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# The Highlands Voice

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April 2002 Volume 35 Number 4

## FEDERAL JUDGE LETS OSM SLIDE

Federal judge Charles Haden II has declined a West Virginia Highlands Conservancy request for an injunction requiring the federal Office of Surface Mining to immediately assume control of West Virginia's coal mining regulatory program. In doing so, he has given the federal Office of Surface Mining more time to force the West Virginia Department of Environmental Protection to correct problems in its surface mine regulatory program.

Since the early 1980's West Virginia has had primary responsibility for enforcing the laws which regulate coal mining. The federal Office of Surface Mining has oversight authority, including an obligation to step in if the state's regulations or enforcement are not equal to or more stringent than the requirements of the federal Surface Mining Reclamation and Control Act.

The Office of Surface Mining identified weaknesses in West Virginia's program more than a decade ago. It has taken no steps other than calling the weaknesses to the attention of West Virginia regulators.

Most prominent among the weaknesses is the deficiency in the bonding program. Federal law requires that any coal company post a bond to assure that the state could complete reclamation should the company fail to do so. In response to this requirement, West Virginia set up a bonding pool, called the Special Reclamation Fund. Each company was required to pay into that Fund. In theory, the bonds could be smaller than the cost of reclamation but the Special Reclamation Fund would make up the difference.

The difficulty is that the Special Reclamation Fund is insolvent. The bonds on individual sites are inadequate to reclaim those sites. This would not be a serious problem if the money in the Special Reclamation Fund were adequate to reclaim those sites where the bond is insufficient. The difficulty arises because the Special Reclamation Fund does not have the money to reclaim all the sites where the bond is inadequate.

The result is that today thousand of acres of abandoned sites are

not reclaimed and hundreds of miles of polluted streams go untreated. One study found that the cleanup could cost more than \$6 billion over the next fifty years.

**"For more than a decade, OSM was derelict and dilatory in the extreme, but recently, and clearly in response to this litigation, stepped up agency action promises a state surface mine regulatory program that conforms to [federal] requirements."**

Other weaknesses that the Office of Surface Mining has identified in West Virginia's regulatory program concern flood control, blasting limitations, replacement of residential water supplies damaged by mining, and post-mining land uses.

For at least a decade the Office of Surface Mining has routinely ordered the West Virginia Department of Environmental Protection to address this problem. The orders were routinely ignored; the Office of Surface Mining has done nothing to require West Virginia to correct the problem.

In November, 2000, the West Virginia Highlands Conservancy filed suit, seeking to force the Office of Surface Mining to assume control of the regulation of mining in West Virginia. In August, 2001, Judge Haden ruled that the Office of Surface Mining had "unreasonably delayed" action to take over the West Virginia program. At that time, the Judge did not require the Office of Surface Mining to take over the West Virginia program because the Office of Surface mining and the West Virginia Department of Environmental Protection promised to move promptly to correct the deficiencies.

Since then, West Virginia has moved to correct the deficiency in its reclamation program by increasing the payments to the Special Reclamation Fund from three cents per ton to fourteen cents per ton. This increase is dramatically less than the increase that would have been required to provide adequate funds to reclaim those sites presently

*Continued on p. 7*

### What's Inside

Message from the President	2
Roster	2
Trail maintenance program	3
Mountain Odyssey schedule	4
Julian Martin sounds off	6
Member runs for state Senate	6
Massey permit suspension	7
Market shuts down mines	7
What is wilderness for?	8
Migration celebration	9

Quarry proposed for Pocahontas County	10
Rivers Coalition announces grants	10
A hike in the George Washington	11
Kumbrabow Management Plan	12
West Virginia Highlands Conservancy at the Legislature	13
Trout Unlimited sticks up for trout	14
Grant County air quality improved	14
Thoughts on property rights	15
Timber news from the legislature	15
Spring review	16

## From the Western Slope of the Mountains

### Decline of Coal; Who's to Blame?

by Frank Young, President

The month of March saw the WV Department of Environmental Protection (WVDEP) claim a degree of success in its charges that Massey Energy subsidiary Marfork Coal Company in Boone County has developed a pattern of violations of mining laws. WVDEP seeks to have some of the Marfork operations shut down for a time (about two weeks) as a penalty for its numerous violations.

Late this week a friend sent me a note about having spent the day in Boone and Logan County. The buzz there is that a shutdown at Marfork might result in a wider and longer than ordered shutdown of its mining operations. The gossip mill suggests that layoffs of up to 1000 miners were pending.

Locals are looking for a scapegoat for the contemplated layoffs. If the layoffs occur, undoubtedly WVDEP, and perhaps "those environmental extremists" will be blamed for contributing to a "bad business climate" for coal.

But who is really to blame? The coal operators, that's who. They know the law. Coal company lawyers and lobbyists wrote many, perhaps most of the mining laws and regulations. Massey and Marfork have been skating on the edge of the regulations for years. Spills of mining waste into local Boone County streams are commonplace- a nearly every week occurrence recently.

Generally, coal production is nothing more than a function of market demand. There are many reasons for coal's possible short-term decline other than just environmental and regulatory agency pressure and oversight board decisions. Several warm winters and several years of high volume production have glutted the market, some coal marketers are saying.

Massey/Marfork will draw plenty of sympathy from coalfield communities if the rumored layoff numbers are true. But there's usually more embellishment and grandiose rhetoric surrounding regulatory actions than there is honest discussion of cause and effect.

After U.S. District Judge Charles Haden declared certain mountaintop removal / valley fill mine operations unlawful in October, 1999, the shrill voices of exaggerated effects was heard- from the governor's office to local convenience stores. Days later, Judge Haden stayed his own order that unlawful permits not continue to be issued. He pointed to the hyperbole behind the closing of some mountaintop removal mines amidst exaggerated claims of the immediate effects of Haden's clearly prospective ruling.

So if Massey/Marfork closes more of its operations than ordered, or for longer than WVDEP orders, it won't be because of the agency or the 'environmentalists'. It will be because of Massey and Marfork's own lawlessness, and perhaps because of soft coal markets.

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The West Virginia Highlands Conservancy web page is [www>wvhighlands.org](http://www>wvhighlands.org)

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## National Service Program Benefits Trails in West Virginia

By Carroll Jett, West Virginia Trails Coalition Projects Director

*President Bush's recent call for expansion of our country's National Service Programs could result in even faster progress as WVTC moves from the planning to the implementation stage of the State-wide Trail plan. Thanks to the vision and foresight of our founder and volunteer Executive Director Lu Schrader, WVTC is in an ideal position to take full advantage of these outstanding programs.*

The National Civilian Community Corps was instituted in 1993 under President Clinton, and our own Senator Jay Rockefeller was instrumental in securing passage of the enabling legislation. Patterned partly after the old CCC program of the 1930's, the NCCC is a national service program for young men and women ages 18 to 24. They commit to a minimum of one year of service and are assigned to a team - typically 12 to 15 members. After a month of training at one of 5 regional campuses, they are available for assignment to public service projects. The public service projects can be in the area of education, human needs, public safety, natural disaster, or environmental preservation (which is where trail projects come in). The Project Sponsor is responsible for housing and providing meals for the team and must go through a selective process to have their project approved. Detailed work plans and objectives are required, and the sponsor is also responsible for any specialized training or equipment needed to complete the assign-

ment.

Under Lu's leadership, the WVTC also provided opportunities for several of us to make a contribution to trail development in West Virginia through the VISTA program (Volunteers in Service to America). It was in my capacity as a VISTA volunteer that I came to know Lu, and it was his suggestion to explore the possibility of landing an NCCC team to take on some serious trail maintenance and construction projects. It was my pleasure to know him for only a little over a year, and for all that time he was sick and frail and in a lot of discomfort. For those who didn't have the privilege of knowing Lu, I believe he could best be described as "the eternal optimist." And his optimism could be contagious. After a couple dozen times of being assured by Lu that a particular project would come together, I began to believe "By golly maybe we really can make this thing work!"

During the past year, WVTC has worked together with other organizations and government agencies to sponsor NCCC projects improving over 50 miles of West Virginia trails, primarily within the Monongahela National Forest. And we have undertaken an ongoing project to develop a system of new single track hiker/biker trails in Twin Falls State Park, which is located in flood ravaged Wyoming County. We anticipate continuation of the improvements at Twin Falls this spring beginning around May

1 with another six week project. We also anticipate project applications for an additional 6 week trail improvement project in the Mon Forest in late spring, and a third project in the Fall. As always, there will be ample opportunities for those who would like to volunteer some time. Toward that end, WVTC will be sponsoring a series of trailbuilding workshops for those who might be inclined to take on a wholesome new hobby. We would like to develop a group of reliable volunteers who enjoy spending an occasional week-end doing a "trail tune-up", or perhaps even spend a weeklong "vacation" working on a larger project.

While we are on the subject of volunteers, how about a great big "hoot and holler" for the members of the West Virginia Highlands Conservancy? Not only did they provide funding for meals and other expenses for the NCCC project in the Mon Forest, but they provided a steady supply of volunteers to support the project and were a tremendous help with organizing some R&R activities for our off-duty time. Kudos also to the Mountaineer Chapter of Trout Unlimited for all their help!

How fitting it is that WVTC, the brainchild of Lu Schrader - the epitome of the volunteer spirit - stands to gain so much from this new National Spirit of Volunteerism!

### YOU ARE INVITED!

Please join us for the  
West Virginia-Pennsylvania  
Wilderness and National Forest Planning  
Training & Volunteer Weekend  
APRIL 13-14, 2002

Sponsored by West Virginia Highlands Conservancy, Friends of Allegheny Wilderness, and The Wilderness Society

Mark your calendars and plan to join fellow West Virginians and our neighbors to the north to learn more about wilderness & forest issues and what you can do to help protect the Mountain State's remaining wildlands! The weekend event will feature an overview of conservation issues on the Monongahela and Allegheny National Forests, workshops on wilderness and forest issues (see agenda preview on reverse), and a "Wilderness Celebration" on Saturday night! Speakers include Ed Zahniser, son of Wilderness Act author Howard Zahniser.

**When:** April 13 and 14 (people are encouraged to arrive Friday evening, April 12)

**Where:** Powdermill Nature Reserve, near Rector, Pennsylvania. 55 miles east of Pittsburgh off PA Turnpike.

**Agenda:** Preview of the agenda appears on reverse

**Questions? Contact:**

West Virginia: Dave Saville, West Virginia Highlands Conservancy, 304-284-9548, daves@labyrinth.net;

Pennsylvania: Kirk Johnson, Friends of Allegheny Wilderness, 814-723-0620, alleghenyfriends@earthlink.net

### **HEARTWOOD'S 12TH ANNUAL FOREST COUNCIL May 24-27, 2002**

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## West Virginia Mountain Odyssey Schedule

**Jan.22-May 2(every Tues and Thur)** "Green-Easy Walks" in Morgantown every Tuesday and Thursday morning from 8-9 AM. Starting point is at the Train Depot on the Caperton Trail. Pace starts slow and will speed up to people's needs. Co-sponsored with the Morgantown Green Space Coalition. Call Greg Good at 291-3091 or email him at [ggood@wvu.edu](mailto:ggood@wvu.edu) to participate.

**April 6-7 (Sat-Sun)** Shaver's Fork headwaters exploration and pathfinding. Eighteen mile overnight. Contact Dave Saville, [daves@labyrinth.net](mailto:daves@labyrinth.net), (304) 284-9548.

**April 13-14 (Sat-Sun)** Forest Activist Training. Sponsored by West Virginia Highlands Conservancy, Friends of Allegheny Wilderness, and the Wilderness Society. Learn how to protect the resources we treasure! Contact Dave Saville, [daves@labyrinth.net](mailto:daves@labyrinth.net), (304) 284-9548.

**April 27 (Sat)-** Annual Osbra Eye Memorial Wildflower Walk in Kanawha State Forest. Choice of 5 different routes, including one for photographers. Sponsored by the Kanawha State Forest Foundation. Walks start at 9 AM and are over by noon. Meet at the swimming pool in the Forest. For further information, call Shirley Schweizer, (304) 925-2771

**April 27 (Sat)-** Middle Mountain ascent. An easy, scenic hike up to a spectacular rock formation overlooking Laurel Fork Wilderness. Will meet on US 33 around 11 AM. Call Tom Rodd, (304)558-1985 (weekdays, office) or (304) 265-0018 (weekends, home), [thomasrodd@hotmail.com](mailto:thomasrodd@hotmail.com)

**May 4 (Sat)** Canoe trip on the South Branch of the Potomac River. This trip was a favorite last year. Contact Carter Zerbe, (304)343-3175.

**May 4 (Sat)** The Sierra Club Metropolitan Washington Regional Outing Program's annual 100K hike along the C&O Canal between Washington DC and Harpers Ferry West Virginia. Three versions of the hike are being offered: (i) the full 100K starting at Thompson's Boathouse in Washington DC at 3am, (ii) the 80K starting at Carderock Maryland at 6am, and (iii) the 50K starting at Edwards Ferry lock in Maryland at 10:30am. In order to prepare for this hike, this group is also sponsoring a series of training hikes. For further details, contact Carol Ivory, (703) 476-8730, [carolivory@erols.com](mailto:carolivory@erols.com) or see [onedayhike.tripod.com/hikes.htm](http://onedayhike.tripod.com/hikes.htm).

**May 5 (Sun)** Day Hike on seldom-visited portion of North Fork Mountain south of US 33. Contact Peter Shoenfeld, (301)587-6197, [peter@cais.net](mailto:peter@cais.net)

**May 10-12 (Fri-Sun)** Backpack trip on the North Fork Mountain Trail. Enjoy the spring up high...atop the ridgeline on North Fork Mountain. This backpacking trip will be a combination day hike/backpack. Thursday night will involve camping either on the trail or at Big Bend campground. You can join the group Thursday night, or later, in time for the weekend backpack. Contact Susan Bly at 304-258-3319 or [sbly@shepherd.edu](mailto:sbly@shepherd.edu) for further details.

**May 10-12 (Fri-Sun)** Highlands Conservancy Spring Review at Handley Cabin on the Upper Williams River. Outings will be scheduled. Watch [www.wvhighlands.org](http://www.wvhighlands.org) and the Highlands Voice.

**May 25 (Sat)** Bird Observation Outing at Blackwater Falls. Dr. Ed Gates, Wildlife and Habitat Ecologist at the Appalachian Laboratory, will lead this fascinating outing. Participants will view returning migrating birds at the height of their spring activity, identify them by their songs, and learn about their behavior patterns in a pristine natural habitat. Bring binoculars. To register or for more information, contact Jack Slocomb at (301)777-8810 or email at [JSLOCOMB@prodigy.net](mailto:JSLOCOMB@prodigy.net).

**June 1 (Sat)** Spring Cleanup on the Allegheny Highlands Trail. Join members of Highlands Trail Foundation along the 21-mile rail-trail between Elkins and Parsons to explore and spruce up this new recreational resource. Leader: Karen Carper, [karen@elkinsbike.com](mailto:karen@elkinsbike.com) or 304-636-4519.

**June 2 thru June 16** Trail Maintenance in Otter Creek Wilderness Area. Join us for the first of our Summer 2002 Trail Maintenance projects. The Highlands Conservancy is co-sponsoring a Vista/NCCC Trail crew for a summer of Service work. Trail Boss, and Highlands Conservancy Board member, Carroll Jett will be coordinating the crew and welcome any volunteers for all or any part of this series of trail work outings. Everyone can contribute, not just high strength and stamina types. Comprehensive Trail Workshop on June 3 for anyone wishing to learn the technical and artistic details of trail construction/maintenance. Contact Carroll Jett at 304-273-5247, [carrolljett@yahoo.com](mailto:carrolljett@yahoo.com)

**June 15 (Sat)** Sinks of Gandy. Walk-crawl-wade-swim almost a mile underground following the Gandy Creek through the mountain. A unique opportunity for an unforgettable adventure. Led by professional geologist and naturalist Barnes Nugent. Suitable for caving novices. Contact Barnes Nugent, (304) 284-9548, [barnes@geosrv.wvnet.edu](mailto:barnes@geosrv.wvnet.edu).

**June 17 thru June 30 Trail Maintenance on Allegheny Trail** Join our Vista/NCCC Trail Crew for the second phase of our Summer 2002 Trail Project. We will be staying at Seneca State Forest. Contact Carroll Jett at 304-273-5247, [carrolljett@yahoo.com](mailto:carrolljett@yahoo.com)

**June 22-23 (Sat-Sun)** - 2.5 mile overnight backpack trip on Allegheny Front south from Bear Rocks to near the Blackbird Knob Trailhead. No trail, but an open country walk through low heathland in peak Mt. Laurel bloom. Several wind-carved rock formations among extensive and blooming mountain laurel. Excellent views. Wear long pants to protect your legs from the heaths. Plan for possible cool temps and winds. Leader: Jonathan Jessup, (703) 204-1372, [jonathanjessup@hotmail.com](mailto:jonathanjessup@hotmail.com)

**June 22 (Sat)** - Solstice Simultaneous Summit Celebration! Several day hikes of varying difficulty on prominent peaks in the highlands. All the hiking groups will unite in spirit to celebrate these high points, and by extension the entire highland region, with flags, horns, rattles, songs, and flowers! Leader: Ruth Blackwell Rogers, (304)636-2662, [ruthbr@wvhighlands.org](mailto:ruthbr@wvhighlands.org).

**June 29 (Sat)** - Easy day hike and introduction to examining water quality, on private land in the Laurel Fork headwaters, Highland Co. VA. Macroinvertebrate sampling, indications of water quality, pH, effects of acid rain, railroad logging history and the returning forest; hiking along Laurel Fork through blooming rhododendron and mountain laurel and to the top of the mountain to a view of the Laurel Fork watershed, with guide, Lucile Miller. Meet at 10:30 am, depart after 3pm tea at Lucile's solar cabin. Leader: Ruth Blackwell Rogers, [ruthbr@wvhighlands.org](mailto:ruthbr@wvhighlands.org), 304-636-2662.

**July 5-7 (Fri-Sun)** - Canyons Rim Trail hike, Roaring Plains. An unpublished and unmaintained high elevation trail with stunning views into Roaring Creek and Long Run Canyons. We'll connect using South Prong Trail. Experienced hikers only please as the going will be rocky. Photos and more information on this trail can be seen at: <http://www.geocities.com/jonathanjessup/rp-set1.html>. Leader: Jonathan Jessup, (703) 204-1372, [jonathanjessup@hotmail.com](mailto:jonathanjessup@hotmail.com)

**July 7 thru July 12 Trail Maintenance in the Seneca Creek Backcountry.** Our Vista/NCCC trail crew will continue with the trail work they began last year in the Seneca Creek area. We will be staying at the Shot Cherry Cabin. Remember, we can use your help even if it is just for one day. Contact Carroll Jett at 304-273-5247, [carrolljett@yahoo.com](mailto:carrolljett@yahoo.com)

**July 11-14 (Thur-Sun)** Bicycle trip on the Greenbrier River Trail. Travel the entire 75 mile rail trail on bikes while camping out at Watoga State Park. "The former Greenbrier Division of the C. & O. Railway was built at the turn of the century to serve the booming timber industry of that time. The trail passes through numerous small towns and traverses 35 bridges and 2 tunnels as it winds its way along the valley. Throughout much of its length, the Trail is directly adjacent to the beautiful Greenbrier River and is surrounded by peaks of the Allegheny Mountains." Contact Susan Bly at (304)258-3319 or [sbly@shepherd.edu](mailto:sbly@shepherd.edu) for further details.

**July 13 (Sat)** - Canoe Trip. Six scenic, flatwater miles on the Buckhannon River Pool just above Buckhannon. Meet at Sheetz in Buckhannon at 11 AM. Leader: Don Gasper, (304)472-3704.

**Aug 17 (Sat)**-Explore Fisher Spring Run Bog. This large, open and seldom visited bog is just within the Dolly Sods Wilderness. Wildflowers and many plant life forms adapted to bog and high elevation conditions are the focus of this trip. Waterproof boots are a must. Leader: Jonathan Jessup, (703) 204-1372, [jonathanjessup@hotmail.com](mailto:jonathanjessup@hotmail.com)

**Almost Anytime.** Visit Kayford Mountain south of Charleston to see mountain top removal (MTR) up close and hear Larry Gibson's story about how he saved his mountain, now almost totally surrounded by MTR. Bring a lunch— there is a picnic area on Larry's mountain. Just call Larry or Julian Martin. Leaders: Julian Martin, (304)342-8989, [Martinjul@aol.com](mailto:Martinjul@aol.com) and Larry Gibson, (304) 586-3287 or (304) 549-3287 cellular.

#### Highlands Voice Online

The online edition of the Voice on [www.wvhighlands.org](http://www.wvhighlands.org) is now stored as an Adobe Acrobat (.pdf) document. It may be viewed and printed using Acrobat Reader. The latest version of this software is available by clicking the link at the bottom of the home page.

For clear Voice readability, set your browser to its full-screen setting and adjust the Acrobat zoom setting to suit. In older versions of Acrobat Reader the zoom control is at the bottom. In newer versions, click the little triangle at the upper right hand corner of the Acrobat display, and then click Preferences.

There is a hyperlink index of "bookmarks" at the left. The pages are sized to print out on 8 1/2 x 11 inch paper, smaller than the regular Voice, but still clearly legible. The photos, which sometimes come out poorly in the regular Voice tend to very clear and sometimes in color in the online edition.

### **Monongahela National Forest**

#### **Hiking Guide**

by Allen deHart & Bruce Sundquist  
Published by the  
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## Propaganda Comes to Public Radio

Commentary by Julian Martin

“Support for Weekend Edition is provided by Arch Coal Incorporated, reclaiming the land for community projects such as the Twisted Gun Golf Course opening soon in Mingo county.” You just read a coal industry editorial disguised as a commercial on West Virginia Public Radio.

This editorial commercial makes it sound like Arch Coal is fixing something that somebody else destroyed when in fact they are just cleaning up a very small portion of West Virginia that they themselves are tearing up. No mention is made of the fact that Arch Coal and other coal companies have, just since 1987, destroyed over 300,000 acres of West Virginia mountains. An attempt is being made, in cooperation with West Virginia Public Radio, to create the illusion that a golf course on a destroyed mountain top is better for a community than the original mountain and trees and streams. And guess just what fraction of the neighbors of the “community project” will ever play golf there.

Like public radio editorial commercials, the golfing will not be free; there will be

a price.

At the rate ruined mountain tops are being “developed” it would take more than 3,000 years to finish the job and that’s if not another mountain top is blasted off. Imagine the size of the job of “developing” mountain top removal mine sites. The five hundred square miles that have already been destroyed are equal to a bulldozed swath one mile wide running all the way from Charleston to Manhattan Island, plowing through the entire island and going on into Connecticut, or from here to Myrtle Beach and on down to Jacksonville.

The degree of truth in the Arch Coal editorial commercial compares with one that might read: “Brought to you by your good friends in the tobacco industry, promoting healthy communities throughout West Virginia.” I dare Public Radio to run that one.

I like Public Radio It is wonderful to listen to programs that are not yet constantly interrupted by loud corporate propaganda. Conservative politicians have reduced public radio funding. For public radio to survive we are

asked to endure coal company fabrications and witness the humiliation of the professional employees of West Virginia Public Radio who must read the coal company lies or lose their jobs.

In a way, these editorial commercials are a good sign. They show that the coal companies, who are the ultimate eco-terrorists and environmental extremists, realize that the public expects them to clean up their mess. However, if with one hand, they can dazzle us that they are in the benign business of reclaiming land for community projects, they can continue to strangle the mountains and streams with the other hand.

Would a twenty five dollar contribution to public radio give a person access to the airwaves to counter the coal company creativity with the truth. Perhaps it is like access to politicians: the more you pay the more you say?

To express an opinion about West Virginia Public Radio or its underwriting policies contact:  
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## West Virginia Highlands Conservancy Member Throws Hat Into Ring

Long time West Virginia Highlands Conservancy member Dr. Wayne Spiggle has thrown his hat into the ring as a Democratic candidate for the District 14 seat in the West Virginia Senate. A native of Davis and resident of Short Gap in Mineral County, Spiggle is running against Barbour County resident, James A. Baughman in the May primary for the Senate seat which represents Mineral, Tucker, Barbour, Taylor, Preston and parts of Grant and Monongalia counties. The seat is presently held by Republican Sarah Minear.

Emphasizing that Americans are now more focused on “making our country and the world a better place to live,” Spiggle said West Virginians have to put aside the past in order to insure our future.

“We are just as good as anyone else and our future can be what we want it to be,” said Spiggle. “But in order to achieve this we have to keep our young people in West Virginia with good jobs and create the opportunity for adults to prepare for another career anytime during their lives.”

A retired physician and farmer, Spiggle, 67, says continued development of our transportation, emergency services and communications systems are vital to the living wage jobs plan.

“I support Corridor H and a North-South highway which will link this part of the state with the northeastern part of the country,” Spiggle stated. “These roads are critical. We need to see them built on routes that are planned wisely so we open our region to the rest of the world while maintaining the beautiful and precious places which characterize this area.”

As for the expanding age of communications, Spiggle said opening access to everyone needs to happen for multiple reasons.

“We must provide electronic access for every citizen,” he

said. “I can’t see why we couldn’t have a state channel that homes could tune into for schooling, community meetings and emergency services.

“And speaking of emergency services, we must put funding in place to adequately support 911, fire departments and rescue personnel,” Spiggle added. “Our EMS and firefighters are very special people and they save lives every day. Making it a priority is the only way we can go.”

Fixing the broken health care system is also at the top of Spiggle’s list.

“It is an outrage for some of our people, including many senior citizens, to be forced into or driven further into poverty just because they get sick,” he said. “We have the best health care in the world but we have the worst, most wasteful way of delivering it. The system is broken, I want to help fix it.”

An avid hunter and fisherman, Spiggle was born and raised in Tucker County. He is a graduate of Davis High School and Berea (Ky.) College. He received his medical training through the West Virginia University system. He was a founding partner in an internal medicine group practice located in Cumberland, Md., where he treated hundreds of patients from West Virginia, Maryland and Pennsylvania for 38 years prior to retiring last July.

Married to the former Betty Sutton, he is the father of six children; the Spiggles have eight grandchildren. One daughter is deceased. His 94-year-old mother, Isabelle, is a lifelong resident of Davis and plans to be actively involved in the campaign.

Spiggle can be reached at his home by calling 304-726-4868 or by e-mail at [wspiggle@mindspring.com](mailto:wspiggle@mindspring.com).

## JUDGE LETS OSM SLIDE

Continued from p. 1

abandoned and those which will be abandoned in the future. OSM has said that its preliminary study indicates that the tax increase is insufficient to provide a long term solution. Federal and state regulators have also imposed deadlines upon themselves to correct the other deficiencies.

Based upon what appeared to be progress, the court declined to order that the Office of Surface Mining take over the West Virginia program immediately. In doing so, the Court said, "For more than a decade, OSM was derelict and dilatory in the extreme, but recently, and clearly in response to this litigation, stepped up agency action promises a state surface mine regulatory program that conforms to [federal] requirements."

The Office of Surface Mining has promised to make a final decision on the West Virginia Department of Environmental Protection's proposals for correcting the deficiencies in the bonding and Special Reclamation programs by May 28. It has promised to approve or reject West Virginia's proposals in other areas by May 1.

In making his ruling, the Judge praised the Highlands Conservancy for its "heavy lifting...producing figures and proposing answers to the question, what will constitute sufficient...funds." He praised the Conservancy's "well placed pressure and persistence" in pursuing this issue.

## It's The Market

By John McFerrin

Within the last month Consol Energy has announced that it is closing four mines, an action that will affect up to 1,200 jobs. It cited the mild winter and the recession. Arch Coal has announced that it intends to cut production by seven per cent at its operations in West Virginia and other states. It cited the unusually warm winter and weak industrial demand. Pittston Co. stopped mining at four mines for eight days and laid off an unspecified number of employees. It cited warm weather.

Nobody said that having to follow environmental laws caused any of the shutdowns or layoffs.

Regardless of the noisy rhetoric surrounding any attempt to enforce environmental laws, the fact remains that how much coal is mined depends upon the market for coal. Those laws determine whether the coal will be mined responsibly or not but it is the market which determines whether it will be mined and how many employees will continue to be employed.

## MASSEY PERMIT SUSPENDED

Mine Board Shortens Suspension

The state Surface Mine Board on Wednesday reduced by a third the amount of time that a Massey Energy operation must shut down for repeated water pollution violations.

In January, the state Department of Environmental Protection suspended Massey subsidiary Marfork Coal Co.'s permit for 14 days. The board cut the suspension to 9 days after hearing an appeal filed by Marfork. The suspension had been stayed pending Wednesday's board hearing. The 9-day shutdown could cost Massey \$5.4 million in gross revenues, according to company estimates.

"Obviously, we would have preferred to have had 14 days, but we are not disappointed," said DEP Secretary Michael Callaghan. "This is a substantial penalty, and it sends a strong message to the industry that patterns of violations will not be tolerated."

Board members agreed to temporarily block the suspension to give Massey lawyers time to appeal the board action to circuit court. During Wednesday's hearing, Massey lawyer Bob McLusky insisted that a 14-day shutdown order was "absurd." "I don't believe any suspension is warranted," McLusky added.

The board ruling concerns the first in a series of high-profile enforcement actions taken by the Wise administration against various Massey subsidiaries. Enforcement hearings or board appeals are also pending for Independence Coal, Green Valley Coal and Omar Mining.

In the Marfork case, DEP inspectors had cited the company for seven separate water pollution violations between July 1999 and February 2001. The violations occurred on a permit that covers a huge coal waste impoundment on Brushy Fork and a nearby strip mine. Inspectors said Marfork did not control erosion on the face of the impoundment and allowed coal waste from that erosion to pour into Little Marsh Fork, which feeds into the Coal River not far from the Boone-Raleigh Public Service Districts public drinking water intake.

Under state and federal law, DEP can revoke or suspend permits when it finds that companies have committed a "pattern of violations." Under the law, a pattern is defined as two or more violations during any 12-month period. As allowed by the law, Marfork lawyers asked DEP for a "show cause hearing" to explain why they thought that the permit should not be revoked or suspended.

In the past, lower-level DEP officials - usually former inspectors - presided over show cause hearings. But last year, Matt Crum, director of the DEP Division of Mining and Reclamation, announced that he would be the judge in a series of Massey cases and several other show cause hearings. At the show cause hearing and again Wednesday, McLusky argued that it was

unfair for Crum - DEP's top mining enforcement officer - to decide on a dispute between Massey and the agency's inspectors.

"I'd prefer a show cause hearing before a neutral hearing examiner," McLusky told Surface Mine Board members Wednesday.

The board did not immediately issue a written ruling. After about an hour of closed-door deliberations, board Chairman Tom Michael announced that members declined to decide whether it was proper for Crum to preside over the show cause hearing. But in explaining the board's decision to reduce the Marfork penalty, Michael specifically cited Crum's involvement.

"The board feels that the outcome [of the show cause hearing] is somewhat tainted by the fact that the director did act as the hearing examiner, perhaps inadvisably," Michael said.

After the ruling was announced, Crum refused to comment. Michael said board members agreed with DEP inspectors and Crum that Marfork committed "a pattern of violations."

"The evidence about that is actually pretty clear," Michael said. "There was a lack of responsible care shown." Michael said that the suspension will not apply to a small strip mine that

is authorized under the same permit as the Brushy Fork impoundment.

McLusky had argued that the proposed 14-day suspension was overkill that would cost the company \$9.4 million in gross revenues.

"A 14-day suspension is absurd," McLusky told the board. "It is simply outrageous."

McLusky repeatedly objected when DEP lawyer Tom Clarke provided the board members with financial data about Massey, Marfork's parent company, to put the \$9.4 million in perspective. "Massey's balance sheet is irrelevant to this," McLusky said.

Michael noted that Massey owns Marfork.

"So what?" McLusky said.

"Your 'so what' is noted," Michael replied.

Clarke told the board that Massey Energy lost \$8.8 million, before taxes, during the 2001 financial year. That, he said, amounted to just 1 cent per share of the publicly traded company. "To the shareholders of this company, \$9 million is a penny," Clarke said. "It's a drop in the bucket." "But maybe it will get their attention," he said. "The only place the penalty hits anybody is the shareholders, who will eventually hold management accountable."

*Reprinted from the Charleston Gazette.*

## ***What Is Wilderness For?***

By H. Charles Romesburg

As most everybody learns, nature is vital to our physical well-being. For one thing, it sustains the balance of oxygen, carbon dioxide, and nitrogen in the atmosphere. For another, it holds medically-useful molecular compounds, preventives and cures to be discovered in centuries ahead.

At the same time, few learn that wild nature, or wilderness, especially when experienced in solitude, is vital to society's creative well-being. One source of support for this is my research into the credos of notable creators, as written in their published diaries, journals, letters, and memoirs. Here is a sample of the beliefs, and of some of the creators holding the beliefs:

To begin with, wilderness stands alone in its psychotherapeutic powers. It is a wick that draws away our neurotic troubles, removing their capacity of tormenting (John Cowper Powys). To experience wilderness regularly, Powys said, is "to possess the power to forget." By this, wilderness frees us to create better, and to appreciate the creations of others.

Further, wilderness stimulates the imagination, increasing our stock of images, material for envisioning and designing new creations (Pierre Auguste Renoir, Gustave Flaubert, Joseph Addison). Wilderness promotes the flow of creative ideas from the subconscious to the conscious (Eugene Delacroix, William Hazlitt, Richard Jefferies). Wilderness brings us spiritual refreshment, vitalizing the creative impulse, motivating us to create (Rupert Brooke, Rachel Carson, Hans Hofmann, Odilon Redon).

This all enters into a subtle but real chain by which wilderness promotes social and economic well being. It begins with wilderness feeding the creative processes of artists and consumers of the arts. In turn, the nonmaterial values produced by the arts, including painting, music, poetry, essays, literature, dance, film, and theater, seep into the everyday world, giving rise to material values, affecting our attitudes and the decisions we make, having formative effects on political values, scientific values, religious values, family values, health care values, and educational values, partly determining the subjects we teach in schools, the scientific knowledge we seek, the ways we treat each other, and the products that are made (Wassily Kandinsky, M. C. Escher).

There are two conditions to this. One, only large tracts of wilderness can give these benefits; pocket wildernesses can't (Margaret Fuller). Two, the large tracts must be free of both human-made things and of signs that such things have ever been there (John Ruskin, William Wordsworth).

Now, it is pointless to talk of protecting nature without specifying a purpose. One purpose will require one type and extent of protection; another, another. Of the reasons for preserving nature for our physical well-being, it means nothing if nature is scarred, or if there is no solitude, a billboard on every tree, loudspeakers by the streambanks, signs of human activity everywhere. But of the reasons for preserving wilderness for our creative well-being, it means everything.

If environmentalists succeed, the earth will not be a dumping ground for pollutants. If conservationists succeed, we won't run low on good topsoil, and the biota will be kept intact. Yet as much as we want them to succeed with these and their other aims, their successes may come in ways that allow the earth to become so empty of wilderness that human creativity will be permanently malnourished. The responsibility of ensuring this doesn't happen falls to us, today's John Muirs, those with his values and fight, who place the prosperity of the

creative spirit close to mercantile prosperity, if not above it.

Among our duties, we ought to protest against the use of the willingness-to-pay method to gauge the worth of wilderness. By this method, analysts find that the public spends more for tickets to football games than for preserving wilderness and species. And in canvassing people, asking how much they would consider contributing to a program to protect so many wild acres, most say they would give little or nothing.

Very well. Who puts van Gogh's *The Starry Night* up for auction before a roomful of people who have been blindfolded from birth, and concludes that the winning two-dollar bid represents its value? Who reasons that because wilderness and species whisper unassertively, enticing few to open their pocketbooks to save them from extinction, such things are inconsiderable? How much a person will pay is usually, John Muir knew, a measure of what promises to feel good, not of what is good. Almost all will pay to appease their hunger for entertainment. Goodness, especially of the long run, doesn't sell on merit.

Materialists, liking what they know, followers of the primrose path, are asked how much they would pay regarding a future whose rightness for them and posterity they have yet to put themselves in position to know, and cannot until they slip their blindfolds, schooling their minds and sensibilities in wilderness as an irreplaceable agent of creativity, and so of social and economic well-being.

And we should work to induce scholars in psychology, sociology, art, history, literature, and philosophy to research the importance of wild nature to creativity, from the perspectives of their fields. Besides strengthening and extending what is already known about this, perhaps further psychotherapeutic powers of wilderness will be revealed, such as powers to reduce the use of tranquilizers, to reduce the number of heinous acts that put society in a funk, and to reduce the rate of suicide among the young. In a decade or sooner, through such research we can be in a new era where the benefits of wilderness are fully established and taken for granted. With these benefits treated as expenses in proposals for building in wilderness areas, or for extracting coal, oil, or timber, the benefit-to-cost ratios will be more likely to go against the proposals.

And let us have none of the claim that lands, after they are skinned of coal or timber, can be reclaimed to wilderness. The creative spirit has a fine eye for deception; a recreated "wilderness" has no spiritual life at all (H. E. Bates).

Finally, we don't permit surgeries to be run by doctors trained only in business, lawyering, and politics. Just so, let us insist that authorities with license to allow or deny decisions having effects on wilderness be roundly educated for the job. At the very least, they should have had and passed a course in ecology, and a course in the worth of wilderness to creativity and to general mental health, and so to social and economic prosperity.

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*H. Charles Romesburg is a professor of forestry at Utah State University, and a thirty-year member of WVHC. He has adapted this article from his new book about creative work, *The Life of the Creative Spirit*, which is described on his web site, [www.cnr.usu.edu/Romesburg](http://www.cnr.usu.edu/Romesburg). The book includes about 700 passages (52,000 words) quoted from the autobiographical writings of more than 300 prominent creators, much of it about the importance of wilderness. The book may be ordered from its publisher Xlibris Corp., by either phone (888-795-4274) or the Internet ([www.xlibris.com](http://www.xlibris.com)), and from Internet booksellers, and bookstores.*

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## ***New Quarry Proposed for Pocahontas County***

by Jeremy Mueller

Waco Oil & Gas has applied to operate a new 76-acre sandstone quarry in Pocahontas County near Knapps Creek and the Greenbrier River.

In January, the W. Va. Department of Environmental Protection (DEP) issued a draft permit for Waco to discharge wastewater from a proposed new quarry into an unnamed tributary (sometimes called Evans Run) of Knapps Creek of the Greenbrier River. If allowed to be built according to the draft permit, this quarry will scar the landscape along a popular tourist highway and will illegally degrade Evans Run and Knapps Creek, a popular trout stream. The Pocahontas County Commission, local citizens, and several organizations are opposing the construction of this quarry.

Fortunately, a local citizens group, called the Browns Mountain Area Preservation Association, has formed to oppose the quarry. Several other groups – West Virginia Rivers Coalition, Sierra Club-West Virginia Chapter and Greenbrier River Watershed Association – recently joined with this association to ask the federal Environmental Protection Agency to step in and object to the permit.

There are two major flaws in the permit. It fails to follow the state's anti-degradation

policy, and it fails to follow water quality standards that would protect Evans Run and Knapps Creek, a trout stream. Anti-degradation is supposed to make sure that water pollution is of socio-economic benefit, and that less- or no-polluting alternatives are explored.

There has been no demonstration that the proposed new discharge permit satisfies the requirements in West Virginia's anti-degradation policy. Only a minimal amount of in-stream water quality data have been collected, and these data have not been analyzed to assign a level of protection. There has been no indication as to whether or not water quality degradation of a high quality water may result from this discharge. Also, there is no evidence that DEP performed the socio-economic analysis required by the policy if degradation results from the project.

According to the draft permit, the quarry will discharge to Evans Run very close to its confluence with Knapps Creek. Knapps Creek is a trout stream, and local anglers report catching trout downstream from the confluence of Evans Run. There also are reports of native brook trout residing in Knapps Creek tributaries in the immediate area of the proposed quarry.

Because the proposed outfall is so close to Knapps Creek, and because Evans Run does not flow year round, the proposed discharge is essentially a direct discharge to Knapps Creek during many times of year. Because there are no flow limits in the permit, the proposed discharge may be a significant source of pollutants to Knapps Creek. For these reasons, it is very important that the state Department of Environmental Protection enforce discharge limits and monitoring requirements that protect trout waters.

Sedimentation and turbidity are perhaps the most important water quality concerns, because significant amounts of soil and rock will be excavated, moved, and stored on site. Discharge limits and monitoring requirements must ensure that the state turbidity standard is met both in Evans Run and Knapps Creek.

DEP held a public hearing on both the water discharge permit and the quarry mining permit on March 4. Over 200 citizens turned out to oppose the permit. Stay tuned to learn if environmental regulators move to protect this area.

*Jeremy Mueller is the Director of the West Virginia Rivers Coalition, a member organization of the West Virginia Highlands Conservancy.*

## ***Rivers Coalition Announces Grants***

The West Virginia Rivers Coalition (WVRC) announces the 2002 dates for their grant program for watershed organizations and groups throughout West Virginia. The Watershed Grant Program (WGP) will fund individual organizations in support of advocacy work focused on the Clean Water Act.

The Clean Water Act (CWA) was passed as federal law in 1972. Its original purpose was to "restore and maintain the chemical, physical and biological integrity of the Nation's waters." Additionally, the CWA had two other goals, to make our waters safe for fishing, drinking, and swimming by 1983, and to eliminate the discharge of pollutants into our waters by 1985.

WVRC believes that the Clean Water Act is arguably the best tool to provide river and stream protection, and to clean up polluted waters, in West Virginia and across the nation.

Proposals must be postmarked no later than July 12, 2002. Email proposals will be accepted if received on or by July 12, 2002. Grant awards will be made around September 2, 2002. Eligible organizations include any watershed organization that is located in and works on a watershed in West Virginia. Statewide organizations, or those working on a larger scale than an individual watershed, are not eligible.

Activities that are eligible for funding through this program must be advocacy work focusing on the Clean Water Act. This could include efforts to change public policy or laws, presentations on the CWA, literature, workshops or conferences focusing on the CWA,

meetings or forums with elected officials to apprise them of the CWA and its relation to West Virginia. Also eligible are on the ground activities, such as water quality monitoring if the end goal is to use the data or information collected to advocate for CWA protections. Other examples include fighting a proposed dam, or opposing a plan or policy forwarded by a state or federal agency that infringes upon our clean waters. Work must be completed within one year from grant award. Examples of past grant recipients are available on our web site [www.wvivers.org/pastgrants.htm](http://www.wvivers.org/pastgrants.htm).

Grants will be awarded up to \$1,000 per organization. Organizations receiving a grant are required to provide a final report one year from receiving the grant award, or when the project is completed, whichever comes first.

Grant priorities will be those proposals that will leverage additional funding, have well-defined goals, objectives, and outcomes, and demonstrate an understanding of the Clean Water Act and advocacy work.

Grant guidelines will be sent out to the ninety-plus watershed organizations active in West Virginia, and can be obtained by contacting WVRC staff at (304) 637-7201. They are also available on the web at [www.wvivers.org/wvrc\\_grant\\_program.htm](http://www.wvivers.org/wvrc_grant_program.htm).

## *Mountain Odyssey Explores George Washington National Forest*

*By Peter Shoenfeld*

There is another National Forest in West Virginia besides the Mon. This is the George Washington National Forest, most of which is in the Virginia Blue Ridge region, but part of which comes over into the Mountain State. This includes the Great North Mountain area along the state line in Hardy County. This was our destination March 23-24. Wilderness has been proposed for the area around Sugar Knob.

We took off from a point near Van Buren Furnace, in the valley of Cedar Creek in Shenandoah County, VA. We ascended Paddy Mountain (about 3100 ft) and had lunch at an east-facing outcrop called White Rock Cliff. The view here rivals many in the Alleghenies. The sky was clear, and we could easily see a succession of ridges to the east—Little North Mountain, Green Mountain, Massanutten and the Blue Ridge itself. Little North Mountain blocks the view of the central Shenandoah Valley at this point, so one sees only the forested ridges and the lower valley to the north, where the ridges drop down toward the Potomac.

When we moved on after lunch, our

group (there were two of us) managed to get separated and spent an hour getting re-united. This cost us some time, so we detoured off the mountain short of Sugar Knob and hiked down into Racer Camp Hollow where we camped. It was cold for late March, about 15° by dawn.

We saw a great deal of tree death around our campsite and on Paddy Mountain. The oaks have succumbed to gypsy moth, and the adelgids were very evident on the hemlocks, which are going fast. The damage was much worse than what we see further west, and we theorized that this might be due to the stress of severe air pollution, as well as the very rocky soil. The deer have largely vacated this area, apparently from lack of mast, and there is plentiful new hardwood sapling growth coming in—something we seldom see these days.

We spent all of Sunday walking north through the valley between Paddy and Great North Mountains. The central part of this is called Wilson Cove and is gorgeous. There is a large in-holding here, with public access

permitted. There are two abandoned farms, interesting old buildings and artifacts, and many spectacular white pines (old growth?) there and farther up. Using a hiking stick as a transit, we measured the tallest of these as around 150 feet. This is a healthy pine forest for the most part, with lots of little pines coming up near the big ones. The streams through here are very nice—Waites Run drains the southern valley toward the Cacapon, and Cove Run drains the northern part toward the Shenandoah.

North of the big pines there is a horrendous clear cut, perhaps 300 acres or more in size, with earth moving scars and erosion everywhere. This is in Hardy County, WV and the northern boundary is at the WV-VA state line, despite the fact that the National Forest tract extends on both sides. Makes you wonder about political considerations in planning this job.

We hiked about two miles past the clear cut, and came finally to the other end of our car shuttle, along Cove Run a few miles south of Route 55.

*Wilson Grove  
Old Growth Forest*

*Photo by  
Jonathan Jessup*



Wilson Cove, WV Old Growth Forest  
<http://www.JonathanJessup.com>

# MANAGEMENT PLAN FOR KUMBRABOW STATE FOREST

By Bob Marshall, Co-Chair Public Lands Committee

For those of us who have been following with interest the West Virginia Division of Forestry's development of a 10 year Management Plan for Kumbrabow State Forest, the release of a final plan has been promised for this month, April, 2002. I commend and sincerely thank all those who have taken the time to make written comments on the Draft Plan, and even made the effort to attend last fall's public meeting about Kumbrabow. The DOF received 108 written responses to the Draft Plan, which is a testament to the concern and interest from citizens about Kumbrabow. I encourage anyone who wishes to become informed of the final plan, or become involved in future management activities, to call the DOF at (304) 558-2788, and request a copy of the final plan, along with the DOF's response-to-comments document.

This whole process of plan development is new territory to the DOF, which, in the past, managed WV's state forests as they wished, without any public input or involvement. How much effect and consideration the forests users' concerns will have on the DOF's final decisions about timber harvesting and overall recreation development are yet to be determined. I certainly hope all this good effort by government agencies and private citizens toward developing a comprehensive Management Plan that truly addresses more than how much timber to

harvest, and when, comes to fruition. Only time will tell.

There are areas of forest management that continue to be bones of contention. To DOF, "multiple use" seems to mean "multiple types of silviculture practices", which is nothing more than varying how you cut trees and harvest timber, to manipulate the natural state of the forest. There is something about "controlling" nature that appeals to the DOF.

Second, DOF's inability to engage West Virginia Division of Natural Resources, Parks and Recreation (which has concurrent management responsibilities of the improved areas of Kumbrabow) in the initial plan development phase is bewildering. While it makes common sense to include Parks and Recreation as an equal partner at Kumbrabow, DOF continues to treat the Forest as its sole possession, only including DNR after the Draft Plan was developed. The continuing distrust and lack of cooperation between these two state agencies must change if any of our state forests have a chance at true multiple-use management.

Third, the use of "species diversity" and "forest health" to justify timber harvesting is bothersome. Destroying the natural succession and return-to-original state of Kumbrabow in the name of "creating diversity" for its own sake is a thinly veiled excuse for cutting the biggest and

most valuable trees. "Forest health" means nothing more than maximizing timber production, at the expense of other concerns or uses.

I must admit there are some signs of hope. DOF has entered into a "Safe Harbor Agreement", which means endangered species surveys and protection will be pursued at Kumbrabow, in cooperation with WVDNR Wildlife Resources and the US Fish and Wildlife Service. So far, Northern Virginia Flying Squirrels have been found there. What DOF does with the results of the endangered species research, by protecting habitat, and setting aside areas of the Forest, will give a good indication of how serious they are about preservation and conservation as aspects of "multiple use".

Finally, let us hope that DOF's quote from the legendary Gifford Pinchot in the Kumbrabow Plan was a typo, and not their true intent. It read: "...for the greatest goods for the greatest number for the longest time." Obviously, Mr. Pinchot meant "...the greatest good", not the greatest amount of commodities. My hope is that WVDOF has turned the corner on "commodifying" our state forests, and that future management will take seriously the needs and desires of all forest users. Only time will tell.

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# HIGHLANDS CONSERVANCY AT THE LEGISLATURE

By Frank Young

## *Under the Dome*

By Donald S. Garvin, Jr.  
West Virginia Environmental Council Legislative Coordinator and West Virginia Highlands Conservancy Board Member

In the mental haze and daze that seems to beset all WVEC lobbyists after working a legislative session, the phrase "politics as usual" might best describe the 2002 West Virginia Legislature.

Picture Dick Waybright (WV Forestry Association), Roger Sherman (Westvaco), and Randy Dye (Director of the WV Division of Forestry) walking down a capitol hallway arm-in-arm. Picture Bill Raney and Chris Hamilton (WV Coal Association) huddled with Secretary Mike Callaghan and other DEP minions at the well of the rotunda, or in any one of numerous other more secluded back rooms (I even let Bill Raney take a photo of me standing with the group!).

Well, you get the picture, don't you? Politics as usual.

And all that "whining" and dining paid off handsomely. Coal got a \$2.5 million break in the amount they are required to pay for their water pollution permits. Timber walked away with expanded regulatory and tax exemptions for "small" logging jobs. WVU gets to sell off publicly owned land in the name of "economic development," with little or no public comment or involvement. The tourism lobby and the real estate lobby put the quash to funding the Farmlands Protection Act. Politics as usual.

This being an election year, we were also treated to a wide array of political hijinx. Delegates in tight races would simply leave the room when controversial committee votes were taken. One senator left a committee meeting and took a couple of colleagues with him to avoid voting on a bill sponsored by his upcoming election opponent; the committee was left without a quorum, so it simply adjourned. This same senator actually voted to kill a bill sponsored by the same opponent, and then reintroduced it as his own legislation! Politics as usual.

As this session unfolded, I watched closely the lobbying efforts of our friends who work for other progressive causes. I think I was aware of this before, but this year it finally hit me squarely between the eyes: we don't lobby the way they do. Whether it's education, health care, or social justice issues, they are actually able to "swing" votes through lobbying legislators one-on-one.

For the most part, we don't have that luxury and we're not very good at it anyway. We don't have the luxury because most environmental issues are totally polarized by one opposition industry group or another. We don't have the luxury because this is a poor state whose newspapers routinely ballyhoo in headlines that "XYZ Corporation Creates 30 Jobs," and politicians still look for short-term fixes to long-term problems. We don't have the luxury because those same politicians think they must rely on big money from the regulated industries in order to get elected (it's no mystery why campaign finance reform can't get off the dime!).

We're not very good at lobbying legislators one-on-one because of all of the above. Instead, we are forced to work with the few friends we have in the legislature or in legislative leadership and to play the political game by using the media and legislative groundrules. We jockey our bills so they are positioned in the right committees and in the right house; otherwise, they will never make it out of committee. And we have little chance of amending bad bills on the floor of either house, because leadership does not like to do business that way and we simply

## *WVHC Has 4 Table Display at E-Day! Event*

by Frank Young

The West Virginia Environmental Council (WVEC) held its 13th annual E-Day! (Environmental Day) at the Capitol in Charleston on February 22nd.

And the West Virginia Highlands Conservancy was well represented at the event. WVHC Board member and "Speaker's Bureau" representative Julian Martin assembled a large display for the day. Julian organized four tables of WVHC displays on mountaintop removal mining and clean water issues.

Also available were lots of "I (Heart) Mountains" bumper stickers, mountaintop removal petitions, flood pictures and sludge spill pictures, Blackwater Canyon bumper stickers, issues of the Highlands Voice, and Conservancy membership information and applications. Various other handouts, newspaper cartoons lampooning defenders of polluters, etc. were also a part of the WVHC displays.

Both Julian and I were interviewed by student newspaper representatives, and were invited to speak to student groups at a Spencer High School about the environment.

WVHC Board member Don Gasper had his own table displays about acid rain and fishing stream degradation.

And the Coalition For Responsible Logging (CORL), another Conservancy supported organization, had a display table with pictures and other information about stream sedimentation and flooding associated with un-sound logging practices.

Many other organizations- about 25 in all, had displays on their issues, as well.

E-Day! keynote speaker newspaper columnist Dave Peyton rallied the crowd by proclaiming, "We (environmentalists) are not the problem, we're the balance." Later Peyton said, in response to being called extremist, "Talk about extremists, the coal people are the extremists."

In a touching ceremony, the annual WVEC Mother Jones award was accepted by Mike Forman on behalf of his late wife, Laura. Laura, an organizer for the Ohio Valley Environmental Coalition, died last December while leading a rally protesting mountaintop removal. This young mother's death has left a tremendous void within the environmental community and it was with bittersweet emotion that the WVEC presented her with this year's honor posthumously.

The WVEC E-Day! is perhaps the longest running citizen education event held at the Capitol during the legislative session. It attracts groups and attendees from across the state.

The West Virginia Highlands Conservancy thanks E-Day! organizer Denise Poole for her many hours of labor in putting together this event.

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### **Under the Dome (continued)**

don't have the votes.

Having said all this, the WVEC lobby team really did have a pretty good year. King Coal took it on the chin big time in the over-weight coal trucks issue, and we played a role in that. The industrial hemp bill passed, and we played a role there as well. The timber industry finally agreed to criminal penalties (albeit, mainly for administrative matters), and we have been pushing for that for years. We continued to provide a voice to our agenda for election reform, responsible logging, green energy, clean air and water, and good government.

We were instrumental in gutting a bill that would have virtually halted environmental lawsuits by citizens. And we even managed to kill a bill that contained such vague language that it could have resulted in commercial timbering in our state parks.

So it was not a bad year at all for the WVEC lobby team, even though "politics as usual" was the order of the day.

## Protecting the Highlands' Headwaters

By Donald S. Garvin, Jr.  
President, Mountaineer Chapter Trout Unlimited

Trout Unlimited has taken the first step in providing the maximum protection allowed under the federal Clean Water Act for a large number of pristine headwater streams located in the West Virginia Highlands.

On February 4th, members of Trout Unlimited's State Council officially filed with the Environmental Quality Board a nomination to redesignate 951 miles of West Virginia's highest quality streams (about 240 individual streams) as Tier 3 streams under the provisions of the antidegradation plan passed by the legislature last year.

On March 21st, the Environmental Quality Board essentially rejected the nomination and asked Trout Unlimited to provide more detailed and site specific information for consideration by the Board. Trout Unlimited intends to do exactly what the Board has requested.

Although Trout Unlimited feels that many West Virginia waters are eligible for Tier

3 protection, the list of streams for the first Tier 3 nomination was based mainly on location: the streams nominated are located either totally or primarily on public lands. They are all of high water quality, have exceptional ecological, recreational and aesthetic value, and their designation would have insignificant or no impact on private lands. Actually, most of the streams nominated are within the boundaries of the Monongahela National Forest.

The Clean Water Act specifically provides that "Outstanding National Resource Waters" should be protected by Tier 3 designation: "Where high quality waters constitute an outstanding National resource, such as waters of National and State parks and wildlife refuges and waters of exceptional recreational or ecological significance, that water quality shall be maintained and protected."

"Maintained and protected" means, quite simply, no degradation.

For the most part the list of streams in

the Trout Unlimited nomination had been previously identified by the WV Department of Environmental Protection and the WV Division of Natural Resources as Tier 2.5 Waters of Special Concern, and is contained in the presumptive list of Tier 2.5 streams in the state's antidegradation implementation rule. Most of the streams nominated were actually designated as Tier 3 until 1994, when a compromise was struck between industries and the state to produce the Tier 2.5 category, which allows for a minimal amount of pollution and degradation.

Trout Unlimited believes that West Virginia's exceptional rivers and streams – the streams included in the Tier 3 nomination — deserve the highest level of protection available under the law: the current water quality should NOT be allowed to be degraded, period.

Trout Unlimited will continue to seek Tier 3 designation for West Virginia's highest quality waters.

## GRANT COUNTY AIR QUALITY MAY BE IMPROVED

By Don Gasper

The Clean Air Act has caused great improvements in regional air quality. Most were made just prior to 2000. Power Company emissions were cut in half and our air today contains only half the sulfur it did 5 years ago. Acid Rain is only half as acid. These were immediate benefits and show clearly how directly responsible coal burning power plants had been all along for air pollution for the last 50 years.

Is this clean-up enough? No, the clean-up should be another similar reduction of emissions. Cutting them in half again might return the acidity of our rain to pH 4.8 - near to what it traditionally was. Our stream and lakes and watershed soils have not recovered. They were exposed to this Acid Rain, 10X more acid than

normal, for so long that they are acid and leached now of nutrients. Recovery will be slow. Great damage everywhere was done.

One reluctant emission source in our mountains at Mt. Storm in Grant Co. has finally agreed to putting more scrubbers on their 3 smoke stacks. The first was put in in 1994, on the first Clean Air Act deadline. It was then ranked as one of the top ten polluters of sulfur and nitrogen in the nation. It has greatly effected the near-by Dolly Sods Wilderness, and surely it carried 150 miles to Washington D.C. (Most of its customers are over that way.)

It is now owned by Dominion. They have been upgrading recently, and by 2004 say they

will have the two new scrubbers operating. This will remove about 95% of their emissions.

This demonstrates that The Clean Air Act is working. There are moves now to weaken it in Washington. If some have their way, it may be that even these two planned scrubbers will not have to be put in. However, there are bills there now also that would strengthen the Clean Air Act. Then many old and great polluters would also have to clean-up - without exceptions.

Speak for Clean Air. Acid Rain is damaging our forest and killing our trout.

Don Gasper

## Something to Think About

Submitted by Don Gasper

The fall of a giant tree rends the fabric of the canopy and instantly alters the way of life that it had supported. "Every few days I hear a giant crash, and I can tell the distance by whether it is like a cannon or just a dull thud, and whether the ground trembles. That a huge tree, so many tons of timber, which has struggled toward the light, grown broad and spread its branches wide against its neighbors, fruited season after season and fed hundreds of generations of birds and monkeys, drained the soil of its goodness and enriched it with decaying leaves, given shade

and fodder to elephants and provided life for a million insects - that this piece of the structure of the living earth, should crash down with unbelievable destruction from its firm unshakable vertical - is an event of such enormity - and yet such insignificance - that I cannot comprehend it."

Vernon Reynolds  
Young English Anthropologist  
Uganda, 1962

## SOME THOUGHTS ABOUT PROPERTY RIGHTS

Commentary by Don Gasper

*Early settlers in this country were driven to first acquire their land and then to use their land for survival. For 100 years there were few people and isolation nurtured an independent spirit with in some cases greed and exploitation of land and people. In some times and places this independent spirit was so intense that pioneers could scarcely be governed by the laws of the community.*

*In most places there were always small communities where settlers gathered for protection and commerce. Here, always, individual rights were given up for the good of the community. Indirectly each individual benefitted as his life became more secure with less strife, membership in a community and sharing agreed upon community goods with neighbors. Communities grew until most people lived in them.*

*A part of living in a community is exerting restraint and acknowledging that our claim to the use of the land is not absolute but limited by obligations to the community and to future generations.*

*The rights of the individual are important but individualism alone, without a balancing commitment to community, is a disastrous social formula. Private enterprise can not be put above the welfare of the community. The individual has to respect his neighbors and the land.*

*The will and best interests of the community take precedence over the irresponsibility, arrogance, and greed of the individual (or a few individuals). Such land owners can not be allowed o make uses of their land that conflict with the overall interests of society.*

*In respecting land and the earth, the landowner acknowledges his temporary ownership. His is a stewardship. His rights to use his property are also limited by future owners of his land. Ever more so, in a world without sufficient resources, with so much degradation, it is important that property be treated as a living trust.*

*The cult of the individual, and the extremist view of absolute property rights, is not an enlightened one today. Today the politics of population growth, the economics of resource depletion, and recognition of our ecological impacts force us to be aware that we are a global community.*

## TIMBERING NEWS FROM THE LEGISLATURE

By Don Garvin

The only logging related bill to pass both House and Senate this session was S.B. 431, "relating to timbering licenses." This bill reinstated the licensing exemption for landowners that had been struck down late last year through a court decision.

While the bill exempts landowners from needing a timber license if they sell less than \$15,000 worth of timber a year, it also provides that exemption to small loggers who cut timber on property they don't own, and bases the exemption on \$15,000 "stumpage" value instead of gross value (which means they can cut more trees without getting a license).

The bill also contains language that makes it a misdemeanor to "violate" certain provisions of the Logging and Sediment Con-

trol Act (primarily administrative in nature, such as logging without a license, etc.), with fines ranging from \$250 to \$500 per day per violation. This provision was actually offered by the WV Forestry Association and the State Division of Forestry, who appeared to be nervous that our persistence for the last several years might result in more substantive changes to the Logging Act.

In the end, however, we lost on amendments that would have required loggers to file their logging plans prior to beginning their operations, limited the license exemption to landowners logging on their own lands, and provided notice to adjacent landowners (talk about a "property rights" abuse issue!). Special

thanks go to Delegates Dale Manuel and James Fox, and Senators John Mitchell and Jon Hunter for their attempts to pass those amendments.

None of our other legislation aimed at reform of the Logging and Sediment Control Act made it out of committee, including strong bills by Senator Mitchell and Delegate Rick Staton. We even lost the battle to get a flood study resolution passed by both houses.

Conni Lewis, lobbying for the Coalition for Responsible Logging, has worked on this issue for the last three years. No one works harder "under the dome" than Conni, and attitudes and votes toward this last basically unregulated extractive industry are beginning to change. That change is due in large measure to the persistent efforts of Connie Lewis.

### Coming Attractions

**April 7** West Virginia Environmental Council Board Meeting, 2:00 p.m., 1324 Virginia St., Charleston.

**April 13** West Virginia Trails Coalition trail construction and maintenance workshop. 302 21<sup>st</sup> Street, Nitro, WV

**April 13-14** Wilderness and Forest Planning Workshop sponsored by West Virginia Highlands Conservancy and Friends of Allegheny Wilderness. Powdermill Nature Reserve, Rector, PA.

**April 16** Massey Energy's Annual Stockholder Meeting, 11 a.m., Jefferson Hotel, 101 West Franklin St., Richmond, Virginia. If you are interested in going, contact Ohio Valley Environmental Coalition.

**April 24** U.S. Army Corps of Engineers public hearing on draft Environmental Impact Statement on the Spruce No. 1 mine operated by

Arch Coal. The Environmental Impact Statement evaluates the environmental impact of the proposed mine, including the valley fills. Chief Logan State Park, 6:30 p.m.

**May 10 through 12** West Virginia Highlands Conservancy Spring Review and Board Meeting

**May 24-27** Heartwood's 12<sup>th</sup> Annual Forest Council, Camp Riverdale, Southern Indiana. Panels and workshops about forests, energy, and community organizing. Contact Heartwood at 812-337-8898, or visit for more information.

**July 13** West Virginia Highlands Conservancy Summer Board Meeting

**October 11 through 13** West Virginia Highlands Conservancy Fall Review and Board Meeting



Everyone is Welcome  
West Virginia Highlands Conservancy's  
**2002 Spring Review**

May 10, 11 & 12

Handley Cabin

"In the middle of nowhere on the upper Williams River"  
Pocahontas County that is.



## The Williams River Headwaters!

### Friday evening

4pm Snacks, campfire, orientation, maps, displays, videos, discussion.

### Saturday

7am Birds before Breakfast

8am Breakfast

9am outings

- Upper Williams River - Our featured outing will look at the portion of this watershed that is scheduled to be logged by the Forest Service. Our special guest, Heartwood's Mark Donham, will lead the trip, along with Rondi Fischer, Marlinton District Ranger.
- Cranberry Wilderness - One of the east's largest!, we'll experience what's so special about this place and see why and how it needs to be made even larger. We'll take a serious day hike up the Little Fork Trail and cross over the divide to the Rough Run of Cranberry.
- Canoeing on the Williams River. Bring your own boat, or we'll have some extra spaces for those who don't have one.
- Highlands Scenic Highway - Don't miss it in the Spring!
  - Cranberry Mountain Discovery Center - Forest Service Nature & Interpretive Center
  - Cranberry Glades & Falls of Hills Creek
  - Edray Trout Hatchery

6pm Saturday evening pot luck banquet and Silent Auction (please bring good stuff to donate)

**Forest Plan Revision** - Highlands Conservancy's featured Panel Discussion

In 1985 the Monongahela National Forest adopted it's current "Land and Resource Management Plan (the Plan)". It was intended to last 10 years, 15 tops. It is outdated and in many cases obsolete. Yet the Forest Service continues to use it in guiding their Forest management. After several false alarms, and postponements, it appears that the Forest Service is actually going to begin the Plan revision process this year. We must be ready. It is the one time when citizens can have a say in how the National Forest is managed. We must be at the table with a steady, loud voice. As the timber resources on the Forest mature and become more valuable in the market place, the exploitative forces of industry will be great.

Our panel will include Doug Adamo, Forest Planner for the Monongahela National Forest and Mark Donham, Program Director for Heartwood. Heartwood is an association of groups, individuals, and businesses dedicated to the health and well being of the native forest of the Central Hardwood region, and its interdependent plant, animal, and human communities.

### Sunday

7am Birds Before Breakfast

8am Breakfast

9am Board of Directors Meeting

Special Sunday outings

#### Directions to Handley

From Rt. 219, turn west at Edray on Woodrow Rd. which is at the Quickie Mart. Go approx. 8 miles and look for the signs to Handley WMA on the right. OR, it is about 2 miles east of the Highlands Scenic Highway along the Williams River on the left.

#### Lodging

**Bunk space** is available in the Handy Wildlife Cabin at \$10/person/night. Limited #, first come first served, bring your own bedding or sleeping bag

**Camping** is available on the grounds at Handley, or in nearby Tea Creek and Day Run Forest Service Campgrounds (nominal fee).

**Marlinton Motor Inn** is only a few miles away on Rt 219. call 304-799-4711

#### Meals

Highlands Conservancy members have volunteered to feed us for the weekend. We'll be serving up breakfast and lunch, including bag lunches for our outings. For our Saturday evening dinner, we will be barbecuing some chicken, hot dogs and hamburgers, we are asking folks to bring along a side dish to share, pot luck, to round out the meal. We'll have drinks. Registration fee includes meals.

### Spring Review 2002 Registration Form

Name \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Phone \_\_\_\_\_ E-mail \_\_\_\_\_

	cost/person	#people	Total
Registration	\$20(includes meals)	_____	_____
Cabin Bunks	\$10/ night	_____	_____
		Total	_____

#### Field Trips

I would like to participate in (please check one)

Upper Williams     Cranberry     Canoe the Williams     Highlands Scenic Highway

**Send this form, and payment to:**  
West Virginia Highlands Conservancy  
PO Box 306  
Charleston, WV 25321