



The Highlands Voice

The Monthly Publication of the West Virginia Highlands Conservancy

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STOP! in the name of law...

SUPREMES CONSIDER WIND POWER

Nedpower Mount Storm, Grant County

People who live near the planned Nedpower Mount Storm and Shell Energy wind farm in Grant County have sought to have it enjoined by having it declared a nuisance. The plaintiffs have previously lost in the Circuit Court of Grant County. In mid-April they argued an appeal of that decision to the West Virginia Supreme Court of Appeals.

Although most people would consider a "nuisance" to be mosquitoes, telemarketers, lawyers, or the like, in the eyes of the law a "nuisance" is a use of land that interferes with someone else's use and enjoyment of their land. It is what is called a common law cause of action. Historically it developed as conflicts arose over the use of land, judges resolved those conflicts, and a body of precedent grew up. Courts continually follow that precedent, adapting established principles to new situations as they arise.

Nuisance law developed at a time when there was no zoning and no regulatory agencies. The legal tool that landowners could use to prevent themselves from being overwhelmed by offensive and irritating land uses was nuisance law.

The plaintiffs in the Nedpower/Shell wind farm case now seek to apply those principles to wind farms. They

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Beech Ridge--Greenbrier County

The Mountain Communities for Responsible Energy and some individuals have appealed to the West Virginia Supreme Court a decision by the West Virginia Public Service Commission. The decision would allow Beech Ridge Energy to construct and operate a 186 mega-

watt wind turbine electric generating facility consisting of 124 wind turbines along 23 miles of mountain ridges in Greenbrier County, West Virginia, with a 13.8 mile 138 kv transmission line to be located in Greenbrier and Nicholas Counties, West Virginia. Each turbine will be mounted on a 262-foot tubular steel tower and will consist of three, 127-foot blades and will produce up to 1.5 megawatts of electricity.

According to the West Virginia Code, the Public Service Commission is supposed to "appraise and balance the interests of the public, the general interests of the state and local economy, and the interests of the applicant." The Public Service Commission applied this standard and concluded that the siting of the Beech Ridge project was proper.

In appealing to the West Virginia Supreme Court, the residents make two arguments. First, they say that the application is incomplete. In order to "balance the interests of the public", the Public Service Commission about whatever people, churches, cemeteries, streams,

(More on p.3)



These are typical windmills. The ones that are the subject of these controversies have not yet been installed.

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From the Heart of the Highlands

by Hugh Rogers

Religion (and Reticence) in the Wilderness

A prominent ad in the Charleston Gazette-Mail on the first Sunday in April began, "We honor the Creator and our mountain heritage by preserving wild places." Eight Christian and ecumenical groups, some statewide, some national, were listed as sponsors. Altogether, they represented a very large number of churches, synagogues, and temples.

The message was affirmative: We recognize wilderness as a gift, both spiritual and cultural, that we ought to share with future generations. It didn't refer to the campaign against wilderness or try to dispel doubts and misunderstandings. But I would hope that people who heard a pro-wilderness message from their church groups would be encouraged to get the facts straight.

Although we're obviously pleased to acknowledge support from faith-based organizations, we don't talk about religion in the Voice, or at board meetings, or in the various forums where we advance the Highlands Conservancy's programs. Nor does anyone expect it. Reading the ad, it occurred to me that we have a deeper reason for reticence than simple pragmatism. Let's take a quick look at the troubling situation we as a nation find ourselves in, and a new book that offers a better example.

One sign of our country's increasing polarization is the official platform of the Texas Republican Party, which pledges to "dispel the myth of the separation of church and state." The Texas Republicans who have been running the country for the past six years want to impose a specific religious agenda. (You may be sure that agenda does not embrace much in the way of conservation. These are advocates for "dominion over the earth.") Paul Krugman, who teaches economics at Princeton and writes a column for the New York Times, says their infiltration of the government has been "underreported, perhaps because journalists are afraid of sounding like conspiracy theorists." Perhaps journalists are also afraid of sounding like anti-religious bigots.

But there's an enormous difference between using the government to impose a religious agenda and simply proclaiming one's beliefs. The former is banned by the "establishment" clause of the First Amendment—"Congress shall make no law respecting an establishment of religion"—while the latter enjoys the protection of the "free exercise" clause—"or prohibiting the free exercise thereof." Pointing out this distinction is not anti-religious.

However, it is true that the aggressive tactics of the religious right have provoked shrill anti-religious tracts from unexpected places. I'm thinking of the MIT philosophy professor Daniel Dennett's "Breaking the Spell: Religion as a Natural Phenomenon," and the Oxford geneticist Richard Dawkins's "The God Delusion". These books impute to people of faith either an angry, narrow-minded fundamentalism or sheer stupidity. We're used to name-calling from angry fundamentalists but not from scientists.

So I was pleased to learn of the posthumous publication of a series of lectures by Carl Sagan. Sagan, a professor of astronomy at Cornell, a familiar presence on PBS, and an author of Pulitzer Prize-winning books, might have been the best-known scientist in the country before his death eleven years ago. Eleven years before that, in 1985, he was invited to give the Gifford Lectures on Natural Theology. One of his predecessors, William James, had published his lectures

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MORE ABOUT NEDPOWER (Continued)

contend that if the wind farm is allowed to go forward they will lose the ability to use and enjoy their property and that, as result, the value of their property will go down.

Nuisance law, as it has developed, is heavily influenced by the idea of "reasonableness." A property use which interferes with someone else's quiet enjoyment of their property may only be allowed if it is reasonable. The plaintiffs contend that the planned wind farm would not be a reasonable land use because it does not provide substantial power to West Virginia, only exists because of taxpayer subsidies, and is not a suitable alternative to coal and gas because wind is unpredictable.

Nedpower/Shell, on the other hand, says that we have been there, done that before the Public Service Commission. They contend that the Legislature gave the Public Service Commission authority to regulate where wind farms are located. By doing this, according to Nedpower/Shell, the Legislature effectively declared that disputes over the location of wind farms would be resolved before the Public Service Commission, not in Circuit Court. In the past, such disputes over the permissible use of land would have been decided in court by applying nuisance law. Now, according to the defendants, whether that particular use of land is permissible should be decided by the Public Service Commission.

The Circuit Court of Grant County agreed with Nedpower/Shell. It ruled that the question of land use should be decided before the Public Service Commission by applying its siting regulations. They should not be decided by the Circuit Court applying nuisance law.

Now the Plaintiffs have appealed that decision to the West Virginia Supreme Court. The case was argued in mid April, 2007. The Court gave no ideation when it might make its decision.

When the Court does decide, it will clarify the role of nuisance law in decision on the siting of wind farms. It may decide, as Nedpower/Shell contends, that the Public Service Commission is the exclusive forum for issues of land use that have been traditionally been decided by applying nuisance law. It may decide that Circuit Courts and nuisance law have a role.

The case incidentally illustrates why most people find lawyers to be nuisances. The plaintiffs are now well into their second year of litigation and all anybody has decided is where they should present their arguments about whether or not nearby land should be used for a wind farm. They have not yet gotten to present evidence and argue to the Circuit Court that the Nedpower/Shell project actually would be a nuisance. Two years into the litigation they are still arguing about where the dispute belongs.

MORE ABOUT BEECH RIDGE (Continued)

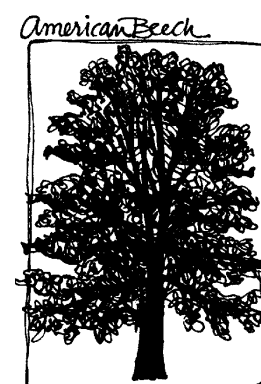
etc. are located around the proposed site. It gets this information from, among other places, maps of the area which the applicant is supposed to submit.

In this case, the citizens contend that Beech Ridge Energy did not submit accurate and complete maps. Neither did it make all the relevant information part of its application. As a result, the Public Service Commission could not possibly have properly evaluated the interests of the public. They contend that the application should have been dismissed and not considered until it was complete.

Second, the citizens contend that the Public Service Commission improperly made its approval of the siting conditional. When it issued the siting certificate, the Public Service Commission conditioned it upon Beech Ridge file any necessary environmental permits or certifications and any letters from the West Virginia Division of History and Culture or the West Virginia State Historic Preservation Office indicating either that Beech Ridge does not need to take action or outlining what action Beech Ridge needs to take to be in compliance with that agency's rules or laws. The Commission also required Beech Ridge to file evidence of acceptance or rejection of the historical/archaeological study with any required mitigation plans prior to commencing construction.

The citizens consider this improper because it moves crucial decisions on siting to other forums where they have no opportunity to participate. To them, these are important issues, ones that are critical to a legal and proper evaluation of the project. As residents, they would have relevant information to offer. Doing it as the Public Service Commission did it takes away any opportunity they might have to participate in or influence the conclusion of the Division of Culture and History, etc.

In mid April, 2007, the Supreme Court accepted the appeal. This means that it made a preliminary evaluation of the case and decided that it should resolve. The case will now be set for argument and decision.



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The West Virginia Highlands Conservancy is a non-profit corporation which has been recognized as a tax exempt organization by the Internal Revenue Service. Its bylaws describe its purpose:

The purposes of the Conservancy shall be to promote, encourage, and work for the conservation—including both preservation and wise use—and appreciation of the natural resources of West Virginia and the Nation, and especially of the Highlands Region of West Virginia, for the cultural, social, educational, physical, health, spiritual, and economic benefit of present and future generations of West Virginians and Americans.

MINING LITIGATION UPDATES

By Cindy Rank

Individual Clean Water Act Section 404 permits:

Judge Chambers' March 23, 2007 89-page Opinion rescinded Clean Water Act Section 404 fill permits for four Massey Coal subsidiary mines, ordered the Army Corps of Engineers to reconsider the permits consistent with the findings of the court, and ordered that activity authorized by those permits stop.

Details of the decision were outlined in the page 1 article of the April *Highlands Voice*. Suffice it to say for the purpose of this update that the Corps permits for the mines in question would allow filling of many more miles of headwater streams with no reasonable assurance that the loss of those streams could be adequately mitigated. The court also stated that the Corps was in violation of the Clean Water Act and National Environmental Policy Act by ignoring the significance of the impacts of these fills "despite the alarming cumulative stream loss caused by valley fills in the watersheds."

On April 10th the companies moved for a stay of the Court's March 23rd Order while they appeal the case to the Fourth Circuit. In case the Judge was unwilling to stay that order in its entirety, the companies asked that he at least suspend his April 6th order prohibiting further use of partially constructed valley fills at the mines in question.

As a bit of background here, I should explain why and how work had begun in portions of each of these mines prior to our filing litigation.

Of course the companies began mining immediately after receiving the Corps' 404 fill permits.

Plaintiffs, on the other hand, (WV Highlands Conservancy, Ohio Valley Environmental Coalition and Coal River Mountain Watch) were not routinely nor within a reasonable amount of time even notified when these individual permits were granted. Consequently, work at the sites began without our knowledge even though we had commented extensively on the applications objecting to the issuance of the permits.

As we learned that permits had been issued we filed our legal challenges. (We learned of permit issuance first only in response to Freedom of Information Act Requests by Margaret Janes of the Appalachian Center, then in a bit more timely fashion after our lawyers encouraged the Department of Justice lawyers to have the Corps do so.) Since mining had already disturbed major portions of several streams in question before we learned of the permits, we reluctantly agreed to allow activity to continue - and miners keep working - in those limited areas.

On April 17th, with the courtroom packed with miners wearing mining garb complete with reflecting stripes and a handful of plaintiffs, Judge Chambers held a two-hour hearing on Massey's request for a stay.

Although the Judge held to his comprehensive Order of March 23rd, he did suspend parts of the April 6th ruling and allowed mining to continue in those portions of three permits where streams had been partially filled and extensive mining was proceeding.

Judge Chambers did not suspend his order with regard to a fourth, presumably inactive, mine. — To the amazement of members of plaintiff organizations who live near that mine and insist that coal is regularly being hauled from the site, lawyers for the company testified that the mine was idle.

Endnote: There is much more to come. As the Fourth Circuit Court of Appeals considers industry's appeal in this case, additional (equally inadequate) permits have been granted for other mines and we have sought to include them in this litigation. Judge Chambers has yet to rule on those permits, or on the permit for the Spruce #1 mine that became a primary focus in our original 1998 Bragg litigation. Stay tuned.

Nationwide #21 Clean Water Act Section 404 permits:

I realize readers (and this author) assumed we had seen the end of rubber stamp general permits to authorize valley fills and the burying of additional headwater streams.

Unfortunately, it appears that we were mistaken. Two processes will be important to follow:

1) Late last year the Corps issued three general nationwide permits for pertaining to coal mining operations. One of them was the renewal of the 2002 Nationwide Permit #21 (NW#21). The renewal came with no additional substantial rationale about how a "general permit" that by law can be issued only for activities that involving MINIMAL impacts can be used to authorize the suffocation and burial of hundreds of miles of headwater streams.

Shaking the cobwebs out of our collective memory, you might recall a challenge to NW#21 was the focus of litigation before Judge Joseph Goodwin in 2003.

Basically the litigation challenged the Army Corps of Engineers' the validity of NW#21 and its use by the Corps to approve large valley fills at coal mining sites. Judge Goodwin ruled in favor of the Plaintiffs and against the Corps. On appeal to the Fourth Circuit a three-judge panel overturned Judge Goodwin's ruling... but on narrow issues in the case. The remainder of the case has yet to play out.

2) Enter Apogee Coal Company.

For nearly a year the Corps had been reviewing Apogee's application for an individual Clean Water Act Section 404 permit to fill over two miles of streams at its 800-acre North Rum mine located just south of Blair, WV. The mine includes fills in the upper reaches of Spruce Fork of the Little Coal River, just upstream of the controversial 2,300 acre Spruce #1 mine.

In February, 2007 — just weeks before Judge Chambers ruling in the case concerning four specific individual permits, Apogee suddenly asked the Corps to abandon the individual permit and process its application as an NW#21 instead.

Then, two weeks before the 2002 Nationwide #21 expired, the Corps granted Apogee's request and issued it a NW#21.

I offer this tidbit of intrigue as an introduction to what I consider the most audacious industry (and/or DEP) performance to date.

It was only through another of her famous FOIA's (Freedom of Information Act requests) that Margaret Janes (Appalachian Center) learned of the Apogee nationwide permit. She immediately checked into the status of the operation and was assured during a phone conversation with an inspector in the Logan office of DEP that the company was working on haul roads, grubbing some upland areas and cutting trees. The Appalachian Center filed for a Temporary Restraining Order to prevent any actual mining activity while it appealed to Judge Goodwin to consider further issues involving the use of NW#21.

Before heading for the hearing April 25th I also double-checked the DEP website for the most recent inspection reports. And yes, the inspector had been checking the site once a month since October... Then twice a month, starting in March (about the same time the Corps issued Apogee its nationwide permit). Inspection reports through March 14th indicated "estimated disturbed acres" to be "5" acres — rather routine for mines during the start-up phases of site preparation, etc.. Inspection reports from a different (blasting?) inspector for April 6th and

(More on the next page)

A BIG UGLY BOOK

By Cindy Rank

Actually, *Sarah's Girls – a Chronicle of Big Ugly Creek* is a small and beautifully written book.

It's a fictional rendering of Sarah Ferrell's family, but the story is underlain with personal remembrances and stories passed along about one family's love for and attachment to the world and ways of Big Ugly Creek in Lincoln County West Virginia.

Lenore McComas Coberly, author of *Sarah's Girls*, and long time member of the Highlands Conservancy, now lives and teaches in Madison, Wisconsin, but her mother Ida was one of Sarah's Girls and was born in Big Ugly.

Lenore has woven a touching fictional account of her grandmother's family from deeply personal reflection on the family history and stories told her by her aunts and uncles (apparently all fine storytellers in their own right). The book comes alive even more because Lenore writes from her own vivid memories of early childhood visits to Big Sulfur and her relatives, the Ferrells, who live along Big Ugly Creek.

I was introduced to this little gem of a book when Ms Coberly sent word through her publisher how distressed she was by an article I wrote for the December 2006 issue of the *Voice*.

That article talked about the huge mining operation moving from the Mud River watershed through the ridge and into Big Ugly — her family's home. Fawn Hollow has become the first part of the Big Ugly watershed consumed by the voracious appetite of Arch Coal's over 12,000-acre Hobet 21 mine.

In the midst of the awful things happening in Big Ugly and other rural communities in the path of today's monster mines... *Sarah's Girls* is an endearing look at the "deeper truth about the hold the mountains and valleys of West Virginia have on its people"

Coberly's words grace the pages of her book and the hearts of her readers as well.

And, for a week in April, Lenore also graced West Virginia with her presence. Returning to her childhood haunts of Big Ugly, Hamlin, Huntington and Charleston she read from *Sarah's Girls* — her voice the very voice of love and caring for place and family that fills the pages of her book.

From the very first pages of the prologue one can feel "the creek's cool on a hot day" and "know the narrow valley's darkness."

Coberly writes, "I knew the hills, dark and bathed in shade, with

magic hidden places for children at play. I knew them when they were rich with autumn's trove of nuts, and with winter's red berries. I knew their summer cool. And I knew the valley. Oh, the valley, that I could see coming down from the summit of Green Shoal Mountain after the long climb. When I saw the creek my heart leaped. I was up on Ugly."

Speaking to a reporter for a Huntington paper, Coberly reflected that the book itself is a sad reminder of what is being lost in the Big Ugly community.

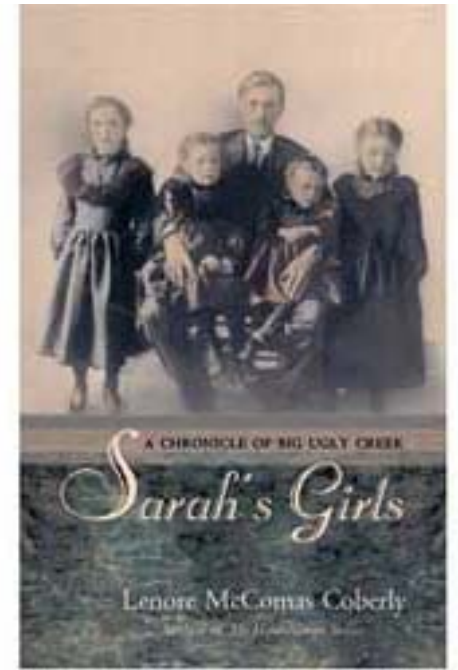
Echoing a sentiment often heard throughout the coalfields, Ms. Coberly reflects "Somehow I thought this was not going to happen here."

Lenore leaves us with this final note in the Epilogue: "Philip Hager [Sarah's husband] left his land on Big Ugly Creek to the state of West Virginia for The Big Ugly Hunting Grounds. If you should go over Green Shoal now, the wooded hills would look much as they did when Philip first crossed into Big Ugly Creek valley except that the chestnuts are gone. And, if you are quiet, you will hear water running over and around rocks. Remembering that sound will comfort you, whatever comes your way."

About those final words Coberly said "I'm not sorry I wrote the book, but the last sentence of the book does say if you go to Big Ugly now, you will find it very much the same as it was back then, and that's not true now. It is changing very rapidly these days."

Fortunately for us Lenore McComas Coberly has given us this brief but beautiful 157 page well-lit path to travel back not only to Big Ugly of days gone by, but also to the deeper truth of the mountains, and the streams that flow through them, and the people who never leave either far behind, no matter where life takes them.

For more information, visit http://www.ohioswallow.com/bookinfo.php?book_id=0804010943.



MORE MINING LITIGATION UPDATES (Continued from previous page)

April 19th indicated "estimated disturbed acres" to be "0".

I arrived in the courthouse to learn that the company's lawyers had just moments before my arrival, produced pictures of the largest valley fill area. The entire length of the stream (over a mile) had somehow been covered with 3-6 feet of rock that must have appeared miraculously overnight without the inspectors seeing and recording any disturbance.

Those pictures and testimony that the company had also constructed the required pond at the toe of the fill as well as miraculously covering the stream essentially overnight was more than enough to disturb this observer.

However, much of the damage had been done.

Judge Chamber's ruling clearly indicated that the Corps has a legal obligation to assess impacts to more than just the water flowing in

the stream bed, and emphasized the importance of function of the biota and upland portions of the watershed. However, in the face of the obvious suffocation of all aquatic life in the Garland Fork fill, Judge Goodwin was hardly in a position to order the pond taken out, the rock removed and the miners in the courtroom sent packing.

Plaintiffs agreed to Apogee working in the smaller, southernmost road fill area of the permit if the company agreed to cease any further activity in the main fill area until Court could consider more details in the case at the hearing scheduled to begin May 31st.

WHAT'S HAPPENING WITH THE WESTERN GREENBRIER COGEN PROJECT

By Beth Little

Air Quality Permit:

- Appealed permit May 2006
- Appeal denied February 2007
- Filed suit March 2007 (drew the worst possible judge)

Environmental Impact Statement:

- Draft released December 2006
- Public hearing Jan 2007
- Filed comments and contacted United States Department of Energy regarding incompleteness of Draft Environmental Impact Statement and requesting Supplemental Environmental Impact Statement (EIS)
- Waiting for action from United States Department of Energy
- Prepared to file suit for invalid EIS

404/401 Permits (404 with United States Army Corps of Engineers for wetland disturbance/401 for West Virginia Department of Environmental Protection certification to take water from Meadow River:

Comments filed and public hearing requested on 401 certification

I called Lyle Bennett, head of 401 Certification, on April 13 to ask about a public hearing. He said one would probably be scheduled, because they had received a lot of comments, but there was a lot of work to be done on the 404 and 401. I asked how long he thought it would take, and he said, "About a year." I exclaimed, "Really? I thought they (Western Greenbrier Cogen) were in a hurry." There was a pause, and he said, "So?" At this I cracked up. Subsequently we had a friendly conversation about whitewater rafting on the Meadow, and he said he would let me know about a public hearing.

We are prepared to turn out a large attendance at the public hearing, both from our Cleanbrier support group in Greenbrier Co (and a few from Pocahontas Co) and from the Fayetteville area where they are very concerned about the Meadow River.

NPDES???:

We did not address discharge in our comments on the draft Environmental Impact Statement, because we assumed there would be an NPDES permit process. Then a Western Greenbrier Cogen official told Gene Kistler of Plateau Action Network (PAN) that they weren't going to file for an NPDES permit, because they weren't going to have any discharge. I called Yogesh Patel, head of discharge for DEP, and before I even got my question in about discharge, he went off about how they don't have enough water. When I got to the subject of discharge, he said that WGC had come in to talk with DEP informally, and they had several options for dealing with discharge.

1. Return it to the sewage treatment plant (the effluent from the plant is to be the primary source of water). Patel told them that wouldn't work, because the heated water would kill the bacteria and the plant wouldn't work.

2. Put it in the Meadow River. Patel told them they would have to go through anti-degradation review, which is very tough and unlikely to be approved.

3. Build a pond and recyle it. Patel said that, although this wouldn't

be subject to public comment, they would still have to get approval from him that the size of the pond and the membrane were sufficient to protect the groundwater. So far, WGC has made no formal proposal regarding discharge. It used to be (when Water Resources was part of DNR) that no construction could start until a project had received their water pollution permit. I am exploring this.

Finances:

The project was supposed to cost \$215 million, of which the United States Department of Energy's \$107.5 million would be half. Many features have changed that would make the project more expensive, and it has already taken longer than planned to get it under construction. The DOE confirmed that they are "wrestling with their finances" and also that they have received \$ from the state. A recent article in the Daily Mail states that the West Virginia Economic Development Authority agreed to extend its commitment to insure \$3 million of a loan the First National Bank of Ronceverte has made to the Western Greenbrier Co-Generation Limited Liability Co. of Rainelle from April 30 to Aug. 31; and acting as the West Virginia Certified Development Corp., the board members also extended two \$300,000 loan commitments to Western Greenbrier Co-Generation to Aug. 31.

Activities:

Went to see Jim Zoia to try and get the DOE funds withdrawn from the project. Problem is that it has already been allocated. I continue to argue that the Democrats ought to be able to correct Bush wrongs if the money hasn't been disbursed.

Tabled at E-Day, the PAN fundraiser at Smokie's on the Gorge (New River) and Fayetteville Earth Day celebration to get the word out.

Monthly (roughly) meetings of Cleanbrier in Lewisburg – currently focusing on fundraising for Appalachian Center.

Needed:

Exposure of this boondoggle to the public – letters, opeds, outreach in the Rainelle area, \$ for legal expenses.



BOARD MEETING HIGHLIGHTS

After approving minutes and such, the Board got down to business. Lame duck Dave Saville had left a report of a successful fund appeal. Although Dave wasn't at Sunday's board meeting, President Hugh confirmed that one of Jonathan Jessup's outstanding photographs will be framed for Dave as a small token of our appreciation for his invaluable contribution to the organization these past nine years.

As for the hiring process now underway to fill the Administrative position, Hugh reported that dozens of applications had been received. Beth Little is willing to fill in to at least cover the membership duties in the interim, but she is not interested in the outreach aspects of the job. We are going to hire Beth to assume the membership secretary duties, do bank deposits, fill guide orders, etc. Beth is willing to serve for as few or many months as the hiring process requires and will be in touch with Hugh as time proceeds.

Historian Dave Elkinton reported that he had completed the first draft of his 40-year history of the WV Highlands Conservancy. The nine chapters either have been or are being reviewed by a number of different people for accuracy and readability. At over 500 pages the manuscript is still longer than Dave had hoped it would be, but possibly the reviewers – and then publisher will help reduce it even further. Dave is still aiming for a publication date by October — in time for the annual book fair in Charleston — and for the Fall Review October 26-28th.

Discussion of the book also led to a discussion of the Fall Review at Cheat Mountain and the appointment of a committee to arrange a gala event to celebrate the Conservancy's 40th anniversary. Buff Rodman will head the committee with help from Perry Bryant, Cindy Rank, Barbara Weaner, Don Gasper, Russ McClain. Among ideas for the celebration are focused outreach to WV college and university students, special invitations to some of the

founding members to join us and be part of the presentations.

Peter Shoenfeld and Jim Solley continue to add to and improve the web site. Peter reiterated his desire to see an instant letter/email



service for contacting legislators, congress, agencies, etc. at appropriate times. Russ offered to check with a computer whiz at Davis and Elkins to see if he could help.

Julian Martin had to leave the Valley for a previous Earth Day commitment to events in Fayetteville, but had earlier circulated an email report on presentations, tabling, etc.

The Board discussed ways to reinvigorate the Outings program. Bob Handley reported that the WV Cave Conservancy continues to seek leads about caves that might be unknown to the cave groups that are able to afford some degree of protection to that irreplaceable resource. A story about this appears elsewhere in this issue.

Cindy reviewed the recent and pending court challenges which are also covered in the VOICE each month. (e.g. Clean Water Act Section 404 permitting by the Corps, inadequacy of the Special Reclamation/Bond Fund in West Virginia, the need for effluent limits at forfeited mine sites where the state has assumed water treatment, the need for the Environmental Protection Agency to study coal slurry and regu-

late it under the Resources Conservation & Recovery Act, etc.)

Bob Gates reminded everyone of the availability of his 1970 strip mining documentary In Memory of the Land and People recently released in DVD format. He also announced the upcoming release of Penny Loeb's book Moving Mountains.

Following the previous night's lengthy discussion of wind and the Public Service Commission's ongoing hearing re: the Liberty Gap proposal in Pendleton County, Peter referred to the article in the last issue of the VOICE, reminded the Board of the PSC hearing that continues through the week and asked for help in donating to the ongoing expenses incurred by the Friends of Beautiful Pendleton County.

The Board discussed the need for a Forest Watch Program to track the Forest Service activities under the new forest plan. Many of the things

which had been mandatory in the old forest plan are permissive in the new one. This means that more management decisions will be made on a project by project basis. Since this is true, it is more important than before that we monitor the individual proposals and decisions by the Forest Service.

The Board decided to officially support the concept of the Bottle Bill. (There is no official "bill" at the moment but one similar to this years will be reintroduced next year.)

Hugh reminded us about the recent return of the Parsons to Davis section of Corridor H (the topic of his column in the April issue of the VOICE) and indicated that comments are due this week. Folks in the know are assessing the need/possibility of further court challenge.

Coming attractions:

July 28th – Summer Board meeting, possibly back at Sandstone in New River Gorge National Park.

October 27-28 – Fall review/ 40th Anniversary Celebration - Cheat Mountain Club

Mark Your Calendars Now!

Help us celebrate The West Virginia Highlands Conservancy's 40th Anniversary at the Fall Review. Join us **October 26-28th** at Cheat Mountain Lodge. Watch this space for more details!

Run the New River with Sara, May 18

By Nick Zvegintzov

This is Sara Corrie at the Mid-Winter Workshop in January, demonstrating the proper use of a wheelchair, namely to wheel it in front of yourself in case the person you're talking to would like to sit down. The sight of Sara walking and talking up her usual storm was a special joy to those of us who heard last year that she was lying crippled in a paraplegic rehabilitation hospital.

Sara's special love is whitewater boating...and free drop rappelling (i.e. going down or up a free hanging rope in the open air or in a cave.) She was coached in rope techniques by Bill Cuddington, a caver who originated many of them. This was in 1959, when Sara was, let's say, in her 40's. Bill recalls that people figured caving was a sport for the young and she would have "a couple of years" to enjoy it.

In 1966 she was on the first team to make a 1000' descent on a rope. She was one of the first women to make the deepest free drop in a cave – nearly 1100' in Sotano de las Golondrinas in Mexico. She is known to have been on the first team to rappel off a certain man-made landmark in West Virginia which shall remain nameless. (Hint: take the river trip described below.) She has been active in the planning and training for a possible rappel off the incredible Angel Falls in Peru.

In 1978 she was testing rappel equipment in Ohio when a device failed. She dropped vertically onto her left leg, breaking bones in the foot, ankle, leg, pelvis and spine. She doesn't remember the fall. "It's nature's way so I don't lose my nerve," she says with a grin.

After recovering from the concussion she was put in a paraplegic rehabilitation hospital. Most of the other patients were young people injured in automobile accidents. There were various stories of her confounding the doctors who told her she was paralyzed – by sitting up from the waist, by wiggling her toes. "I've always been a wiggler," she says.

There were black times, which Sara speaks thoughtfully of, despite her bantering tone. People tell her she might be able to help others recover because she's been through it. "I'd like to," she says, "but, you know, it doesn't work that way. You just feel so jealous and hopeless. When I couldn't get out of bed, I saw a woman drag herself across the room and pour a cup of coffee. I thought, 'I'll never be able to do that.'"

"Of course there's always a challenge," she adds. "Two years ago I wanted to rappel

off Angel Falls. A year ago I'd be thankful just to sit up. The main thing for me," (she roasts her listener with a feisty smile), "is to play to win."

When her doctors told her she could drive again, she drove her van to (yes) Colorado to help with a rappelling exercise off the Grand Canyon. In Silver Plume, Colorado, former Conservancy board member Keith Kirk was riding with some other mine inspectors when he saw Sara on crutches by the side of the road. He told his companions, "Wait – there's a caving buddy of mine – and she's hitch-hiking!" (She wasn't actually hitch-hiking, but waiting for her van to be tuned up.) Sara reports that Keith was looking happier and more relaxed than ever.

Last year, also, Sara attended the annual meeting of the National Speleological Society and accepted their Certificate of Merit to a standing ovation. [She had represented the NSS on the board of the Highlands Conservancy for many years.]

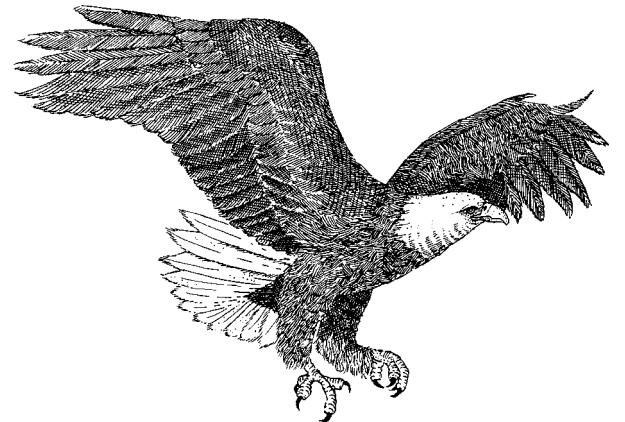
This brings Sara's story up to date, and now's the time for the commercial. Every year Sara books a whitewater raft trip down the New River – this year it's on May 18, on the wilder, lower half from Thurmond to Fayette Station. Her idea is to meet old friends, make new friends, and introduce you to the New River if you don't know it.

Would you like to meet the rambunctious New River and the rambunctious Sara Corrie? She'd like to meet you.

Editorial notes by Dave Elkinton: Sara Corrie, was not only one of the original incorporators of the West Virginia Highlands Conservancy, but an extremely active paddler, caver, climber and general outdoorsperson. No one who ever met Sara would ever forget her. This by Nick Zvegintzov appeared in The Highlands Voice of March 1980. It was illustrated with a photo of Sara Corrie holding the handlebar of a wheelchair. It will appear in the forthcoming book on the history of the Highlands Conservancy, available later this year.

Sara Corrie, died March 15, 1988, at the age of 73, ironically seven months before President Reagan signed the bill adding further protection of the New River Gorge National River and new protection for the Gauley, Meadow and Bluestone. A Voice article noted additional details about Sara. Among her distinctions was that, af-

ter having been paralyzed three years earlier, Corrie set the world record in her age group for the women's 100-foot-mechanical climb in a competition at the National Speleological Society's Annual Rope Climbing contest at Western Kentucky University. Most tributes to her emphasized her zest for living life to the fullest and willingness to push herself to new challenges. At the same time, she was deeply interested in people and enjoyed nothing more than sharing stories around a campfire, even when she was the oldest member of the circle. She was truly unforgettable.



BROCHURES

The West Virginia Highlands Conservancy has joined with the Sierra Club, Coal River Mountain Watch, Ohio Valley Environmental Coalition, West Virginia Rivers Coalition, Appalachian Voices, Kentuckians for the Commonwealth, Keeper of the Mountains Foundation and Christians for the Mountains have put together a new brochure entitled "**Mountaintop Removal Destroys Our Homeplace STOP THE DEVASTATION!**" For a copy send a self addressed stamped envelope to Julian Martin, 1525 Hampton Road, Charleston, WV 25314.

Quantities are available for teachers, civic and religious groups and anyone who can distribute them.

Join Now !!!

Name _____

Address _____

City _____ State _____ Zip _____

Phone _____ E-Mail _____

Membership categories (circle one)

	<u>Individual</u>	<u>Family</u>	<u>Org</u>
Senior	\$ 15		
Student	\$ 15		
Introductory			
Other	\$ 15		
Regular	\$ 25	\$ 35	\$ 50
Associate	\$ 50	\$ 75	\$ 100
Sustaining	\$100	\$ 150	\$ 200
Patron	\$ 250	\$ 500	\$ 500
Mountaineer	\$500	\$ 750	\$ 1000

Mail to West Virginia Highlands Conservancy PO Box 306 Charleston, WV 25321

West Virginia Highlands Conservancy
Working to Keep West Virginia Wild and Wonderful!

ABANDONED MINE MUST KEEP ON TREATING THE WATER

By John McFerrin

The Cheyenne Coal Company has been ordered to continue treating water from an old mine in Upshur County, West Virginia.

Cheyenne Coal had mined the site from 1977 through 1980. Because the area had been previously mined, there was already water pollution coming from the site when Cheyenne began mining. When Cheyenne Coal quit mining in 1980, the West Virginia Department of Environmental Protection determined that, while the water did not meet pollution control standards, it was no worse than it was when Cheyenne began operating on the site. West Virginia Department of Environmental Protection released the bond on the site.

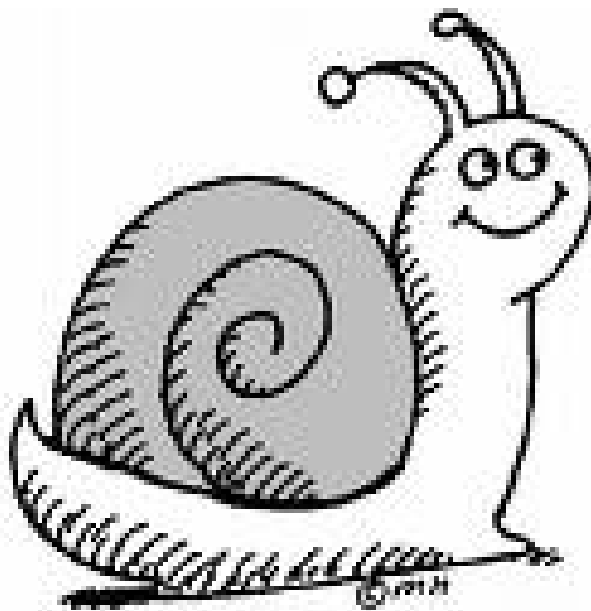
Acting upon a complaint from the West Virginia Highlands Conservancy in 1992, the federal Office of Surface Mining determined that the state's action was inadequate and ordered Cheyenne Coal to treat the water before allowing it to leave the site.

Cheyenne Coal appealed. The Office of Surface Mining's action was affirmed by an Administrative Law judge affirmed it. The Interior Board of Land Appeals affirmed the order of the Administrative Law Judge. In March, 2007, the United States District Court (Hon Frederick Stamp, Jr., Judge) affirmed the Interior Board of Land Appeals.

The underlying problem at the site is that the geology in that area is such that, once the land is disturbed by mining, water leaving the site will be acidic. Because it is so acidic, the water dissolves metals more readily so that

water leaving the site typically is polluted by the metals as well.

The acid will not be produced literally forever; by the time sun burns itself out several billion years hence the acid production will have long since ceased. Since acid production will



continue for decades or centuries, however, acid sites typically require what has come to be known as "perpetual treatment."

The legal issues in the case had to do with jurisdiction. The federal Surface Coal Mining Reclamation Act passed in 1977. The Office of Surface Mining approved West Virginia's program for the regulation of strip mining in 1981. Because the mining ceased

during this time of transition, there was some question about the jurisdiction of the Office of Surface Mining to take enforcement action and the proper standards to be applied. Cheyenne Coal argued that it had met the state requirement that the site be no more polluted when they finished than it was when they started. Having satisfied the state, it contended that it did not have to meet the requirement that the water leaving the site not be polluted. It argued that the Office of Surface Mining did not have jurisdiction to take enforcement action. The West Virginia Highlands Conservancy and the Office of Surface Mining argued to the contrary.

While the arguments were all about jurisdiction, etc. the practical issue was that nobody wants to do perpetual treatment. As miserable as perpetual litigation might be, it is better than perpetual treatment.

Now that the litigation is over, Cheyenne Coal will be ordered to do perpetual treatment at the site. The Conservancy's attorney throughout, Walt Morris, deserves our gratitude both for his skill and his persistence.

Editor's note: Since this decision was rendered in March, 2007, it would have been more timely for the April issue. But the April issue was full to overflowing. Besides, when you've been in court for 14 years, what's another month?

West Virginia Mountain Odyssey



Outings, Education and Beyond

Open Dates: 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 lunch for a picnic on Larry's mountain. Call in advance to schedule. Julian Martin (304) 342-8989; martinjul@aol.com or Larry Gibson (304) 586-3287; (304) 549-3287

***April 21-22 (Sat – Sun): GWNF, Pedlar Ranger District, VA: AT/Mau-Har overnight backpack:** Strenuous 12.7 mile loop with 6800 ft elevation change offering outstanding views and an impressive canyon. Pre-registration required. Contact Mike Juskelis at 410-439-4964 or E-mail at mjuskelis@cablespeed.com.

MAY 12 Buckhannon River Canoeing. This is a short 3 mile long canoe run in a very safe reach. The bed in the 100' wide lower Buckhannon is bed rock, shallow then, but very interesting. We will bring lunches, and stretch our legs. We would meet at **Sheetz** in Buckhannon at 11 and take out by 4 P.M. Good for beginners or old folks. Don Gasper, old himself, is the leader. No need to contact him, just show up. Canceled if raining. 304-472-3704

May 26-28 (Sat – Mon Memorial Day Weekend): Cranberry Wilderness, WV Backpack Trip: Backpack in about 7 miles on the Big Beechy Trail and set up a base camp on day one. On day two do a 10+ mile day hike through the Wilderness. Day three backpack out about 8 miles along the scenic Middle Fork of the Williams River. Some potentially challenging stream crossings. Pre-registration required. Contact Mike Juskelis at 410-439-4964 or E-mail at mjuskelis@cablespeed.com.

June 2 This Otter Creek Wilderness hike. Downhill, smooth, and easy, and slow. We may have one moderately difficult crossing that will be managed well- or not at all. We will cancel if the water is too high. We begin down the Big Spring Trail about 1.5 miles to the crossing. Then 5 miles on a big good trail along the beautiful Otter Creek. We will not hurry out but we should reach Dry Fork and our cars by 5:00 p.m. We will meet at Sheets in Parsons at 11:00 a.m. No need to contact, just show up. This trip's leader is Don Gasper, 304 472-3704.

***June 30–July 2 (Sat – Mon): SNP, VA - Brown Mountain-Rockytop Backpacking Trip:** Strenuous 18 mile trek spread out over 3 days. Lots of vistas and beautiful streams. Total elevation gain approximately 5100 ft. Pre-registration required. Contact Mike Juskelis at 410-439-4964 or E-mail at mjuskelis@cablespeed.com.

July 13 - 15 (Fri -Sun) BACKPACK, Seneca Creek in the Spruce Knob/Seneca Rocks NRA, WV: This 22.5 mile moderate backpack will take us along a beautiful stream in the Seneca Creek Backcountry. We will hike in 5 miles past the Judy Springs campground to the Upper Falls of Seneca Creek for basecamp. Saturday will involve "stream whacking" along Seneca Creek to explore the sights and sounds of this seldom seen area. INFO: Susan Bly (sbly@shepherd.edu) 304/258-3319 7pm - 9pm.

July 28-30 (Sat – Mon): MNF, WV, Dolly Sods Backpacking Trip: An approximately twenty mile moderate trek through portions of beautiful Dolly Sods North and Dolly Sods Wilderness. Visit Raven Ridge, Rock Ridge, the Lions Head, the Forks and more. Pre-registration required. Contact Mike Juskelis at 410-439-4964 or E-mail at mjuskelis@cablespeed.com.

September 1-3 (Sat – Mon Labor Day): MNF, WV, Laurel Fork Wilderness /Allegheny Trail Backpacking Trip: Approximately 28 miles. Main trails are old railroad grades that parallel beautiful streams. Cross-connectors are a mixture of footpaths and old woods roads with modest elevation gains. Approximately 5 miles of road walking and rail trails required to close the loop. Some potentially challenging stream crossings. Pre-registration required. Contact Mike Juskelis at 410-439-4964 or E-mail at mjuskelis@cablespeed.com.

September 15-17 (Sat – Mon):MNF, WV, Roaring Plains Backpack/Base Camp: Day 1 – Backpack in 2.5 miles on the east segment of the South Prong Tr visiting several vistas along the way and set up a base camp in a pretty hollow next to a stream. Explore a seldom-visited vista of the South Prong drainage. Day 2 – 11 mile day hike over some of the most rugged and beautiful terrain on the east coast. Day 3 – Backpack out from whence we came. Pre-registration required. Contact Mike Juskelis at 410-439-4964 or E-mail at mjuskelis@cablespeed.com.

October 6 - 8 (Sat-Mon) BACKPACK, Otter Creek Wilderness, WV: Enjoy the fall colors at their max in a justly famous Wilderness. Count yourself among the lucky ones to see brilliant golds, russet reds and rustling rusts as we backpack 20.6 moderate miles in the Wilderness. INFO: Susan Bly (sbly@shepherd.edu) 304/258-3319 7pm - 9pm.

More on the next page

MORE OUTINGS (Continued from previous page)

October 6-8 (Sat – Mon Columbus Day): MNF, WV, Cranberry Backcountry Backpacking trip: 31 mile strenuous trek with 4500 ft elevation change utilizing the beautiful Pocahontas and Fork Mt trails. Several vistas. Three miles of road walking required to close the loop. Tentatively, the trek starts at Summit Lake near Richwood. Pre-registration required. Contact Mike Juskelis at 410-439-4964 or E-mail at mjuskelis@cablespeed.com.


***October 20-22 (Sat – Mon): GWNF, VA, Cole Mt, Mount Pleasant Backpacking Trip:** Day one – Backpack approximately 4 miles and set up base camp at Cow Camp AT Shelter. Day 2 – day hike approximately 12 moderate miles visiting 3 magnificent vistas: Cole Mt, Mount Pleasant and Pompey Mountain. Day 3 – backpack back down the mountain. Note: Elevation Gain on day one is approximately 2400 feet over 3 miles. Pre-registration required. Contact Mike Juskelis at 410-439-4964 or E-mail at mjuskelis@cablespeed.com.

***November 3-4 (Sat – Sun): GWNF, VA, Big Schloss Overnight Backpack:** 12 mile moderate backpacking trip. This may be suitable for novices if you are experienced hikers. The hardest part is a 1400 foot climb over 4 miles on the first day. The short out and back to the primary vista will be packless. Pre-registration required. Contact Mike Juskelis at 410-439-4964 or E-mail at mjuskelis@cablespeed.com.


Items with an (*) are VA trips.

HATS FOR SALE

The West Virginia Highlands Conservancy has two models of caps for sale.

One is khaki and the pre-curved visor is forest green. The front of the cap has West Virginia Highlands Conservancy in gold above We  Mountains. The heart is red; and lettering is black.



The other model is tan with a muted green pre-curved visor. The front sports the lovely, in color, logo that appears on the VOICE masthead. Beside the logo is "West Virginia Highlands Conservancy" in green. The lower back of the hat has the We  Mountains slogan.



Pictures of both appear on our website www.wvhighlands.org. Both are soft twill, unstructured, low profile with sewn eyelets, cloth strap with tri-glide buckle closure. Cost is \$12 by mail. Make check payable to West Virginia Highlands Conservancy and send to Julian Martin, P.O. Box 306, Charleston, WV 25321-0306

The Monongahela National Forest Hiking Guide

By Allen de Hart and Bruce Sundquist

Describes 180 U.S. Forest Service trails (847 miles total) in one of the best (and most popular) areas for hiking, back-packing and ski-touring in this part of the country (1436 sq. miles of national forest in West Virginia's highlands). 6x9" soft cover, 368 pages, 86 pages of maps, 57 photos, full-color cover, Ed.8 (2006)

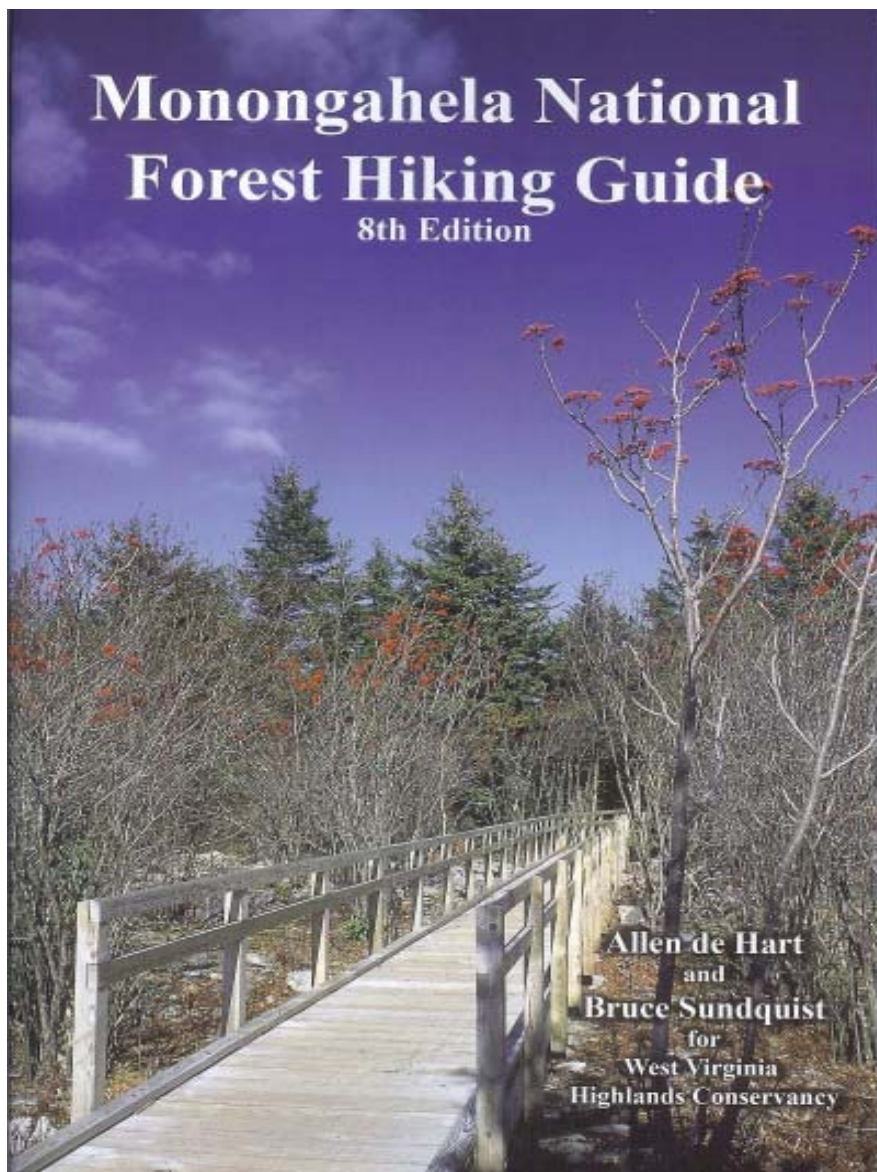
Send \$14.95 plus \$3.00 shipping to:
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P.O. Box 306

Charleston, WV 25321

OR

Order from our website at
www.wvhighlands.org



If they gave medals, for mothers...**ROSE NADER: ACTIVIST IN HER OWN RIGHT**

By Don Gasper

Besides Rachel Carson, another great lady died in 2006. She was Rose Nader, Ralph Nader's mother. She was born February 7, 1906, and died January 20, 2006. She was an inspiration to him and her distinguished family. Not at all typical, but she does show-case what many try to do with our live's energy for the betterment of mankind - within and beyond the family.

She was born in Lebanon. As a young lady she taught languages in high school, married, and came with her husband to this country. Settling in Connecticut, they raised four children. Ralph's siblings became a Doctor of Political Science, an anthropology professor, and a founder of Northwestern Connecticut Community College. One surviving sister resides in Pittsburgh. Ralph recalls his mother consistently reminded him to value this country and to make it better.

In 1991, after years of orally responding to questions from people curious about what formula she used to raise her children, she authored the book *It Happened in the Kitchen*, which contained her philosophy of child-rearing, the intimate connection between good food and diverse kitchen table/family conversations and some 100 recipes to nourish this food and thought combination. The last segment includes many perceptive observations by her husband, Mr. Nader, during discussions with their children. She was featured that year on the Phil Donahue Show with her book, which received wide circulation.

She spoke to her youngsters about the price of sunshine, cool breezes and songbirds. She was engaging, vibrant, but not a person of many works. She did not read often, but told her youngsters stories. She would draw upon her wide historical and literary memory and speak directly to their eyes so as to discern their reactions. She was a wise lady - and an active one.

There was a Senator Prescott Bush (grandfather of the President) in the 1950's. At a public gathering she shook his hand and would not let go until she got a promise of a dam above their flooded town. The dam was built. She organized a Women's Club International Relations Committee. She became known for her adult education efforts to the extent she was criticized in the 1970's Wall Street Journal for sending her children to school with chick-peas to munch on. (Now it is called

hummus.) She was on the Phil Donahue show, and wrote for The New York Times. In the U.S. Postal Service's magazine she wrote in praise of so-called "junk-mail" from citizen organizations. "They inform us about what is going on and gives us an opportunity to help" - help "make this a better world" - - and you have Rose Nader.

Editor's note: Much of the material for this article came from *Public Citizen News*, Mar./Apr. '06 -



And a happy Mother's Day to you and yours!


Speakers Available !!!!!

Does your school, church or civic group need a speaker or program presentation on a variety of environmental issues? Contact Julian Martin at 1525 Hampton Road, Charleston, WV 25314, or Martinjul@aol.com, or 304-342-8989.

Your comments and opinions are important to us.

Please email any poems, letters, commentaries to the VOICE editor at johnmcferrin@aol.com or send honest to goodness, mentioned in the United States Constitution, United States government mail to WV Highlands Conservancy, PO Box 306, Charleston, WV 25321.

T- SHIRTS

White, heavy cotton T-shirts with the  **Mountains** slogan on the front. The lettering is blue and the heart is red. "West Virginia Highlands Conservancy" in smaller blue letters is included below the slogan. Sizes: S, M, L and XL. **Short sleeve** model is \$10 total by mail; **long sleeve** is \$15. Send sizes wanted and check payable to West Virginia Highlands Conservancy ATTN: Julian Martin, WVHC, P.O. Box 306, Charleston, WV 25321-0306.

VIEWS THAT JUST WON'T QUIT

By Mike Juskelis

What a way to kick off the backpacking season! There was not a cloud in the sky. The high temperatures for the weekend would be in the 70s with the lows in the 40s (Don't think it ever got that cold.) The vistas would be primo today!

I was joined by Mollie, Pit Stop (also known as Kathy), Treebeard, Cognac Jack, Mr. Hiking Upward, Doc, Skywalker and Mollie, the soon to be famous hiking dog (She's just a pup you know.). We arrived at the Reeds Gap parking lot to find it plum full. I've not seen it that way on my previous 2 visits. We made a couple of impromptu spaces and were on the trail by 11:30.

I have to say that this has been the hardest overnight backpack trip I've ever accomplished to date. At first I found it hard to believe that I had done this as a day hike last August with hotter temperatures and higher humidity. Then it took me 9 hours to complete the 14+ mile loop. But then, after doing the math, it only took an extra 1.5 hours to do it with a 30 pound pack this time. I guess that's a reasonable expectation, especially since the trek involved a net elevation change of over 6500 feet. There were very few, if any, flat portions on the trails we traversed.

The first day was all about the views. I counted eight of them, all of which were nothing short of spectacular. Most had the omnibus Priest Mountain as the focal point. I'm glad I accomplished that one last year since it seems to call out to the hiker to try to climb it. We were supposed to meet Trlhiker at the first major vista

but the crystal blue, cloudless sky forced him to continue on to the Harpers Creek shelter lest he burn to a crisp under the high noon sun. We eventually met him there and set up camp.

The second day was all about the water works in Campbell Creek Canyon. It was a beautiful but tough climb out. Having the floor of the canyon covered in Trilliums, moss cov-

ered rock walls and the numerous gushing waterfalls and chutes made it worth the effort. The final 1.5 miles from the Maupin Fields shelters served as a good period to get your legs back under you and prepare for the long drive home. We were back at the cars and on our way by 1:30.



HELP SAVE CAVES

By Bob Handley

I work with the West Virginia Cave Conservancy (WVCC) which was set up to acquire caves primarily in West Virginia. We are an Institutional Member of the National Speleological Society (NSS) and one of their recognized cave conservancies. We also are a member of the Virginia Area Region (VAR) of the National Speleological Society. I sit on the Highlands Conservancy board to represent the Virginia Area Region. Now the West Virginia Cave Conservancy needs your help.

With rapid real estate development taking place in West Virginia, many caves in limestone areas are in danger of being permanently closed – bull dozed shut. WVCC's goal is to keep caves open for present and future generations to enjoy. We accept caves as donations, will purchase or lease, and will enter into conservation easements or management agreements.

West Virginia Cave Conservancy is a 501(c)(3) non-profit organization so donations can involve tax write-offs. Our funds come from membership dues, various promotions, donations, and grants. We prefer to keep caves open, but there are situations that require WVCC to construct entrance gates – caves that are home to sensitive cave animals, may be unsafe, or have fragile formations or archeological treasures. We do not permit any sort of commercial development or cave-for-pay trips.

We need your help in finding caves to save. West Virginia Cave Conservancy members are located throughout the region (WV, VA, MD, PA, NC, OH, NY) but more eyes and ears can only enhance our efforts. We'll investigate any leads (significant caves or rat holes [very small caves]) that we're made aware of – that need protection.

Call up www:WVCC.net, write WVCC, P. O. Box 243, Frankford, WV 24938, or call me – 304-497-2276.

Thanks for any help,

COUGAR UPDATE

By Helen McGinnis

The last update on cougars in the Voice was printed just before the second Eastern Cougar Conference in April 2004. Three years have gone by. A third eastern cougar conference is scheduled for the end of May, and there are interesting developments outside West Virginia.

Remote Camera Search. Between April and September in 2003 and 2004, Todd Lester, president and co-founder of the Eastern Cougar Foundation (ECF), set out 20 remote cameras in the southern Monongahela NF. The cameras “captured” 999 deer, 339 bears, 104 coyotes, 43 bobcats and miscellaneous other wildlife. At least two “mystery animals” were photographed, but none that were definitely cougars.

Work and family responsibilities overwhelmed Todd in 2005. In 2006, four other members of Eastern Cougar Foundation set out the cameras in widely separated areas—eastern Kentucky; south-central Pennsylvania; the Dolly Sods-Roaring Plains area; and Great Falls, Montana. In 2003 and 2004, the cameras had been set out along game and human trails without lures. In 2006, a scent lure, urine from estrous and non-estrous cougars, was added. Again, no cougars were recorded.

Judy Tipton and Mark Gumbert set out the cameras in eastern Kentucky. Judy has been interested in the Land Between the Lakes National Recreation Area (LBL) in extreme western Kentucky and Tennessee for many years. Land Between the Lakes was inadvertently set up as a recovery area for large carnivores when TVA dammed two large rivers that flow northward only about 5 miles apart. The two parallel reservoirs isolated a 170,000-acre strip of land on all but the southern end. All human inhabitants had been moved from the area by 1960, and since then it has been managed for recreation and wildlife by the US Forest Service. Alleged sightings of cougars go back to at least the 1970s. Reports in the East are not unusual, but Land Between the Lakes is different because many of the reporters are from professionals.

In 1994 Judy and Gumbert brought a slide of a track to the first Eastern Cougar Conference. Knowledgeable people said it was probably cougar. Judy and her helper Dana Hurt set out all 15 of Eastern Cougar Foundation’s remaining film cameras plus an additional 10 digital cameras in Land Between the Lakes in late December 2006 and February 2007. So far, no cougars have been re-

corded, but convincing sightings continue to come in.

Confirmations from Central and Eastern North America: The cougar was once the most widespread mammal in the Western Hemisphere. After the arrival of European settlers, it was presumably eliminated from all of the eastern US, except for extreme southern Florida, and most of the central US except for western Texas. However, people have continued to report sightings of cougars throughout eastern North America. Usually no evidence is available, but a limited number of photos, videos, and track photos and casts have accumulated. They suggest that most assumed normal-colored cougars are actually bobcats or orange house cats, that presumed black cougars (never documented in North America) are black house cats or dogs, and that tracks are usually large dog or more rarely, small or incomplete bear tracks. Of course, the availability of a few pieces of evidence that are not cougar does not mean that all reports are misidentifications.

The Cougar Network (CN) has set up a set up rigid criteria for confirmations of cougars—carcasses, photographs and videos, DNA evidence from hair or scats, track sets, and other physical evidence confirmed by an expert. Confirmations dating from 1990 or later are shown on a series of maps (<http://www.easterncougarnet.org/cougarconfim.html>). The map accompanying this article is based on CN’s maps with additions, some of which are not known to the organization. Cougars with Central and South American forebearers are derived from former captives. All North American cougars belong to a single subspecies, so it may be impossible to determine if a cougar of North American ancestry was a native, a recent immigrant from the West, a former captive, or a combina-



tion of all three sources.

Outside of Florida—where subadult males are increasingly leaving their recognized habitat in the extreme southern end of the state, moving north and often ending up dead on highways—there are no recent confirmations east of the Mississippi River and south of the Kentucky-Virginia state line. Only one is from West Virginia—tracks that Todd Lester found in Wyoming County in 1996.

Five-Year Review of the Eastern Cougar (*Puma concolor cougar*). The “eastern cougar” is undergoing its first five-year review since it was listed in 1973. The US Fish & Wildlife Service is conducting numerous five-year reviews in response to a lawsuit brought by the conservative Pacific Legal Foundation. Conservatives are not fond of the Endangered Species Act because the presence of listed species may inhibit mining, logging and grazing on public lands and interfere with development plans on private lands. Their goal is to delist as many species as possible. Another species that has undergoing such a review is West Virginia’s northern flying squirrel. As with most threatened and endangered species, loss of habitat is the main threat to the squirrel. The main threat to the “eastern cougar” is that there probably never was a separate subspecies. If cougar is delisted, it will be up to individual state wildlife agencies to determine if cougars should be protected.

So far, debate about cougars in the East has focused on whether or not any that inhabit the region now are natives or come from somewhere else. If delisting occurs, the important questions will be (1) Does it matter where they come from? and (2) Should we tolerate them?

The 3rd Midwest-Eastern Puma Conference will take place in Peterborough, Ontario on May 23-26th. Check out www.pumaconference.com. Undoubtedly there will new information on cougars in eastern Canada, where small breeding populations may be building up. There will also be the opportunity to interact with Canadian enviros who are working with groups in the US to preserve undeveloped lands and connecting corridors on both sides of the border as part of the Northern Appalachians Wildland Project. If you would like to attend and share a ride, contact me at helenmcginnis@frontiernet.net or 304-227-4166.

MORE FROM PRESIDENT HUGH

(CONTINUED FROM P. 2)

as “The Varieties of Religious Experience”; Sagan’s widow gave his book the complementary title, “The Varieties of Scientific Experience: A Personal View of the Search for God.”

Sagan was neither an orthodox believer nor an orthodox unbeliever. He was famously open-minded, awed by the universe and eager to explore it, unwilling to be limited by presuppositions. He wrote: “I would suggest that science is, at least in part, informed worship.”

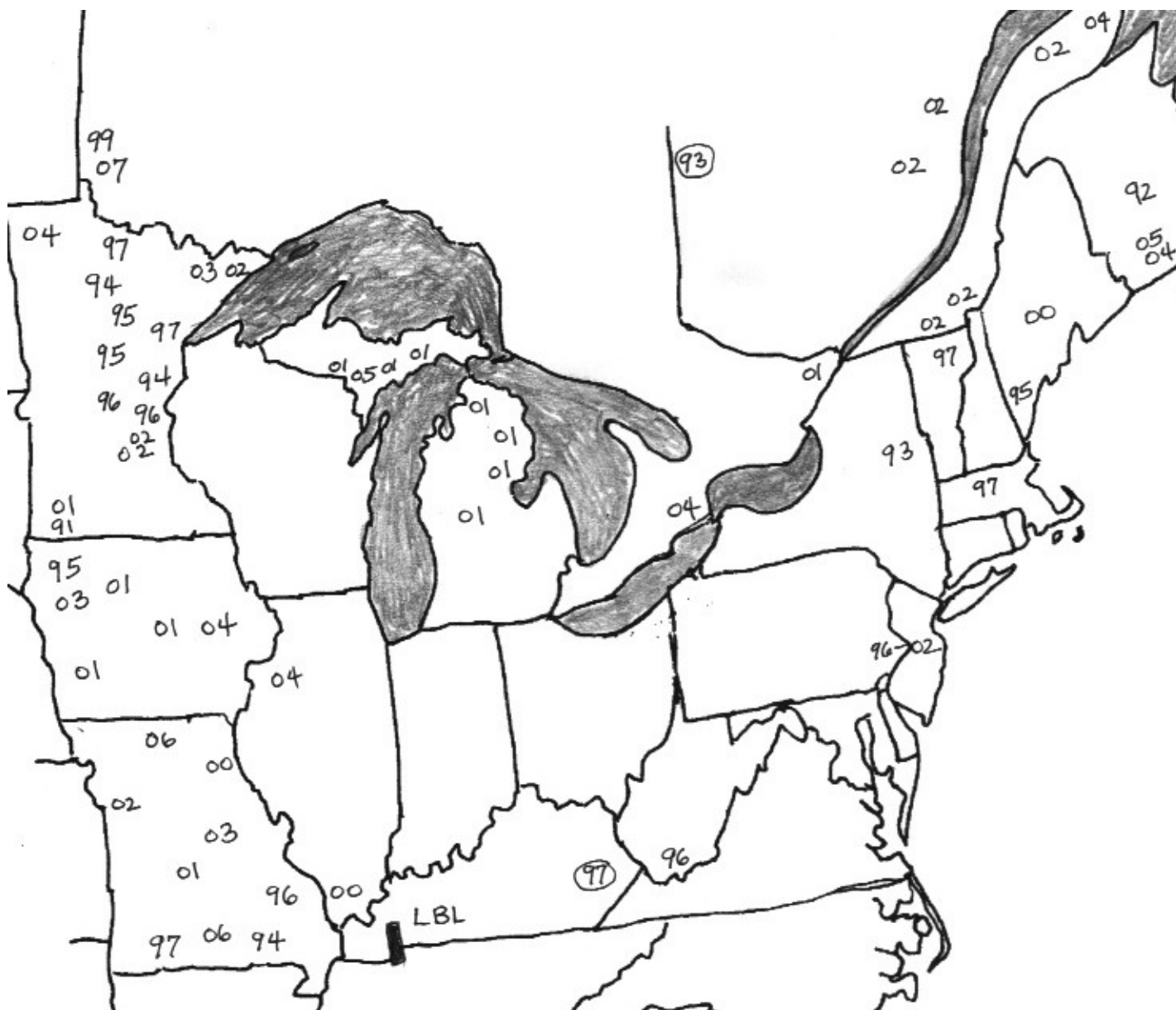
Regarding religion, Carl Sagan was a provocative skeptic, but reasonable, charming, and humble. In his view, “I think if we ever reach the point where we think we thoroughly understand who we are and where we came from, we will have failed.”

A profound humility may be where religion and science have the best chance to meet. Sagan taught us that those who know the most know how much they don’t know. And doesn’t the deepest faith recognize the greatest mystery?

Humility, an honest estimation of our place in the scheme of things, is an excellent reason to leave wild places alone. It also encour-



Cool Run in Otter Creek Wilderness. Photo by Buff Rodman.



Leave a Legacy of hope for the future
 Remember the Highlands Conservancy in your will. Plan now to provide a wild and wonderful future for your children and future generations. Bequests keep our organization strong and will allow your voice to continue to be heard. Your thoughtful planning now will allow us to continue our work to protect wilderness, wildlife, clean air and water and our way of life.

ages a respectful reticence about religion.

Dates of cougar confirmations in the eastern United States north of Florida and in eastern Canada since 1990. Circled dates represent cougar carcasses determined to be wholly or partially of South American origin by DNA analysis. The 2001 confirmations shown in Michigan are based upon DNA analysis of scats collected by Patrick Rusz and his associates and are highly controversial. [LBL: Land Between the Lakes National Recreation Area.](#)

I Hope You Also Will Write Your Legislators**MY PLEA TO WASHINGTON FOR WILDERNESS**

By Don Gasper

Your Legislators will have the opportunity to review and recommend a number of proposals for Wilderness Areas on the Monongahela National Forest. This is about the only place W.Va. can have real Wilderness Areas and we have had no new ones for 20 years. We know how increasingly valued they are today. The establishment of Wilderness Areas is a Congressional prerogative and your chance to modify and really update the new Forest Plan. This is in every sense a watershed moment - to set this fragile Forest, the first we have ever seen, of which we know so little, on the path to recovery.

Fifty years ago I was solely in charge of fisheries on the Monongahela for 7 years; I have been around it every since. I note in the least disturbed watersheds some channel recovery is just now beginning. It must be a top-down recovery, first through brook trout reaches, eventually reducing the terrible flooding in the communities below. Improving brook trout fisheries would quickly become famous, and of great economic value, and then never again be threatened. Wilderness status would assure little disturbance. The extreme purity of many streams will be enriched by helicopter delivery of lime to 157 headwater tributaries (about 50 each year). This would double the brook trout streams on the Forest. This Forest now has over 80% of W.Va. trout streams on it.

Seneca Creek should be a protected Wilderness with its erodible Mauch Chunk Geology, its rare wild rainbow population, and perhaps ten waterfalls of over ten feet.. It is the Monongahela's centerpiece. It was listed in "America's 100 best trout streams.

Disturbance—mostly from logging and the roads—that results in sediment is very harmful to trout. Trout eggs must spend the entire winter under the gravel; they are so much more easily smothered than other fish eggs, all of which hatch in 3 weeks or less. Brook trout are present only in little disturbed, generally remote watersheds. They define pristine, high quality water. Their presence enhances the entire area, watershed and beyond, in every respect, and in everyone's mind.

The wilderness proposals cover the Forest from North to South, from East to West. They cover all land-types from 35" of rain to 60". This would be an ideal laboratory to study recovery. Each has been carefully delineated to avoid a lot of the West Virginia Department of Natural Resources conflicts.

No one disputes that brook trout are only found in our coldest, purest streams; and that they are rare in the vast landscape beyond this Forest. Moreover they are found, or characterize, our wildest areas. These are our least disturbed watersheds, where "natural appearance" is a dominant feature. Opinion polls show it to

be the feature most valued by today's citizens - more so all the time.

This, briefly, is the value of Wilderness. It is the watershed management most conducive to healing and recovery. Robert Stough, in a Highlands Voice article in 1993, would say something like this: Today the angry rivers of our 100 year old forest are beginning to show that human domination (management) is needed less than the nurturing of Forest Life. Where in are woven structures and processes in a seamless tapestry of remarkable strength and diversity.. Only time is needed for a healing, a recovery.. These things Forest managers, with their imagined control over the Wild Forest, only begin to understand.

Large, "natural appearing" wild areas; solitude, challenge; etc., are values of Wilderness itself. Others can write better about this - but the many Wilderness proposals scattered throughout would in time make this Forest a wilder place, un-like any other lesser forest. The 10 or more new proposals should be considered carefully. Each is an Ecological anchor in a fragile landscape, a tap-root into the Original Forest; and collectively this Forest could again resonate with a wildness of the Old Forest. This is your watershed moment; it can go either way.

**Join us atop Spruce Knob,
West Virginia's Highest Point,**

for the 4th Annual West Virginia Wilderness Workshop, June 29-July 1

When: June 29th & 30th and July 1st, 2007

Where: The Mountain Institute (on Spruce Mountain near Spruce Knob)

Why: To learn how and help to protect additional Wilderness areas on the Mon National Forest, meet others interested in Wilderness see some of our state's most beautiful landscapes and get involved in the campaign!

The West Virginia Wilderness Coalition cordially invites you to join us for a weekend of learning, strategy and fun. We have a great opportunity to protect special places on the Mon and many of you are responsible for the progress we've made so far which has brought us to the brink of a Bill introduction!

We'll be gathering atop Spruce Mountain on the campus of the Mountain Institute for workshops on grassroots organizing, working with the media as well as conducting strategy sessions to plan the coming months of our Wilderness Campaign as we lead up to the introduction of legislation that will protect special places on the Mon. **This year, we'll be conducting an outings leader training program for those of you who'd like to get others into these special places to experience them first hand.** We'll be getting out into the woods some too, developing a deeper sense of appreciation as we learn from each other about why it is important to protect these places. This will be an excellent opportunity to get plugged into the campaign or raise your level of participation and effectiveness.

Contact: Dave Saville 304-284-9548, daves@labyrinth.net, or register online at www.wvwild.org