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# The Highlands Voice

The Monthly Publication of the West Virginia Highlands Conservancy

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## EPA MAKES WAVES IN CENTRAL APPALACHIA

By Cindy Rank

Voice deadline came at the end of a week overflowing with news on the valley fill/mountaintop removal/water front. The United States Environmental Protection Agency is making big waves and incurred a tidal wave of wrath from the coal industry, politicians and some in the regulatory community.

There's such a deluge of activity that I can't possibly do justice to it all for this issue. But the following are few hi-lights and a more detailed accounting of two major actions.

### The Overview

At long last on March 26<sup>th</sup> EPA proposed to veto the fill permit for Spruce #1/Pigeonroost Hollow mine in Blair (Logan County) WV – familiar to readers of the *Voice* as the permit that became the focus of our *Bragg v Robertson* litigation in 1998 and the topic of ongoing debate and legal challenges since then. [See more about this action further down in the article.]

The last days of March (March 30-31, 2010) I attended the annual mine drainage symposium in Morgantown WV where the director of the Office of Surface Mining Reclamation and Enforcement (OSMRE) often makes one of the lead off presentations. This year recently confirmed Director Joe Pizarchik did the honors and rattled off a whole litany of rule changes OSMRE plans to propose along with a revised Stream Buffer Zone Rule in



***Trying to save their family home the Weekleys became the focal point of the first ever litigation vs mountaintop removal mining in 1998 [Bragg v. Robertson]. Jim and Sibby are pictured here sitting on their front porch swing. Now, twelve years later, EPA is proposing to veto the fill permit that would allow the Spruce mine to fill Pigeonroost Hollow where Jimmy still lives. (Sibby died in 2007.)***

months to come. The list included items such as better and more uniform Approximate Original Contour requirements, excess spoil disposal and fill minimization, constructed valley fills, strengthened use of the CHIA (Cumulative Hydrologic Impact Assessment) process to avoid downstream impacts, defining “material damage” used in the CHIA process, and much, much more.

On April 1, 2010 (but fortunately not an April Fool's Day prank) EPA announced more stringent conductivity limits for water permits to better protect streams and communities in the Central Appalachian region. [More about this action follows later in this article.]

Then on April 2, 2010 the Army Corps of Engineers (Corps) issued a release noting that the agency will also be filing new rules to better manage water quality in the region. The Corps reviews and issues Clean Water Act Section 404 “dredge-and-fill” permits for mining operations, and also must review the impacts of those permits under the National Environmental Protection Act – better known as NEPA. Corps officials said they would begin writing formal regulations to expand the scope of their analysis under NEPA. In previous litigation, the Corps has taken the position that its NEPA analysis is limited, arguing that they had to consider

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Time to Register for Spring Review  
**DO IT!**  
**NOW!**  
See Page 14 for Details

## Biographies of Place

The farm is 150 acres of some tillable land, stands of timber, hay meadow, cow pasture, rocky hillsides of blackberry briar and sumac. It is bounded in the west for me as a child and for a long time after by certain large rocks, two hickories and a pignut tree at the edge of the woods, and on the east by the fallen remains of a shack with a birch growing up through it and a blue and white tin coffeepot which I noticed the other day is still there rusting. Other markers are: a field where I always found meteorites, clicked two red ones together and a silver dust fell out and slicked my hands; the small knoll which is the boundary between my father's and uncle's farms where I built a circle of stones and sat in it, expecting; and the deep hollow where I walked naked to become or find a dryad.

So begins our Poet Laureate Irene McKinney's "The Durrett Farm, West Virginia: A Map," the one prose piece included in her selected poems, *Unthinkable* (2009). I thought of it as I read Paul Salstrom's essay in last month's *Highlands Voice*.

Professor Salstrom, a West Virginian now teaching in Indiana, had been pleased to receive a "place-based" book written by one of his former students. It set him to wondering about biographies of places in West Virginia. McKinney's three-and-a-half-page "map" would be a vivid introduction; its brevity and density recommend it for his class in Earth Literacy. The animals, wild and domestic, alive or buried in a designated graveyard; the house, built before the Civil War, with scaffolds for roof repair as weathered as the original siding; the father, ever "falling backwards" into family history as a way to understand his place; the creeks, orchards, and "muddy swathes of the loggers" fill in this "accurate and flexible map." One understands the poet herself as part of the farm's produce.

Salstrom asked, "When you think of 'place,' where do your thoughts go?" For him, the word summoned memories of the Lower Farm on Panther Branch in Lincoln County. Its animals—specifically, "an old retired mine pony named Bob"—featured as prominently as the log cabin and tobacco barn. His map could be something like McKinney's. But in spite of the farm's importance in his family history, and although he'd been blessed by a retreat there in "the worst year of my life," he did not feel capable of writing its biography.

He wrote, "Now the place has changed." We know change can act as a spur or a block to writing about a place. What stopped Professor Salstrom, I think, was the depressing effect of repeated assaults on the place that was dearest to him. A botched logging job, an intentionally-set fire that burned down the old cabin, and the threat of surface mining, which is devastating the Mud River valley: one turns away in dismay. It's hard to write about a place that has become unrecognizable.

Generously, out of his loss, he offered an invitation: what does "place" mean to you? Do you have a mental map you refer to? What parts are most clearly drawn?

When we lived in Seoul, most of the people we knew, or their parents, had migrated there from other parts of Korea. *Kohyang* was the word they used to refer to their "original place". The word has a deep emotional meaning that West Virginians especially can

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Twists and turns and finally a death

## MARCELLUS SHALE “WATER BILL” DIES ON FINAL NIGHT OF THE LEGISLATURE

By Donald S. Garvin, Jr. West Virginia Environmental Council Legislative Coordinator

HB 4513, “establishing requirements for Marcellus gas well operations’ use of water resources,” died in a conference committee on the final night of the West Virginia 2010 Legislative Session.

If it had passed, the bill would have set additional reporting requirements for water withdrawals from streams, the contents of water used for high-volume “slick water” hydraulic fracturing, and where the waste water was to be disposed of.

The bill would also have required drillers to have plans for handling water withdrawals and waste disposal prior to getting the permit to drill. One of those plans would have covered maintaining minimum instream flows necessary to protect aquatic life when withdrawing water.

HB 4513 passed out of House Judiciary Committee by voice vote, and was later passed by the full House by a vote of 89 to 8.

The Senate referred the bill to two committees: first to Natural Resources, and then to Energy, Industry and Mining (EIM). Senate Natural Resources Chairman John Pat Fanning (D-McDowell) took the bill up in committee almost immediately, and he allowed a full hour for the public to make comments to the committee. The committee then passed the bill by a unanimous voice vote.

But that second reference to EIM was the kiss of death.

Before I go any further, I need to tell you about another oil and gas bill – SB 369, the “deep well/shallow well” bill. SB 369 would have changed the definition of a “shallow well” so that it applies to many vertical Marcellus Shale wells. Industry *REALLY* wanted this bill. But it’s a terrible bill that would have essentially legalized stealing of gas from neighboring mineral owners, and been worse for the environment by eliminating the need for well spacing (meaning more wells drilled and more land disturbed).

So keeping all this in mind, here’s how things played out during that final week, as described by WV CAG lobbyist Julie Archer in this week’s *Capitol Eye*:

“The House Judiciary Committee essentially held SB 369 hostage in order to encourage the Senate Energy, Industry and Mining

(EIM) Committee to act on HB 4513. However, in an unfortunate turn of events, EIM amended the provisions of SB 369 into HB 4513. In addition, the committee also weakened important protections for our water resources, specifically a requirement that operators have a plan to maintain minimum instream flows. What started out as a good bill aimed at protecting our water resources, turned into something that neither WV-Surface Owners Rights Organization nor the WV Environmental Council could support.

The bill ended up in a conference committee on the last night of the session. Delegate Tim Manchin (D-Marion), lead sponsor of HB 4513, tried to convince the Senate conferees to agree to restore critical language needed to protect our waters. When it became clear no compromise could be reached, HB 4513 died, killing SB 369 along with it.”

So that’s that. But not quite.

The process of attempting to pass this bill in the Legislature has pushed Department of Environmental Protection to actually do more for protecting water from oil and gas operations. And as a result, much of what we proposed in the bill is actually now being done by the Office of Oil and Gas in the permit process. So all is not lost.

Finally, I want to mention that this bill would never have been proposed in the first place were it not for Delegate Tim Manchin (D-Marion), the House Chairman of the Legislative Oversight Commission on State Water Resources.

It was Delegate Manchin who had the bill drafted after a year’s worth of presentations on Marcellus drilling issues. It was Delegate Manchin who became the lead sponsor of the bill. It was Delegate Manchin who orchestrated the advancement of the bill. And it was Delegate Manchin who stood behind the principles of the bill to the bitter end.

I have *never* seen a legislator “work a bill” so hard.  
He wore me out!

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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.

## MORE ABOUT COAL (Continued from p. 1)

only stream segments that were buried, and not other portions of valleys that were filled. Three years ago, U.S. District Judge Robert C. Chambers, in Huntington, ruled that the Corps was wrong not to consider broader impacts of fills. And now, the April 2nd announcement indicated Corps rulemaking would expand the analysis to “include all effects of proposed surface coal mining ‘valley fills’ on downstream aquatic resources” to ensure future mining operations comply with federal law.

These various rulemaking efforts are part of a multiagency effort by the Obama administration to fulfill its promise to take “unprecedented steps” to reduce the environmental impacts of surface coal mining in Appalachia. Preliminary outlines of the proposals now being presented to the public were contained in a June 11, 2009 memorandum of understanding among the regulatory agencies. It is clear from statements by representatives from EPA, the Corps and OSMRE that they are all reading from the same script with each agency emphasizing the parts of that script that apply most directly to their agency under the various federal environmental laws that impact permitting large scale strip mines and valley fills in central Appalachia.

So now the deluge of reaction begins...e.g.: - Mingo Logan Coal (an Arch Coal subsidiary) filed suit against EPA’s proposed veto of the Spruce Permit. –Citing the proposed veto of the Spruce permit and the “ridiculous guidance on water standards that Mother Nature will be hard pressed to meet”, Friends of Coal declared “the federal EPA has mobilized a new war on West Virginia coal. ...every bit as serious and threatening as the federal court decisions of the past.” – And the list goes on. You might want to check out Ken Ward’s Coal Tattoo blog for running commentary about these actions.

For this issue of the Voice, allow me to expand on a few details of the two EPA actions of most immediate concern in this stew of activity --- 1) the proposed veto of the Spruce#1 404 fill permit and 2) the water quality guidance intended “to clarify and strengthen permitting requirements for Appalachian mountaintop removal and other surface coal mining projects.”

We’ll revisit some of the other developments in future issues of the Voice.

### Details on two

#### **1) SPRUCE #1/PIGEONROOST HOLLOW 404 PERMIT - AT LONG LAST EPA PROPOSES VETO**

There have been any number of *Highlands Voice* articles about the mine permit for Pigeonroost Hollow since Penny Loeb’s *Sheer Madness* article in US New & World Report (August 1997) and the infamous 1998 *Bragg* litigation. The history of Spruce includes a multitude of public hearings, comments written, permits debated issued and challenged. This latest is a proposed veto of the 404 fill permit issued by the Corps without due consideration of EPA’s concerns.

Rather than repeat a lot of what I and others have written about the Spruce controversy over the years, here is what EPA wrote about its proposed veto:

“The Spruce No. 1 Mine is one of the largest [single] surface mining operations ever authorized in Appalachia. It is located in Logan County, West Virginia in the Spruce Fork Watershed, which has been impacted by previous mining activities. The Mingo Logan Coal Company has already been authorized by the U.S. Army Corps of Engineers, Huntington District (Corps) to construct six “valley fills” and numerous sedimentation ponds in Seng Camp Branch, Pigeonroost Branch and Oldhouse Branch and

certain tributaries to those waters by discharging excess spoil generated by surface coal mining operations. These on-site streams are tributaries of and exhibit surface water connections to Spruce Fork of the Little Coal River, which ultimately flows into the Coal River.

“EPA has reason to believe that the Spruce No. 1 Mine, as currently authorized, could result in unacceptable adverse effects to fish and wildlife resources. EPA has issued a public notice of a proposed determination to restrict or prohibit the discharge of fill material at the Spruce No. 1 Mine project site consistent with our authority under [Section 404\(c\) of the Clean Water Act](#). EPA is concerned that the project could result in unacceptable adverse effects on the aquatic ecosystem, particularly to fish and wildlife resources and water quality. EPA is also concerned that the project may have cumulative adverse impacts. EPA believes that the Spruce No. 1 project, in conjunction with numerous other mining operations either under construction or proposed for the Coal River sub-basin, may contribute to the cumulative loss of water quality, aquatic and forest resources. The Coal River sub-basin is already heavily mined and demonstrates impacts associated with surface coal mining.”

Public comments on the proposed veto action are due June 1, 2010. We’ll be posting more on [www.wvhighlands.org](http://www.wvhighlands.org) in the coming days, but for now you can find more background and instructions on filing comments at: <http://www.epa.gov/region3/mtn/spruce1documents.html>.

A public hearing will be held. (Let us hope EPA is better prepared to conduct a civil hearing that the Army Corps of Engineers did in October 2009!) However, at the time this issue of the *Voice* went to press, location, date and time were not yet scheduled.

As I mentioned above, Mingo Logan/Arch Coal has filed legal challenge to EPA’s veto action though the action is far from final.

There will be lots more to this story and we’ll keep you informed as best we can as things develop.

#### **2) EPA ISSUES COMPREHENSIVE GUIDANCE**

Another blockbuster came from the Environmental Protection Agency (EPA) on Thursday, April 1, 2010. The coal industry in West Virginia and surrounding states may be wishing it was an April Fool’s Day prank, but fortunately EPA appears to be far from joking.

The announcement set forth a series of actions “to further clarify and strengthen environmental permitting requirements for Appalachian mountaintop removal and other surface coal mining projects” in Ohio, Pennsylvania, West Virginia, Kentucky, Virginia and Tennessee.

According to a news release from the agency a major reason for issuing new guidance is “A growing body of scientific literature, including previous and new studies performed by EPA, [that] show significant damage to local streams that are polluted with the mining runoff from mountaintop removal”.

Though I’m confident industry and state regulatory agency personnel were aware of the pending guidance, the actual announcement still stunned both. From what I heard at the annual mine drainage symposium in late March, many are outraged and incredulous.

I have no doubt people and companies will be lining up around the block with challenges from every perspective..... and we know how diabolically creative some can be when cornered like this. So what I write

**(Keep going, more on p. 5)**

## MORE ABOUT COAL (Continued from p. 4)

here is only the beginning of what promises to be a long saga.

One aspect of EPA's announcement that has caused such a firestorm is the fact that though EPA will be seeking public comment on the guidance (once it finds its way into the official Federal Register) it has also made it effective immediately on an interim basis.

Especially irksome to industry and the West Virginia Department of Environmental Protection is the fact that EPA is not only exercising its Clean Water Act (CWA) authority to review Section 404 fill permits authorized by the Corps of Engineers (CORPS), but it is now also reviewing more closely Section 402 NPDES water discharge permits authorized by the states. At issue is the quality of streams below fills and mine discharges.

As long as I can remember – i.e. at least since 1979, citizen activists including WV Highlands Conservancy representatives Rick Webb, Richard diPretoro, John Purbaugh and others have lobbied for numeric standards for sulfates and other 'salty' components in mine discharges that contribute to the conductivity and total dissolved solids (TDS) in streams across the state and region. The nearest we could ever come to those goals is the inadequate and fairly unenforceable turbidity standard that was adopted years ago.

Now the chickens have come home to roost.

TDS levels (salts, sulfates, chlorides, you name it) have risen to unhealthy levels in many streams in Central Appalachia and much of that can be traced to mining areas in those watersheds. Studies by EPA and others have shown impairment to aquatic life in those streams and analyses demonstrate that the observed effects are due to types of salts that are consistent with minerals leached from mountaintop mining operations and not to other variables that were evaluated.

In accordance with its legal responsibility under the CWA to protect the nation's waters and based on 2,000 field samples collected in West Virginia (and validated using data from Kentucky), EPA has now identified as a benchmark for protecting aquatic life a range of conductivity of 300-500 microSiemens per centimeter as the level needed to protect 95 percent of aquatic life and fresh water streams in Central Appalachia. The maximum benchmark of 500 is a measure of salinity that is roughly five times above normal levels.

In addition to the conductivity standard, EPA's recently issued comprehensive guidance documents include directives to EPA field staff to coordinate with the federal CORPS and OSMRE, as well as state regulatory agencies "to strengthen environmental review of new Appalachian surface mine projects and to improve protection of the communities' local water and environment."

Related to these coordinated activities this comprehensive guidance clarifies how CWA requirements apply to the disposal of mining overburden in streams, and how best to reduce the size and number of valley fills, to limit water quality contamination of streams near mining operations, and to prevent significant environmental degradation of streams and wetlands. [I'm sure we'll be hearing more about this as the Corps and OSMRE issue their proposed rules in accordance with the June 2009 memorandum ...]

In support of these actions EPA has also released for public comment two draft scientific reports – one specifically dealing with the aquatic life conductivity benchmark – the other focuses on mountaintop removal and valley fill impacts cited in literature reviewed by EPA's Office of Research and Development .

It should come as no surprise to readers of *the Highlands Voice* that this Office of Research and Development report contains the following conclusions:

- Burial of headwater streams by valley fills causes permanent loss of ecosystems.
- Concentrations of salts as measured by conductivity are, on average, 10 times higher downstream of mountaintop mines and valley fills than in un-mined watersheds.
- The increased levels of salts disrupt the life cycle of freshwater aquatic organisms and some cannot live in these waters.
- Water with high salt concentrations downstream of mountaintop mines and valley fills is toxic to stream organisms. To date, there is no evidence that streams that undergo a restoration process have returned to their normal ecological functions after the mining is completed.

In statements over the last few days EPA Administrator Lisa Jackson has repeatedly emphasized that ***"This is not about ending coal mining. This is about ending coal mining pollution."***

For readers wanting to do more in-depth reading of these and other related documents: <http://www.epa.gov/owow/wetlands/guidance/mining.html#memo20100401>

### 3) ENVIRONMENTAL JUSTICE CONSIDERATIONS

Perhaps most refreshing of all to me and others who have watched one family after another, one community after another dissolve away in the wake of ever expanding mountaintop removal operations is the inclusion of environmental justice considerations in the proposed Spruce veto and comprehensive guidance.

Despite countless hours of testimony and meetings and comments and discussions with members of affected communities, agencies responsible for the original Mountaintop/Valley Fill EIS (1998-2005) and the Spruce #1 EIS somehow managed to bypass pleas to consider just such factors. For the most part stories and predictions of problems fell on deaf ears.

As years go by and huge mining operations continue to expand, more and more people and communities have felt the effects of nearby mining and their voices have grown strong. Undaunted in their efforts impacted citizens have reached deep into some amazing storehouses of strength and courage. They have been indefatigable in their willingness to travel great distances to meet with Congressional representatives, to talk with like minded but uninformed citizens throughout the country, to share their stories in countless documentaries, publications, public hearings and media events. They have heightened the awareness that consideration of life and home and culture must be more fully and fairly accounted for in evaluating the pros and cons, the costs/benefits, the value of granting or denying mine permits that so fundamentally impact . They have put a human face on the legal arguments to protect the environment and those who are part of that environment.

Perhaps EPA has put it as clearly as anyone in the Federal Register Notice pertaining to the Spruce #1 veto:

"Although the Spruce No. 1 Draft EIS contained some information regarding environmental justice, EPA remains concerned that these issues were not adequately addressed in the Final EIS.

"Spruce No. 1 is located in a Census block group where the per capita income is roughly half that of the national average and \$6,000 less than the West Virginia state average. Moreover, 24% of the residents of Logan County live below the poverty line which also exceeds state and national averages. Accordingly, additional analysis of the potential for disproportionately high and adverse effects on these low-income

**(For the rest of the story (promise) go to p. 9)**

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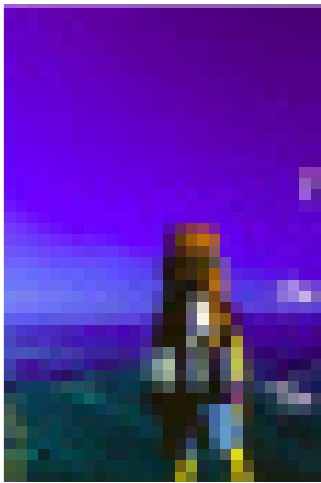
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**Working to Keep West Virginia Wild and Wonderful!**



### GREAT HISTORY BOOK NOW AVAILABLE

For the first time, a comprehensive history of West Virginia's most influential activist environmental organization. Author Dave Elkinton, the Conservancy's third president, and a twenty-year board member, not only traces the major issues that have occupied the Conservancy's energy, but profiles more than twenty of its volunteer leaders.

Learn about how the Conservancy stopped road building in Otter Creek, how a Corps of Engineers wetland permit denial saved Canaan Valley, and why Judge Haden restricted mountaintop removal mining. Also read Sayre Rodman's account of the first running of the Gauley, how college students helped save the Cranberry Wilderness, and why the highlands are under threat as never before.

With a foreword by former congressman Ken Hechler, the book's chapters follow the battle for wilderness preservation, efforts to stop many proposed dams and protect free-flowing rivers, the 25-year struggle to save the Canaan Valley, how the Corridor H highway was successfully re-routed around key environmental landmarks, and concluding with the current controversy over wind farm development. One-third of the text tells the story of the Conservancy's never-ending fight to control the abuses of coal mining, especially mountaintop removal mining. The final chapter examines what makes this small, volunteer-driven organization so successful.

From the cover by photographer Jonathan Jessup to the 48-page index, this book will appeal both to Conservancy members and friends and to anyone interested in the story of how West Virginia's mountains have been protected against the forces of over-development, mismanagement by government, and even greed.

518 pages, 6x9, color cover, published by Pocahontas Press  
 To order your copy for \$24.95, plus \$3.00 shipping, visit the Conservancy's website, [wvhighlands.org](http://wvhighlands.org), where payment is accepted by credit card and PayPal.  
 Or write: WVHC, PO Box 306, Charleston, WV 25321. Proceeds support the Conservancy's ongoing environmental projects.

### SUCH A DEAL! Book Premium With Membership

Although *Fighting to Protect the Highlands, the First 40 Years of the West Virginia Highlands Conservancy* normally sells for \$24.95, we are offering it as a premium to our members. Anyone who adds \$10 to the membership dues listed on the How to Join membership form (right up there ) will receive the history book for free. Just note on the membership form that you wish to take advantage of this offer.

This offer is available to current members as well as new members. Current members may add \$10.00 to the amount they pay when they renew their memberships and receive a book as well.

### Voice Available Electronically

The Highlands Voice is now available for electronic delivery. You may, of course, continue to receive the paper copy. Unless you request otherwise, you will continue to receive it in paper form. If, however, you would prefer to receive it electronically instead of the paper copy please contact Beth Little at [blittle@citynet.net](mailto:blittle@citynet.net). Electronic copies arrive as e-mail attachments a few days before the paper copy would have arrived

### 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](mailto:Martinjul@aol.com), or 304-342-8989.

## ~Book Review~

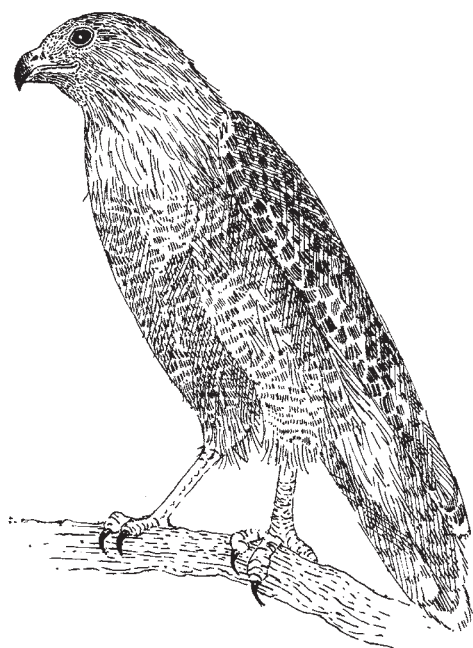
“THE BIRDWATCHING ANSWER BOOK: Everything You Need to Know to Enjoy Birds in Your Backyard and Beyond” by Laura Erickson, Storey Publishing, \$14.95.

Reviewed by Cindy Ellis

“What mammal could truly be called ‘resplendent’ or ‘scintillant’ or be justifiably named for any of the gems common in hummingbird names---ruby, amethyst, topaz, emerald, sapphire, or garnet?”

Small wonder our depictions of angels portray them bearing the wings of birds. And small wonder that when we see birds, our minds are filled with questions.”

The quote, from near the end of this book, demonstrates this author’s affection for, and knowledge of her subject. For more than 30 years Erickson, of the Cornell Lab of Ornithology, has written and spoken about birds. She must have heard the same questions hundreds of times. Questions such as, “Will feeding the birds make them dependent upon me?” “Why aren’t birds coming to my feeders?” “Will mother birds reject the young if humans handle them?”



One clue to the tone of Erickson’s answers could be in the mission statement of the publishing company. “The mission of Storey Publishing is to serve our customers by publishing practical information that encourages personal independence in harmony with the environment.” This book does that. In three parts; “Bird Brains,” “For the Birds,” and “All About Birds,” and their 12 chapters [Canada Goose is found under “Outdoor Hazards!”], Erickson uses the question and answer format to shine light on anyone’s avian

inquiries. It is rather like having a pleasant and experienced tutor, neither condescending nor pedantic, available on the bookshelf.

“Why don’t they organize field guides by color?” “What should I do if a bird crashes into my window?” “Do birds mate for life?” “Do birds play?” Sometimes the answers are simple and straightforward; sometimes the writer will provide all the known facts on a particular issue but freely admit that ornithologists do not yet completely understand every behavior or process. To help, she includes frequent sidebar selections on a wide variety of birdy things. Dipping into this book could make a reader feel like the Scarecrow in Oz when he got his diploma... suddenly one’s head is crammed with fascinating facts and figures clamoring to come out. Things like---Most wild birds never see their first year---Birds not only have much better visual acuity than we, but they can also see UV light--- A Winter Wren sings an average of 36 notes per second!---Most older people cannot hear Cedar Waxwings.

The list of questions grows with ones such as, “Are balloon releases bad for birds?” “Do Vultures find dead animals by smell?” “Why am I seeing a Robin in Winter?” Meanwhile the sidebars let you know the details of a study on the memory skills of crows that



used Dick Cheney masks and, also that, “During the breeding season, you might see three Mourning Doves flying in tight formation, one after another. This is a form of social display. Typically the bird in the lead is the male of a mated pair. The second bird is an unmated male chasing his rival from the area where he hopes to nest. The third is the female of the mated pair, which seems to go along for the ride.”

[At this point in writing the review, I stopped to stretch and stepped outdoors. Three Red-shouldered hawks, a species that have nested here for some time, were screaming in courtship displays! Really!]

So the review will wind down to allow the reviewer to tend to birds of “backyard and beyond.” This excellent resource book includes index, appendixes, and a modest, but serviceable resource section. It is small in size but jam-packed with helpful information and has pen or pencil drawings by Pedro Fernandes. His depiction of a Piping Plover chick is not cute enough, but the Whip-poor-will’s “whiskers” are just right!

The book was printed in China.

We Highlands Conservancy members, as readers of *The Highlands Voice*, are folks who enjoy the mountain habitat of birds and support protecting it and them. This book would fit nicely with wildlife field guides on our shelves or make a great gift. As Laura Erickson says, “As the world grows ever more computerized and mechanized, we grow hungrier to experience nature, and perhaps especially hungry to experience birdlife.” She would be glad to know we are part of a group trying to ensure that those experiences continue.



# West Virginia Mountain Odyssey



## Outings, Education and Beyond 🗺️

**Saturday & Sunday April 10 & 11: Red Spruce Ecosystem Restoration** Volunteer opportunity, 10 am at Canaan Valley National Wildlife Refuge Visitor Center both days. Help us plant red spruce and balsam fir trees on the Wildlife Refuge, Blackwater Falls State Park and Monongahela National Forest. Contact Dave Saville at (304) 284-9548 or [daves@labyrinth.net](mailto:daves@labyrinth.net) for more information. There is also a story about this outing on page 16 of this issue.

**Saturday-Monday, April 24 to 26, 2010. Triple Crown of VA (modified).** 24 mile strenuous shuttle backpack on the AT with great views from McAfee Knob, Tinker Cliffs and Hay Rock Overlook. Average daily mileage approximately 8.0 miles. contact Mike Juskelis at 410-439-4964 or [mjuskelis@cablespeed.com](mailto:mjuskelis@cablespeed.com).

**Saturday-Sunday, May 08-09, 2010. Ramsey's Draft, GWNF, VA.** 17 mile circuit with several stream crossings and 3100 feet of elevation gain. Beautiful stream and still some magnificent old Hemlocks left to see. Suitable for experienced hikers who want to try backpacking. Pre-registration required. Contact Mike Juskelis at 410-439-4964 or [mjuskelis@cablespeed.com](mailto:mjuskelis@cablespeed.com).

**Saturday-Monday, May 29 to 31, 2010 (Memorial Day Weekend). Cranberry Backcountry Backpack, MNF, WV.** 26 mile moderate circuit in this under-utilized hiking venue featuring a circumnavigation of Cranberry Glades. Daily mileage: 8/12/6. Pre-registration required. Contact Mike Juskelis at 410-439-4964 or [mjuskelis@cablespeed.com](mailto:mjuskelis@cablespeed.com).

**Sat. - Mon. June 12-14 ~ Backpacking on Red Creek/ Roaring/ Flatrock Plains of Monongahela National Forest.** This is one of the highest, most rugged, and most scenic parts of the West Va. Highlands. It is directly south of, and overlooks, Dolly Sods Wilderness. Prior backpacking experience is required because the Plains are no place for beginners - even for easy, leisurely trips like this one. We will cover only about 17 miles total, because there is so much to see and do that we will need lots of time for that. If you prefer a more rugged trip you can use the campsites as base-camps for your explorations. We will be near the peak of the late spring colors (probably the later stages of pink lady-slipper orchids, the peak of the azaleas, and the early stages of the mountain laurel.). Lots of spectacular views. Both campsites are right on the Eastern Continental Divide. We start at the upper trailhead of South Prong Trail, then take Hidden Passage Trail to Seneca Meadows where we can camp at the Rim campsite. This is one of the most fascinating campsites on the MNF. It offers a 3000 vertical ft. view of the North Fork of the South Branch of the Potomac. Seneca Rocks, the Fore Knobs, and some remote high mountain pastures are also visible far below us. Further east can be seen most of North Fork Mountain, and numerous ridges beyond that to the Shenandoah Mountains on the horizon. A view into the deep, steep-walled canyon of the headwaters of Roaring Creek is nearby. Day 2 takes us up Roaring Plains Trail to the Spruce Campsite on the rim of the deep, steep-walled Long Run. Mt. Porte Crayon and Haystack Knob can be seen along the rim of Long Run. Near the campsite is an overlook looking down on Dolly Sods Wilderness, Cabin Mountain, Canaan Valley, and Allegheny Front. The "roaring winds" are often experienced in the Spruce Campsite in late evening. Day 3 takes us down Boar's Nest Trail and across South Fork of Red Creek (water levels permitting). We get back to our cars around 1 PM. Limit: 10. To learn more about the Plains, read pages 161 to 173 of Edition 8 of Monongahela National Forest Hiking Guide. Contact Bruce Sundquist at [bsundquist1@windstream.net](mailto:bsundquist1@windstream.net) or 724-327-8737. A 4-page trip sheet, road directions, and topo maps will be emailed to sign-ups. Bad weather dates: June 19-21.

**Saturday-Wednesday, June 26 to 30, 2010. Mount Rogers N.R.A., VA. Car Camping and Day Hiking.** Camp at Grindstone Campground. Hike the Iron Mountains. The first hike will be The Iron Mountain Loop. It is a strenuous 14 mile circuit with 3400 feet of elevation gain starting at Beartree Lake and features vistas, streams and Rhododendron tunnels. The second hike will be the 12 mile Rowlands Creek Loop with 2430 feet elevation gain featuring several waterfalls, a couple over 100 feet in height, and some views. The third hike is another waterfall hike, 9.0 mile Comers Creek Loop, with 1850 feet of elevation gain. (The leader reserves the right to substitute any of the above with a shorter, easier hike starting from camp.) Sign up for all or part of the trip. Pre-registration and campsite reservation required. Contact Mike Juskelis at 410-439-4964 or [mjuskelis@cablespeed.com](mailto:mjuskelis@cablespeed.com).



## MORE OUTINGS (Continued from p. 8)

**Saturday-Monday, July 10 to 12, 2010. Cranberry Wilderness Backpack, MNF, WV.** 18 miles total. Hike in 5 miles and set up camp at Big Beechy Falls. On the second day we'll climb steeply up to the plateau, hiking about 10 miles. Extra water will be required for that day. The final day will be an easy 3 miles back to the cars. Pre-registration required. Contact Mike Juskelis at 410-439-4964 or [mjuskelis@cablespeed.com](mailto:mjuskelis@cablespeed.com).

**Saturday-Monday, September 04 to 06, 2010 (Labor Day Weekend).** Roaring Plains Base Camp Backpack and Day Hike, MNF, WV. Backpack in 2.5 miles and set up a base camp at the Hidden Passage. Day 2, strenuous 12-14 mile day hike along the canyon rim. Lots of boulder fields and fantastic views. Day 3, Backpack back out the way we came in. Pre-registration required. Contact Mike Juskelis at 410-439-4964 or [mjuskelis@cablespeed.com](mailto:mjuskelis@cablespeed.com).

**Saturday-Tuesday, September 18 to 21, 2010. Lake Sherwood, MNF, WV.** Car Camping and Day Hiking. The first hike (11 miles/moderate) will start at the campground and will follow the eastern shore of the lake and the western ridge of the valley. A short drive will be required to set up an 11 mile, moderate shuttle hike through the newly proclaimed Big Draft Wilderness Area featuring the beautiful Anthony Creek. Pre-registration required. Campsites are first come, first served. Contact Mike Juskelis at 410-439-4964 or [mjuskelis@cablespeed.com](mailto:mjuskelis@cablespeed.com).

**Saturday-Monday (or Tuesday), October 09 to 11 (or 13), 2010. Cooper's Rock State Forest, WV.** Car Camping and Day Hiking. As of now this is a three day trip with an 8 mile circuit hike within the park to visit the Cheat River and a vista. It is possible this will be extended an extra day if more good hiking is close by. Pre-registration and campsite reservation is required. Contact Mike Juskelis at 410-439-4964 or [mjuskelis@cablespeed.com](mailto:mjuskelis@cablespeed.com).

**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](mailto:martinjul@aol.com) or Larry Gibson (304) 542-1134; (304) 549-3287.

### T- SHIRTS

White, heavy cotton T-shirts with the **I ❤️ 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. Short sleeve in sizes: S, M, L, XL, and XXL. Long sleeve in sizes S, M, L, and XL. Short sleeve model is \$12 total by mail; long sleeve is \$15. West Virginia residents add 6% sales tax. Send sizes wanted and check payable to West Virginia Highlands Conservancy ATTN: James Solley, WVHC, P.O. Box 306, Charleston, WV 25321-0306.



populations needs to be conducted.

"Specifically, a characterization of the economic status of residents near the site and the conditions they face including any effects relating to the proximity of the blasting zone, locations of discharges of fill material, truck traffic, noise, fugitive dust, and habitat loss needs to be conducted. Additional consideration must also be given to these activities' potential impacts on subsistence fishing, hunting, foraging and gardening in the area. Additional information is needed concerning sources of drinking water for the affected populations (including municipal water supplies and private sources of drinking water including streams and/or wells).

"Furthermore, the cultural implications of mountaintop mining must not be ignored. The mountains being affected by Spruce No. 1 are considered a cultural resource by many residents. The mountains influence residents' daily lives and in many cases have helped define Appalachian society. Removing them may have profound cultural changes on area residents, so it is important that cultural impacts be considered as well." See <http://edocket.access.gpo.gov/2010/pdf/2010-7532.pdf> for the entire Federal Register notice about the proposed veto of the Spruce #1 404 permit.

#### 4) A FINAL NOTE

I don't want to mislead readers by leaving you with an overly glorified presentation of these recent actions without some caveats. Nor do I want to give anyone the mistaken impression that these are the best or the be all and end all of what can and should be done about valley fills and huge surface mining operations.

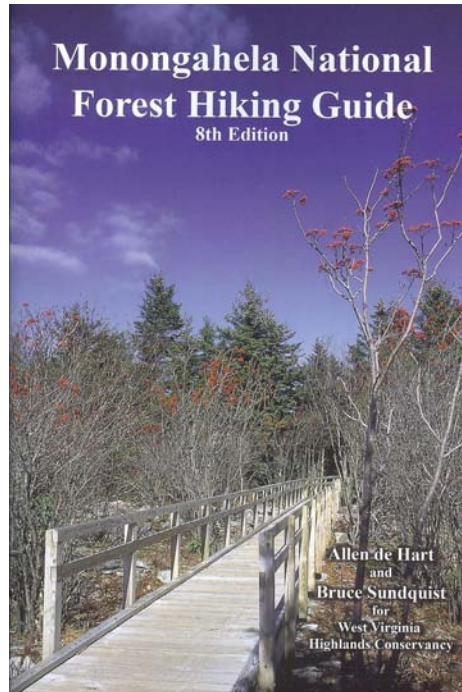
EPA's actions inject a breath of fresh air into the ongoing controversy and the proposed rule changes by EPA, Corps and OSM may well protect against the most egregious of mine permits in the years ahead. – To me they represent a giant step forward from where we have been these past ten years, and one that could actually be achievable given the right set of circumstances.

Also, it must be noted that Administrator Jackson is obviously sincere when she emphasizes the need – and her willingness – to protect communities. She repeats time and time again that "Coal communities should not have to sacrifice their environment or their health or their economic futures to mountaintop mining ... They deserve the full protection of our clean water law."

However, it remains to be seen just how well even the best of intentions will play out or better rules enforced. As Coal River Mountain Watch's Vernon Haltom wrote just the other day: "Regardless of how clear and strict the rules of the game are, they're useless if the referee is at the concession stand."

Furthermore, people who are suffering TODAY from blasting, dust, intimidation, loss of water, home and family life along with the disappearing the hills and hollows of Appalachia can hardly be comforted knowing that stronger rules applied to new permits even with the best enforcement in the world will not bring them relief from the current destruction going on in their own backyards.

And finally, many will continue to encourage support for Congressional action on the Appalachian Restoration Act and/or Clean Water Protection Act as the only option(s) for truly ending the abuses of mountaintop removal and valley fill mining by reversing the 2002 Bush rule change that allowed mine waste to be disposed of into our nation's waterways.



## 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:  
West Virginia Highlands Conservancy  
P.O. Box 306  
Charleston, WV 25321  
OR  
Order from our website at  
[www.wvhighlands.org](http://www.wvhighlands.org)

### New 8TH Edition Now Available on CD

WV Highlands Conservancy proudly offers an Electronic (CD) version of its famous Monongahela National Forest Hiking Guide (8th Edition), with many added features.

This new CD edition includes the text pages as they appear in the printed version by Allen deHart and Bruce Sundquist in an interactive pdf format. It also includes the following mapping features, developed by WVHC volunteer Jim Solley, and not available anywhere else:

- All pages and maps in the new Interactive CD version of the Mon hiking guide can easily be printed and carried along with you on your hike
- All new, full color topographic maps have been created and are included on this CD. They include all points referenced in the text.
- Special Features not found in the printed version of the Hiking Guide: Interactive pdf format allows you to click on a map reference in the text, and that map centered on that reference comes up.
- Trail mileages between waypoints have been added to the maps.
- ALL NEW Printable, full color, 24K scale topographic maps of many of the popular hiking areas, including Cranberry, Dolly Sods, Otter Creek and many more

Price: \$20.00 from the same address.

### BUMPER STICKERS



To get free *I ♥ Mountains* bumper sticker(s), send a SASE to Julian Martin, 1525 Hampton Road,



Charleston, WV 25314. Slip a dollar donation (or more) in with the SASE and get 2 bumper stickers. Businesses or organizations wishing to provide bumper stickers to their customers/members may have them free. (Of course if they can afford a donation that will be gratefully accepted.)

Also available are the new green-on-white oval *Friends of the Mountains* stickers. Let Julian know which (or both) you want.

### ***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.

### **Send us a post card, drop us a line, stating point of view**

Please email any poems, letters, commentaries to the VOICE editor at [johnmcferrin@aol.com](mailto:johnmcferrin@aol.com) or real, honest to goodness, mentioned in the United States Constitution mail to John McFerrin, WV Highlands Conservancy, PO Box 306, Charleston, WV 25321.

# INTRODUCING SENECA

By Dan Berger

For fourteen years, Dallas, our black labrador retriever brought us joy, protection, love, and on occasion, frustration. Yes, I named the poor dog after my beloved and belittled Dallas Cowboys. As you may recall, I have written about her adventures as well as her companionship on fishing trips in this column before.

Unfortunately, the ol' girl recently passed away, bringing a flood of emotions to my entire family. My now 6-year old daughter Shelby has always had that loyal black lab in her life. Always.

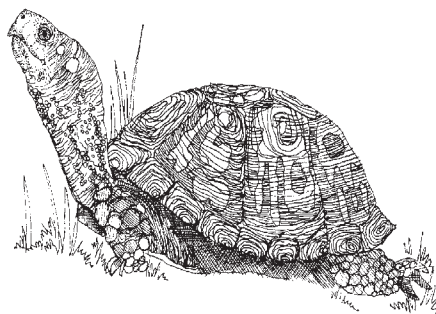
Dallas was also there for 14 years of my (so far) 19-year marriage, starting out in our lives as a small pup. She was the runt of the litter in fact (I do have a history of rooting for the underdog).

Now don't get me wrong. I am not one of those people that treat dogs like people, however, I do treat them kindly and as a member of the family. And Dallas was a loving member of our family.

When we were blessed with our place near the North Fork River looking up at the magnificent cliffs on North Fork Mountain, I don't think anyone was more happy than Dallas. New scents to smell. New animals to stalk and chase. New land to roam and protect. New water to swim in and then gloriously roll around in the dirt and grass. New porch to nap on in the setting sun. A good deal.

I will admit to you my friends, that just typing this article for the kind folks at *The Highlands Voice* has made my eyes slightly well-up. Caused mostly from the recollection of the sadness in my daughter's face and words after informing her that Dallas had gone on to doggie Heaven. Have a problem with that? Well, you know what you can do? You can kiss my...oh never mind.

But now the good news!



## MORE FROM HUGH (Continued from p. 2)

understand. Think of Kate Long's well-loved song, "Who'll Watch the Homeplace?"

My understanding comes from a different direction. When I was eight years old, my family moved from Massachusetts to North Carolina, and although I went back to Mass. for college and even lived there for a while as an adult, I had no feeling of *kohyang*. I wonder if the age when one is uprooted makes a difference. My mother has longed for New England now going on sixty years.

My sense of place lacks a focal point. Something else that happened when I was eight had a long-term effect, I think. I got my first big bike, with 26" wheels, and (tacit) permission to ride wherever I liked. My range constantly expanded. While my younger brothers and sisters knew our immediate neighborhood better than I ever did, I understood how many neighborhoods fit together. My map had a different scale.

After much lobbying by the love of my life, we bought a new puppy for Shelby's 6<sup>th</sup> birthday. Little did I know that the negotiations had yet to really begin.

Now came who got the naming rights to the little pup. The first round of negotiations in naming the dog included every possible Disney World character (damn you Mr. Disney). Then it went to every conceivable princess and fairy. Holy mother of gawd, who knew there were so many flying fairies and young women of royalty?! And they all seem to wear pink and purple.

And can you imagine me calling the veterinarian for an appointment? "Hello, this is Dan Berger and I need to make an appointment for Tinkerbelle." Please leave any dignity and manliness at the door.

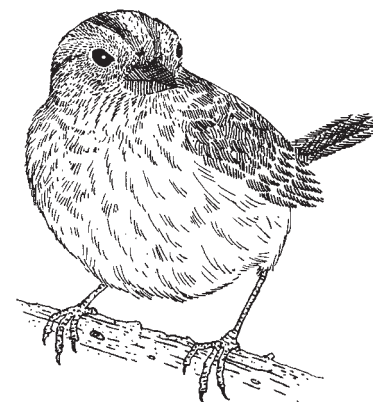
Our new yellow lab is not only the cutest thing on the planet, she too has a friendly and fun demeanor very similar to Dallas. And she too loves all that Wild & Wonderful West Virginia has to offer.

And even more good news!

My young, soon-to-be-an-attorney-negotiating-prodigy daughter, finally settled on a name: Seneca. Why you may ask? Shelby says that "her fur is the same light color as the cliffs at Seneca Rocks, daddy likes to fish Seneca Creek, and they are both in my favorite place, the mountains of West Virginia."

Please pass me a tissue.

*Dan Berger is a lifelong outdoorsman and conservationist. He and his family live in Cabins and his past articles can be read at [www.mtnriverhome.com](http://www.mtnriverhome.com)*



We can't create a *kohyang*—it wouldn't be our "original place"—but we have tried to make a homeplace since we came to West Virginia more than thirty years ago. Our children, now grown, return and return, and their maps, and now their children's maps, are full of fine and quirky detail. I hope they'll write them down some time.

For now, I rejoice that Irene McKinney continues working on the map she began in 1976. Many readers will have heard bits of it from time to time on West Virginia Public Radio's "Morning Edition." When I asked about her plans she told me, "The idea of biography of place is exactly what I want to do. The person growing up out of place, rather than the person as star of the show."

All over but the shouting

## 2010 LEGISLATIVE WRAP UP

By Donald S. Garvin, Jr. West Virginia Environmental Council Legislative Coordinator

The 2010 regular session of the West Virginia Legislature was the perfect example of why we need the West Virginia Environmental Council.

This year a combined 2,079 bills were introduced in the House of Delegates or the Senate. Among the bills that were introduced, 219 bills would finally be passed by both chambers, 98 House bills and 121 Senate bills.

Many of the bills that finally passed involved environmental issues or concerns. Many, many more of the original 2,079 bills involved environmental issues. In fact, there were so many that the WVEC Lobby Team had trouble keeping track of them all.

But the number of bills introduced this session was itself not out of the norm. Similar numbers have been introduced in recent years. What was unusual this year was how many of those bills were “active” at some time during the session. There were many days this year when it took all four of us on the lobby team in Charleston to cover committee meetings that were occurring all at the same time.

Here are just a few examples of bills that unexpectedly took up our time:

Early in the session WVEC lobby team member Denise Poole had to devote a major effort to defeat SB 85, the bill that would have repealed West Virginia’s statutory ban on the construction of nuclear power plants until they are proven safe. We won this one, when the Senate Judiciary Committee voted against the bill.

Likewise early in the session, WVEC lobbyist Leslee McCarty had to play defense on SB 181 and HB 4505, bills that would have limited counties and municipalities from enacting ordinances regulating natural resource extraction. These bills never made it out of committee, thanks in large part to Leslee’s efforts.

Similarly, WVEC lobbyist John Christensen worked tirelessly in support of two bills dealing with recycling that were not on our radar screen. One of those bills passed -- SB 398, which prohibits the disposal of certain electronic devices, such as computers, monitors, and television sets in a West Virginia solid waste landfill. The other bill failed -- SB 489, would have required the WV Solid Waste Management Board to study the state’s recycling success rates.

Along the same lines, there were at least a dozen great renewable energy bills introduced this session. The main sponsors of these bills were Delegates Barbara Fleischauer (D-Monongalia), Nancy Guthrie (D-Kanawha), and Mike Manypenny (D-Taylor). While none of these bills advanced far, the WVEC lobby team spent hours working them.

And I spent a big chunk of time trying to convince the chairmen of both Judiciary committees to block two bad Department of Environmental Protection bills that we had successfully managed to derail the previous three sessions. Those were SB 496, which made terrible revisions to the DEP Advisory Council, and HB 4277, which gives the authority to sign NPDES water quality pollution permits to

the DEP Secretary. I failed in both cases.

Here’s a rundown of other bills – some good, some bad – that the Legislature dealt with this session:

- **SB 614** – Improves the way the West Virginia Public Service Commission handles applications for certificates of convenience and necessity for high voltage (over 200 kV) transmission lines. It requires the PSC to give priority to the impacts of new lines on West Virginia citizens and consumers. And it requires that all land owners within the power line’s 2200’ wide proposed preferred construction corridor be given at least 30 days notice, by certified mail, that they have the right to intervene in the PSC case at least 30 days before the PSC sets a deadline for intervenors. Senator John Unger (D-Berkeley) was the bill’s lead sponsor. The bill passed on the last night of the session, and is a major victory for WV landowners and electricity consumers.

- **HB 4130** – Establishes a Pilot Project for alternative public financing options for candidates campaigning for the West Virginia Supreme Court of Appeals beginning in 2012 through funds from the State Treasurer’s Unclaimed Property Trust Fund. The bill’s lead sponsors were Delegate Tim Manchin (D-Marion) and Senator Jeff Kessler (D-Marshall). The bill passed the last week of the session, and is a major victory for WV voters. Congratulations to Carol Warren and Julie Archer and everyone with the Citizen’s for Clean Elections coalition who have been working for years on public financing

initiatives.

- **HB 4016** – Ethics bill that would have toughened financial disclosure requirements for public officials and their spouses, and would have banned certain officials, including legislators and employees of the legislative and executive branches, from lobbying for at least a year after leaving their public post. The bill passed the House unanimously a week after the session began. The Senate referred the bill to Senate Finance Committee, where Chairman Walt Helmick (D-Pocahontas) never put the bill on the agenda. So the bill died and the “revolving door” is still alive and thriving at the WV Statehouse.

- **HB 4008** – The “Green Buildings Act” would have required that new state buildings be built to the LEED silver certification or equivalent “Green Globes Initiative” building rating standard. This language was a compromise that had been worked out between all of the stakeholders over the last two years. After making it through the House Government Organization Committee in a “neutered” condition, WVEC’s “Green Buildings Act” (HB 4008) failed to make it on to the House Finance Committee agenda. So it’s dead for another

**(More on the next page)**



**Don Garvin and Delegate Tim Manchin react during the Marcellus Shale bill discussion in Senate Natural Resources Committee**

## THE LEGISLATURE (Continued from p. 12)

year. The bill's lead sponsor was Delegate Barbara Fleischauer (D-Monongalia). We'll try again next year.

- **Oil and Gas Rule** – After what can only be described as a rough start, Department of Environmental Protection's Oil and Gas Well Drilling Rule was passed by both chambers on the last day of the session. It took some butting of heads and a couple of conference committees, but the rule as finally adopted begins to address drilling for Marcellus Shale natural gas in some positive ways. The rule provides construction standards for large volume pits and impoundments. Amendments adopted make it highly unlikely that drillers will *NOT* use impermeable synthetic pit liners. And amendments were accepted that require notice and opportunity for a hearing for the surface owner, should a driller opt to use just a clay liner. While we would have liked to see other protective measures included in the rule, this is a good first step at protecting the state's water resources from Marcellus Shale drilling operations.

- **State Building Code Rule** – Last year the Legislature passed a bill requiring the State Fire Commission to update the energy efficiency provisions of the State Building Code. This year the Legislature gutted the 2009 IECC energy code provisions from the rule proposed by the State Fire Marshall. West Virginia currently is as much as six years behind in updating to the National Code. We lobbied hard to restore the energy efficiency code to this rule, along side the Governor's staff. The WV Homebuilders Association lobbied hard to keep the updated energy code out of the rule. We lost. This prompted one of the stakeholders to comment that "West Virginia's building code amounts to the worst possible building you can build under the code."

- **SB 518** – As originally introduced would have created the "Governor's Commission to Seize the Future of Energy for America" (we dubbed it the Commission to Seize the Past). However, after the House Finance Committee finished with the bill, there's no commission at all! The bill simply gives the state's Division of Energy some additional responsibilities relating to promoting "clean coal," something the agency already does whenever it gets the chance. The one good thing in the bill is that it requires Legislative Auditor's office to perform an agency review of the Division of Energy in 2010 as part of its review of the Department of Commerce. That could prove interesting.

As I mentioned earlier, the bills I have highlighted here are just the tip of the iceberg. Overall, it was a grueling session, what with the workload and the winter weather that never seemed to end.

I believe the WVEC lobby team performed our role well. We were able to advance some of our agenda while also "playing defense" and stopping some really terrible legislation. WVEC continues to have a more credible presence for the environment at the Legislature every year.

So on behalf of all the WVEC team, thanks again to the West Virginia Highlands Conservancy for your continued support.

Now it's on to the Legislative Interim Committee meetings which will begin soon!

The West Virginia Supreme Court of Appeals has accepted for review an appeal by the Highlands Conservancy, Friends of Blackwater, and former State Parks Chief Cordie Hudkins of a decision by the Circuit Court of Logan County. The decision would have allowed gas drilling in Chief Logan State Park.

The Supreme Court does not review every, or even most, cases that are appealed. All cases receive a preliminary review. With the majority of cases the Court rejects the appeal after this preliminary review. Those which are not rejected are scheduled for full review.

The controversy is over a proposal by Cabot Oil and Gas to drill several gas wells inside Chief Logan State Park. The Department of Environmental Protection had originally denied the permit to drill based upon a statute which it believed prohibited drilling for gas in a state park. Cabot Oil and Gas (the driller) appealed to the Circuit Court of Logan County which reversed the Department of Environmental Protection and ordered that the permit be issued.

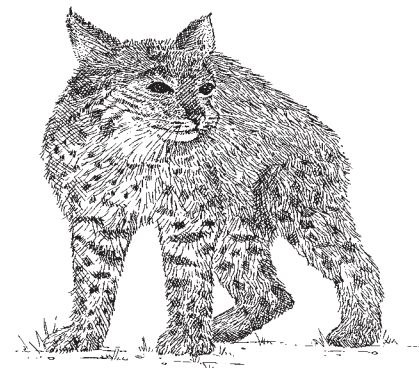
A state statute, West Virginia Code 20-5-2, appears to prohibit developing of minerals on state park land. The Department of Environmental Protection had originally denied the application for a permit to drill a well based upon this statute.

While the Department of Energy assumed that the statute prohibited the drilling, the Circuit Court made a different interpretation. It ruled that the statute only applies to minerals not owned by the state. Since the minerals at Chief Logan State Park were not owned by the state, the Court ruled that the statute did not prohibit drilling for those minerals.

On April 16, 2010, the Highlands Conservancy, Friends of Blackwater, and former State Parks Chief Cordie Hudkins will file legal arguments on this issue before the West Virginia Supreme Court. The West Virginia State Division of Natural Resources and Department of Environmental Protection will also file briefs, as will the "Lawson Heirs," who own the gas under Chief Logan State Park -- and proposed gas driller, Cabot Oil.

It seems likely that this case won't be decided by the Supreme Court until the Fall of 2010. There is a lot of evidence that the trial court did not see, and it's possible that the case will be sent back to the lower court system. But the pro-park side has submitted evidence showing that the law has been interpreted to protect park-owned land for more than fifty years, and there's a good chance that this interpretation will stand.

Whatever happens, this case has huge consequences for West Virginia's state park system. Please support this legal effort in any way you can.



**LAST CALL**

**SPRING REVIEW  
TYGART LAKE STATE PARK  
May 7-9, 2010  
COMFORTABLE FULLY EQUIPPED LAKESIDE  
CABINS  
OR CAMPING  
OR LODGE ACCOMODATIONS  
-- YOU CHOOSE --  
\$25.00/person/night plus food**



The Spring Review is coming up. This year it will be at Tygart Lake State Park just outside of Grafton West Virginia on Mothers Day weekend, May 7-9. There will be serious and sobering discussions of longwall mining and problems facing the Tygart and Monongahela Rivers, but the lakeside cabins and our friendly Taylor County hosts promise a great time in delightful surroundings.

But beyond the serious talk, there will be some serious fun. A Division of Natural Resources fish guy to talk fish, bird walks, Don Gasper talking trout, a bird walk, a tour of lake and dam, a chance to visit local attractions including the Mothers Day Shrine, Anna Jarvis home. Here's the schedule:

**Friday (May 7th):**

- Mid afternoon - Sign in at lodge and pick up info packet
- Dinner on your own at the lodge
  - Or in your own fully equipped kitchen in your cabin
- 6:30 – gather, get acquainted, enjoy hearty snacks
  - fun and frustrations at Tygart Lake and Mon River watershed
  - w/ Fish biologist Frank Jernejcic and other friends

**Saturday (May 8th):**

- early:- bird walk
- enjoy morning coffee on porches overlooking the lake
- breakfast on your own in your cabin or at the lodge
- 11 a.m.: meet WVHC newest Organizational member: TEAM
- at the outdoor pavilion or lodge depending on weather
- brief intro to ICG longwall plans/locations - TEAM
- pick up bag lunch and head out for afternoon trips
- Afternoon: trips and workshops (final list to be determined on-site according to interest level / number of people signing up for each)
  - tour of lake and dam (possible boat trips as well as walking)
  - driving tour to local attractions including Mothers Day Shrine, Anna Jarvis home, local area/ homesteads to be undermined by ICG, ...
  - Marcellus shale presentation and discussion of issues
  - trout fishing presentation,
  - leisurely afternoon on the lakeside trail or cabin area
- 6:00 p.m. – gather at Grafton 1,2,3, Restaurant & community room
  - Dinner: Lasagna (meat and vegetarian) salad, bread and great desserts - \$15.00

**- 7:30: - Evening program: LONGWALL MINING**

- Light refreshments compliments of TEAM & WVHC
- documentary: Subsidized Ground...Fallen Futures
- panel discussion
  - overview and status of ICG Tygart #1
  - Beth Baldwin(TEAM),
  - Evan Hanson (Downstream Strategies),
  - and others not yet confirmed
- Ryerson Station/Duke Lake and other PA stories
  - Cassie McCrea (Citizens for Coalfield Justice),
  - Aimee Erickson (Citizens Coal Council)
- MUSIC -- T Mitchel Bell and the Wandering Coalition

**Sunday (May 9th):**

- coffee on your porch, breakfast on your own in lodge or cabins
- Board meeting in the lodge – lunch available at break
- non-Board members: travel home or stay and enjoy the lake

Contact Cindy Rank for more details and/or to make a reservation

email [clrank@hughes.net](mailto:clrank@hughes.net) or call 304-924-5802

... reserved rooms and cabin space are filling quickly so don't delay ...

For directions and overview of the park see: [www.tygartlake.com](http://www.tygartlake.com)

## WEST VIRGINIA'S GREATEST RESOURCE: WATER

By Katheryne Hoffman Victor, West Virginia

Yes, I said water, not coal. At a time when other states are having to radon water, and the water wars are beginning, our state is Blessed with untold amounts of water--streams, creeks, lakes, rivers. Waterfall--a seemingly never-ending supply of this life giving resource.

Yet, something ugly is happening here. An out of control industry, with no regard for the people or the environment of this beautiful state, are wreaking havoc on our water sources. They are violating the Clean Water Act recklessly. burying hundreds of headwaters, poisoning our creeks, rivers, and lakes with the byproducts of coal: arsenic, selenium, mercury, sludge, and many other contaminants. All this in the name of electric power, coal, and jobs. Yet, all the electricity in the world and all the jobs in the world will be absolutely worthless without clean safe water with which to drink, cook, and bathe.

The mountaintop removal method of mining coal is one of the main reasons why our water sources are being devastated. If the industry really cared about the jobs and the miners, they would go back to underground mining until the coal is gone. They could provide many, many more jobs by going underground, for in mountain-top-removal mining, the machines do all the work. They could use the money they spend on their misleading commercials to provide more safety for the men underground. Just maybe they could be persuaded to enforce the laws in place to protect the people and the environment.

If our Governor and our Legislators were not so totally cowed by the coal industry, they would be putting into place legislation to protect our water. If we had a Department of Environmental Protection that was allowed to enforce the laws already in place, companies would not have to worry about permits, miners could work, and the citizens would have some faith in the system.

Unfortunately, what we have is an industry who has for generations controlled the politicians; polluted the environment, killing the citizens; and who acts like a schoolyard bully when it is expected to obey the law.

The extraction of coal has always been perceived as an energy issue,. However the problems caused by the mountain-top-removal method of mining coal are Human Rights Issues: burying and polluting our water sources; polluting the air we breathe; destroying our forests and the animal and bird habitat; desecrating our cemeteries and destroying or moving entire towns, thereby eradicating our culture and history; and removing the entire mountaintops for which our state is renowned, and with which most West Virginian's are spiritually entwined. All these are Human Rights Issues.

Perhaps, one day, the companies and the politicians can be tried for Crimes Against Humanity.



## CLEAN WATER ACT REFORM

By Don Gasper

When the Clean Water Act was passed into law in 1972 it was suppose to keep all of our nation's waterways free from pollutants. And for more than 35 years the law did just that, keeping our nation's streams, rivers, lakes, wetlands, and other water from destruction and pollution. Not so anymore. Thousands of water bodies that have lost Clean Water Act safeguards since 2001 will continue to be vulnerable.

In the next few weeks, the Senate Environment and Public Works Committee will consider clean water legislation - and hopefully put the Clean Water Restoration Act on the agenda. Specifically the Clean Water Restoration Act will: adopt a statutory definition of "waters of the United States" based on the longstanding definition in EPA's and the Army Corps of Engineers regulations; delete the word "navigable" from the Act to clarify that Clean Water Act is principally intended to protect the nation's waters from pollution, not to just maintain navigability; and make findings that provide the basis for Congress's assertion of constitutional authority over the nation's waters, as defined in the Act, including so-called "isolated" waters, headwater streams, small rivers, ponds, lakes, and wetlands.

The Clean Water Restoration Act is what the Clean Water Act once was: the primary tool to ensure that all of America's waters are protected from destruction, pollution and degradation. Citizens should write for it.

## PLAN TO LEASE MON LAND FOR GAS DRILLING IN THE MON WITHDRAWN

The federal Bureau of Land Management has abandoned a proposal to auction publicly owned oil and gas reserves under the Monongahela National Forest. The proposed lease parcels consisted of 1,916 acres in Pendleton County And 2,479 acres in Randolph County. The tracts are located to the south and west of the Spruce Knob - Seneca Rocks National Recreation Area.

The West Virginia Highlands Conservancy, The Wilderness Society, the Friends of Blackwater , the Center for Biological Diversity, the Friends of Beautiful Pendleton County the West Virginia Wilderness Coalition, Friends of the Allegheny Front, and the Stewards of the Potomac Highlands, and Laurel Mountain Preservation Association, Inc. had joined together to object to this proposal.

The groups contended that the agency should have done an analysis pursuant to the National Environmental Policy Act (NEPA) before offering the parcels for lease. Had it done so, it would have found adverse impacts upon several species, including habitat for imperiled species, including the Endangered Species Act listed Virginia big-eared bat and the Indiana bat. The Randolph County lease parcel contains populations and habitat for the recently delisted West Virginia northern flying squirrel.

Such an analysis would also have documented the adverse impacts that the leasing would have on the Seneca Creek proposed wilderness. This area was proposed for wilderness designation by the West Virginia Wilderness Coalition (WVWC) in a broadly backed proposal.

The area also has a geology that makes it likely that there are abundant fractures and solution cavities which serve as conduits for groundwater issuing as springs into numerous creeks in the area.

The groups contended that, without proper analysis of the threats to these resources, any leasing of those tracts would be improper.

## Early Spring

Betsy Reeder

I got used to snow everyday going by sideways  
I imagined it piling up on Virginia's west-facing slopes...  
How else could it fall for hours and look no deeper  
In the yard already pressed flat by drifts of crystals  
Capped with ice cement?

A lone sparrow became my companion  
Pecking at frozen seeds while I guzzled mugs of tea  
We eyed each other through the glass  
With a shared, stoic will to endure.

But I love winter I reminded myself  
Until the words became a chant  
Or dirge;  
It would have helped to see the Sun.

I suppose there were thousands of prayers  
For early spring  
Prayers becoming fervent as the days lengthened  
And winter spat more snow.

The last flakes landed on a black cloth seat  
When I opened the car door  
Perfect white flowers—  
For real?  
I bent to study them  
Constructed of petals tapered to meet at the middle  
Mysteriously held together  
Identical in size and form, defying the snowflake rule  
I learned as a child.

So all those months the flying white demons  
Had been miniature blossoms  
Our prayers answered before they were uttered,  
Spring was promised all along.

## HATS FOR SALE

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](http://www.wvhighlands.org). Both are soft twill, unstructured, low profile with sewn eyelets, cloth strap with tri-glide buckle closure. Cost is \$15 by mail. West Virginia residents add 6% tax. Make check payable to West Virginia Highlands Conservancy and send to Jaames Solley, P.O. Box 306, Charleston, WV 25321-0306

## RESTORING THE RED SPRUCE ECOSYSTEM

Red spruce once covered the higher elevation areas of the state. Prized for its straight, unknotted light wood, spruce was used in everything from paper to pianos. The Wright brothers even used spruce in the construction of the first airplanes. Many spruce forest wetlands are now listed as globally impaired and are a high conservation priority for the state. After heavy logging, red spruce stands were reduced to 10 percent of their original size.

Now the Central Appalachian Spruce Restoration Initiative is working to restore the red spruce to its former glory. The Central Appalachian Spruce Restoration Initiative is a multi-partner organization working to restore spruce ecosystems. CASRI includes: The Monongahela National Forest, Canaan Valley National Wildlife Refuge, The Nature Conservancy, Fish & Wildlife Service, WV DNR, WV DOF, WV State Parks, West Virginia Highlands Conservancy, NRCS, The Mountain Institute, and Trout Unlimited.

On April 10th & 11th volunteers are needed to help plant over 10,000 red spruce seedlings in Canaan Valley and near Blackwater Falls as part of the restoration initiative. With support from Dominion Power Company, West Virginia Highlands Conservancy, Canaan Valley National Wildlife Refuge, the Monongahela National Forest, Blackwater Falls State Park and The Nature Conservancy, Central Appalachian Spruce Restoration Initiative will restore key areas that will connect habitat and bring back this native West Virginia ecosystem. Volunteers should meet at the Canaan Valley National Wildlife Refuge visitor center at 10 a.m. on both days. Lunch will be provided by the West Virginia Highlands Conservancy.

The West Virginia Highlands Conservancy made generous contributions for the purchasing of spruce seedlings to be planted on a reclaimed strip mine near Blackwater Falls. The project will shade high quality streams and promote native trout habitat. The plantings will also benefit habitat for threatened Cheat Mountain salamander and the recently delisted WV Northern flying squirrel.

Restoration will not only improve conditions for native trout, a federally-listed species, one recently delisted species and a multitude of globally rare species, it would buffer this ecosystem to potential negative effects of climate change. Planting trees shades streams and the ground from solar radiation. This creates lower temperatures in spruce forests compared to hardwoods. The group is also working on releasing spruce from the understory. The shade tolerant nature of spruce allows for targeted hardwood timber harvests to provide effective restoration. Protecting and restoring these natural systems that we all depend on not only makes people and nature less vulnerable to climate change impacts, but highlights the uniqueness of Appalachia and West Virginia heritage.

