturbance, specifically wild turkey, black bear, and other wild life species that use the same types of habitat.

To get your very own copy of the Environmental Assessment write, call or fax Cynthia Schiffer Marlinton Ranger District, USFS PO Box 210 Marlinton, WV 24954-0210 304-799-4334 - Voice 304-799-6280 - Fax

Mon Forest News

17 Million Bd. Ft. Cut for East Gauley Mountain?

Mining Matters - the G, B & U

(from page 7) methods and more powerful mining equipment make the problems even more difficult. When you're mining several hundred feet deep, for dozens of splits of coal there's one massive amount of dirt mining going on...Mining today has far surpassed the strip 'cause the obliteration of the streams and holdbacks, and so on and so forth... Nevertheless, the end result is undeniably the burying of many WV headwater streams.

In plain english, these headwater holdups have become dump sites. - FILL SITES is the more politically correct terminology. But, the truth is, those pretty pictures of lush green state-of-the-art Valley Fills, that appear in the Mining Association's glossy publication GREEN, give no indication of the beauty and value of the life that has been buried below. A few years ago when the WV Department of Natural Resources was the primary agency dealing with coal industry mitigation for loss of the state's streams, the going price for those burial ridges could reach $500,000 per flowing acre. More recently the price required by DEP is minimum of $200,000. During this legislative session the WV Mining Association cried hardship and poverty and suggested $10,000 per acre as a more appropriate price.

- It's in their own self-interest not to take the tax.

- However, if history is reliable indicator, DEP may well fall prey to these latest industry pleas and begin to reassess its requirements. If that happens, I have no doubt that the mitigation guidelines will be relaxed, standards lowered and the fees option reduced even further.

- My heart certainly is not in it, but perhaps citizens should lobby for a reduction to a mere $10 per acre to better reflect the heroic nature of these giveaway proposals.