

*Return Service requested*



# *The Highlands Voice*

The Monthly Publication of the West Virginia Highlands Conservancy

Volume 43

No. 6

June, 2010

## **EPA'S PUBLIC HEARING: "A MINER SHOULD NOT HAVE TO CHOOSE"**

By Hugh Rogers

You may recall that last year's public hearing on mining permits at the Charleston Civic Center turned into a melee (see *The Highlands Voice*, November 2009). The purpose of that hearing was to get comments on the Army Corps of Engineers' proposal to suspend a nationwide permit that had given coal companies a free pass to dump "fill" into streams. All comments in favor of the proposal were shouted down. The people who offered those comments were threatened, pushed, bumped, and cursed.

On May 18, the Environmental Protection Agency (EPA) held a similar hearing in the same place on a related issue: its proposal to veto the Corps' permit—an individual permit, not the nationwide version—for the huge Spruce No. 1 mine in Logan County. This was the mine that we went to federal court to stop back in 1998.

The late Judge Charles Haden, a hard man to persuade, left his courtroom to see first-hand the impacts of mountaintop removal mining. In *Bragg v. Robertson* (1999), he granted plaintiffs' motion for injunction. Then he found in our favor on every issue that remained after long and complicated settlement negotiations (which brought about the first regional Environmental Impact Statement on valley fills).

Judge Haden's decision was reversed by the court of appeals on a jurisdictional question. Substantive questions remained unresolved. In the decade between, further scientific analysis confirmed our assertions about the damages from this type of mining. Nevertheless, the Corps of Engineers granted to a successor coal company a permit to do what Judge Haden had enjoined. The Obama

Administration's EPA decided to block that permit. And we anticipated all hell breaking loose at the public hearing on their proposal.

It didn't happen. The "Stay Smart! Stay Safe!" handout we got from Bill Price, the economic justice coordinator for the Sierra Club, didn't turn out to be necessary. Afterwards, as Julian Martin and I escorted Cindy Ellis to her car, the city was so quiet she could draw our attention to the sound of nighthawks.

Although there was no lack of fiery speakers who came to the microphone to condemn the EPA and predict "Armageddon" if the veto went through, and the larger part of the crowd (most in matching T-shirts) screamed and cheered, it was nothing like the travesty seven months ago. The difference may have had something to do with the pro-coal rally in another hall of the Civic Center that ended an hour before the hearing. Along with the speeches, the miners probably heard that more violence would be counterproductive. Some might have left in disappointment at the low-key tone. The crowd was half as large as the organizers had anticipated—about 500 in the 1,000 folding chairs—and that too had a dampening effect. But credit should be given to the EPA and its consultants who ran the meeting according to clear and repeated rules.

When she announced the proposed veto, EPA Administrator Lisa Jackson said, "This is not about ending coal mining. This is about ending coal mining pollution." The opposition would have none of that. For them it was not about science, it was about politics; it was

**(Continued on p. 3)**

### ***What's inside:***

Thoughts from President Hugh	2
Roster of officers	2
Matters legislative	4
Suing FOLA coal	5
Comments on big strip mine	5
PATH update	5
Get a history book	6
How to join	6

Outings	7
Bombs in Dolly Sods	8
Endangered rivers	10
Get a Hiking Guide	11
Speakers available	11
The Planting of the Spruce	12
What not to do with coal ash	14
Spring Review	16

## Not the Official Position of West Virginia Highlands Conservancy

A loyal but disgruntled member criticizes our “apparent opposition to all forms of energy production.” He writes, “We all use energy. Therefore it behooves environmental protectors to advocate the use of other forms of energy.” And he adds, “WVHC seems to be supporting nuclear energy as the only solution to our energy conundrum.”

Well. The notion that we’re supporting nuclear energy will be startling to all the members of our board, especially Peter Shoenfeld, the only one who has written about it (*The Highlands Voice*, July 2009). So far, he has not persuaded the board to take up the issue, let alone act on it.

I suspect this is another case of “If you print it in the *Voice*, it must be your official position.” Periodically, our editor, John McFerrin, publishes a disclaimer: Just because you read it here doesn’t mean we agree with it. Some of what you read in the *Voice* reports on official actions and positions; but other stuff agitates for actions we ought to take, or attacks what we have done, or simply expresses an interesting point of view on subjects we care about. It shouldn’t be difficult to figure out which is which.

The disclaimer, which we might do better to print every month, applies equally to this column. Every month. Hence the Monty Python-ish headline above.

With that understood, here’s my personal opinion of the member’s complaint: Who’s behooved? Not us. Our mission is “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.”

To be sure, our preoccupation with the impacts of energy production makes us more aware of alternatives, and board members do have opinions; but advocating for them is not our core mission. First, we try to conserve.

Our committees are composed of volunteers; our conservation efforts flow from individual interests as well as organizational history. Board elections come around every October. Someone with a particular interest in alternative energy production could gain a seat on the board and urge us to become more active on the issue. Short of that, John always welcomes thoughtful articles and letters to the editor. Publication doesn’t imply endorsement, but it can be persuasive.

A hit-or-miss way to draw attention to an issue is to write a personal letter. It worked for this person. I can reassure him that we agree with his call for “an energy system that is diffuse, efficient and as friendly to the environment as possible.” He gives as examples small (10kw) wind turbines to supply power to neighborhoods, solar collectors on roofs, and on-site geothermal systems for efficient heating.

In mid-May I forwarded to the board a bit of news from my law school alma mater: UNC-Chapel Hill was phasing out campus coal use. George Beetham commented, “On-site solar arrays and wind turbines to serve large installations seems to me to be a great way to ‘go green.’ Generation at or near the site is exactly what I’ve been

**(More on p. 15)**

## Roster of Officers, Board Members and Committee Chairs and Board of Directors

PRESIDENT: Hugh Rogers, Moon Run, Kerens, WV 26276, (304)636-2662, hugh.rogers@gmail.com

SENIOR VICE PRESIDENT: Buff Rodman, 32 Crystal Dr., Oakmont, PA 15139; (412) 828-8983; buffrodman@hotmail.com

VICE PRESIDENT FOR STATE AFFAIRS: Julian Martin, 1525 Hampton Rd., Charleston, WV 25314, (304) 342-8989; martinjul@aol.com

VICE PRESIDENT FOR FEDERAL AFFAIRS: Marilyn Shoenfeld, HC 70 Box 553, 23 Sands Springs Lane, Davis, WV 26260, (304) 866-3484, marilyn.shoenfeld@gmail.com

SECRETARY: John McFerrin, 114 Beckley Ave., Beckley, WV 25801, (304)252-8733, johnmcferrin@aol.com

TREASURER: Bob Marshall, 886-Z Divide Ridge Road, Kenna WV 25248 (304)545-6817, woodhavenwva@aim.com

PAST PRESIDENT: Frank Young, Rt. 1, Box 108, Ripley, WV 25271, (304)372-3945, fyoung@mountain.net

DIRECTORS-AT-LARGE (Terms expire October 2010)

Don Gasper, 4 Ritchie St., Buckhannon, WV 26201; (304)472-3704

Bob Gates, Box 5130, Charleston, WV 25361; photonzx@ntelos.net.

George Beetham, geobeet@hotmail.com

Bill McNeel, 1118 Second Ave., Marlinton, WV 24954, (304)799-4369; wpmcneel@gmail.com

Peter Shoenfeld, HC 70, Box 553, Davis, WV 26260, (304) 866-3484, (301) 642-2820;

PShoenfeld@gmail.com

DIRECTORS-AT-LARGE (Terms expire October 2011)

Bob Henry Baber, 207 Howard St., Glenville, WV 26351, (304) 462-0320, mayorbobhenrybaber@yahoo.com

Dave Fouts, HC 80, Box 993, Maysville, WV 26833, (304) 749-8172, foutsberg@citlink.net

Larry Thomas P.O. Box 194, Circleville, WV 26804, (304) 567-2602, larryvthomas@aol.com

Carter Zerbe, 16 Arlington Ct., Charleston, WV 25301, (304)343-3175; scz3667@aol.com

Mike Withers, Rt 2, Box 328, Grafton WV 26354, 304-265-3750, 1nastynash@comcast.net

### ORGANIZATIONAL DIRECTORS

NATIONAL SPELEOLOGICAL SOCIETY: Robert (Bob) Handley, HC 67 Box 508 Renick, WV, 24966 497-2266; leatherwing@frontiernet.net

PITTSBURGH CLIMBERS: Jean Rodman, 32 Crystal Dr., Oakmont, PA 15139, (412)828-8983; jeanrodman@verizon.net

BROOKS BIRD CLUB: Cindy Ellis, RR 1, Box 163, Red House, WV 25168 (304) 586-4135; cdellis@wildblue.net

MOUNTAINEER CHAPTER TROUT UNLIMITED: Chris Byrd, 292 Magnolia Ave., Clarksburg, WV 26301 Tel. (304) 622-3023 <cbyrd@ma.rr.com>

WEST VIRGINIA RIVERS COALITION: Don Garvin, P.O. Box 666, Buckhannon, WV 26201; (304) 472-8716; DSGJR@aol.com

FRIENDS OF THE LITTLE KANAWHA: Cindy Rank, HC 78, Box 227, Rock Cave, WV 26234, (304)924-5802; clrank@hughes.net

TEAM (Taylor Environmental Advocacy Membership): Beth Baldwin, Grafton, WV 26354, 304-265-3029, elbrn6e21@msn.com

### COMMITTEE CHAIRS

MINING COMMITTEE: Cindy Rank, HC 78, Box 227, Rock Cave, WV 26234, (304)924-5802; clrank@hughes.net

PUBLIC LANDS MANAGEMENT COMMITTEE: Marilyn Shoenfeld, HC 70, Box 553, Davis, WV 26260, (304) 866-3484, (301) 642-2820; Marilyn.Shoenfeld@gmail.com

LEGISLATIVE COMMITTEE: Frank Young, Rt. 1, Box 108, Ripley, WV 25271, (304)372-3945; fyoung@mountain.net

WIND ENERGY COMMITTEE: Peter Shoenfeld, HC 70, Box 553, Davis, WV 26260, (304) 866-3484, (301) 642-2820; PShoenfeld@gmail.com

ENDOWMENT FUND COMMITTEE: John McFerrin, 114 Beckley Ave., Beckley, WV 25801, (304)252-8733; johnmcferrin@aol.com

RIVERS COMMITTEE: vacant

HIGHWAYS COMMITTEE: Hugh Rogers, Moon Run, Kerens, WV 26276, (304)636-2662; hugh.rogers@gmail.com

OUTINGS COMMITTEE: Dave Saville, PO Box 569, Morgantown, WV 26507, (304)284-9548; daves@labyrinth.net

### MISCELLANEOUS OFFICES

SPEAKERS BUREAU: Julian Martin, 1525 Hampton Road, Charleston, WV 25314, (304) 342-8989; martinjul@aol.com

WEB PAGE: Peter Shoenfeld, HC 70, Box 553, Davis, WV 26260, (304) 866-3484, (301) 642-2820; PShoenfeld@gmail.com and Jim Solley, jamessolley@comcast.net

### ADMINISTRATIVE OFFICES

ADMINISTRATIVE ASSISTANT: Beth Little, HC 64, Box 281, Hillsboro, WV, 24946 (304) 653-4277; blittle@citynet.net

HIGHLANDS VOICE EDITOR: John McFerrin, 114 Beckley Ave., Beckley, WV 25801, (304)252-8733; johnmcferrin@aol.com

## EPA PUBLIC HEARING (Continued from p. 1)

not about this one permit, or even mountaintop removal mining, it was about the survival of the coal industry in Central Appalachia.

“Let us do our jobs” was a repeated plea. A surface miner from Pike County, Kentucky, said, “This is our livelihood and our way of life. This is all we know.” There could not have been a more poignant comment.

Another miner from Kentucky declared, “Mountaintop mining improves the environment.” He didn’t elaborate. Other mine-supporting delegations came from Ohio, Virginia, and Maryland.

The EPA’s new conductivity/salinity standard was condemned as unattainable by any mine. (The upper limit is five times the normal level.) Several speakers asked, “In this economy, how can EPA think of doing anything that would cost even one job?” Miners and their relatives expressed their hurt—“You don’t live there”—and their anger—“These extremists has nothing to do.”

There was plenty of political posturing. State Senator Mike Oliverio, fresh from his victory over Congressman Alan Mollohan in the First District Democratic primary, read Senate Concurrent Resolution 61, urging the EPA to back off: “That’s your legislature!” A county commissioner, the school superintendent, and a candidate for delegate from Logan County also spoke. The big card of the night was Congressman Nick Joe Rahall and his opponent, Spike Maynard. Spike wanted blood: “We *are* going to mine coal, and we *are* going to mine at Spruce. When November comes, we *will* take this country back.”

Congressman Rahall saw an inconsistency in EPA Administrator Jackson’s sympathy for Louisiana fishermen who have been affected by the Gulf drilling rig blow-up, and her supposed lack of it for West Virginia coal miners. The remainder of his comments sounded a theme that was heard over and over as the hours went by: the EPA’s proposed veto would call into question the reliability of all mining permits. How could any investor depend on any coal project going forward?

Before commenting on those comments, I should say that the EPA’s Regional Administrator Shawn Garvin and his mining chief Randy Pomponio, who sat through it all, did hear from a significant number of people who supported the veto, beginning with our own Julian Martin. Danny Chiotos of the Environmental Council, Viv Stockman and Stephanie Tyree from Ohio Valley Environmental Coalition, and Denise Giardina, writer and deacon in the Episcopal Church, among others, spoke eloquently. Many admirable folks from

Logan and Boone counties—most from long-time mining families—stood up against the dominant sentiment in the room. They described the damage that has been done. They pointed out that mountaintop removal didn’t create jobs; it eliminated them.

EPA’s critics never complained about the previous administration’s willingness to change regulations and flout the law in order to permit larger and more destructive mines. Now they regretted that politics made a difference in enforcement. It’s undeniable. Some administrations have tried to enforce the law; other administrations ignored it. The simple answer to the “no take-backs” argument is that the law provides for EPA to review the Corps’ decisions. The permit was not final until after that review.

As for those Gulf fishermen, they are innocent bystanders. They didn’t work for BP. The miners who work for Mingo Logan Coal are unfortunately subject to its decisions about where and how to mine. Let us hope they can find work in mines that will not have such an impact on the environment. One young woman said it best: “A miner should not have to choose between poisoning children and losing his job.”

### 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

### Your comments and opinions are important to us.

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 United States mail to John McFerrin, WV Highlands Conservancy, PO Box 306, Charleston, WV 25321.

*The Highlands Voice* is published monthly by the West Virginia Highlands Conservancy, P. O. Box 306, Charleston, WV 25321. Articles, letters to the editor, graphics, photos, poetry, or other information for publication should be sent to the editor via the internet or by the U.S. Mail by the last Friday of each month. You may submit material for publication either to the address listed above or to the address listed for Highlands Voice Editor on the previous page. Submissions by internet or on a floppy disk are preferred.

*The Highlands Voice* is always printed on recycled paper. Our printer uses 100% post consumer recycled paper when available.

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

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.

## LEGISLATURE BEGINS INTERIM MEETINGS

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

The West Virginia Legislature held its first set of monthly Interim Committee meetings May 24 to May 26. This was the first full set of monthly Interim meetings for 2010. Primarily, the committees only received staff reviews of the various study topics they have been assigned, so there was not much substantive discussion.

Judiciary Subcommittee A did, however, have a presentation from the WV Department of Environmental Protection (DEP) on possible funding sources for capital improvement projects at Eastern Panhandle wastewater treatment facilities. These improvements are needed to meet the new nutrient removal requirements of the federal Chesapeake Bay Initiative.

Theresa Koon of DEP's Office of Water and Waste Management told the legislators that the state must come up with between \$110 million and \$140 million to finance new and upgraded treatment systems in order to meet phosphorous and nitrogen reduction goals by 2025.

DEP has been meeting with stakeholders in the area to discuss funding options. According to DEP the top three options are (and I am not kidding about this):

- A "flush tax", every time you flush the toilet;
- A toilet tissue tax on every roll you purchase;
- And a tax on "table games" gambling.

I guess we will have to wait and see how this all flushes out (sorry, but I couldn't resist).

The substantive presentations will begin in earnest at the June Interim meetings (June 7 through June 9).

Almost all of the environmental regulatory study issues have been assigned to Judiciary Subcommittee A. The study topics include a variety of Marcellus shale gas drilling issues (both environmental and surface owner issues), a continuing discussion on coal slurry injection, in addition to handling the nutrient reduction in Chesapeake Bay. This subcommittee was also assigned the coal mine safety topic.

Judiciary Subcommittee C has been assigned a study of the Public Service Commission's exemption from legislative rule making.

The Joint Commission on Economic Development has been assigned several important study topics involving renewable energy and "green jobs" and "green public policy" initiatives.

Finance Subcommittee B has been assigned several interesting study topics, including "tax issues generally", a study of the tax burden on the coal industry (*right!*), and a study of the federal "stimulus" monies the state has received and expended to date.

So there will be plenty for us to watch and participate in during the 2010 Interims. You can see the entire list of study topics on the Legislature's web site at [http://www.legis.state.wv.us/Committees/Interims/2010\\_Interim\\_study\\_assignments.cfm](http://www.legis.state.wv.us/Committees/Interims/2010_Interim_study_assignments.cfm).

And the West Virginia Environmental Council will post updates and action alerts about these meetings on our web site at <http://www.wvecouncil.org/>.

## DEP RELEASES 2011 RULES DRAFTS

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

The WV Department of Environmental Protection (DEP) has released the initial drafts of the agency's rule changes that it intends to propose to the Legislature in 2011.

So here's my annual legislative tutorial about "rules."

The Legislature passes laws (or statutes), and then they pass rules (or regulations).

Generally speaking, the laws or statutes set out the broad guidelines for government actions, and the rules set out the specific details or regulations. Generally speaking, the laws establish the authority for the government to act and create an agency to implement the action. Generally speaking, the agency then develops (or "promulgates") the individual rules needed to enforce the laws.

Agency rules are not proposed by individual legislators. They are developed annually by the specific agency and are then presented to the Legislative Rule-Making Review Committee during the Interim sessions.

Usually, the Legislative Rule-Making Review Committee then simply approves the rules and passes them on for consideration by the full Legislature during the regular session. There are normally more than a hundred of these rules. If you look at the legislative web site, you will see a long list of bills in both the House and the Senate with titles like, "Authorizing Commissioner of Agriculture promulgate legislative rule relating to shellfish" (that was an actual rule title last year).

But you can't find out what's in these rules on the legislative web site. Each agency files its rules with the Secretary of State's office, and that's where you have to go to read them.

It's not a particularly citizen friendly arrangement. And it gets even worse when the rules get to the full Legislature. But I will cover that another time.

This year the DEP is proposing changes to only 12 of its rules (some years the number is more than double that). The list includes major changes to the Water Quality Standards rule and the Surface Mining Reclamation Rule, as well as changes to seven air quality rules, the Surface Mining Blasting Rule, the Hazardous Waste Management Rule, and the Secretary's rule for Freedom of Information Act requests.

The Water Quality Standards rule is a good example of why these rules changes are important to the public. This year DEP is proposing a statewide drinking water quality standard for "total dissolved solids" of 500 mg/liter (think Marcellus shale, the Monongahela River, and the Dunkard Creek fish kill). DEP's proposal is the same as the federal EPA's recommended standard to protect human health. However, polluting industries are already lobbying DEP to weaken how the standard is measured – they want the standard to be applied at public water supply intakes and not at the point of discharge, using the entire river or stream as a "mixing zone."

The DEP will publish the final drafts of all these rules in the next couple of weeks, and will then schedule public comment periods and public hearings for each of the proposed rules during the months of June and July.

To keep you informed, the West Virginia Environmental Council will post the schedules and action alerts about these rules on our web site, <http://www.wvecouncil.org/>.

## HIGHLANDS CONSERVANCY COMMENTS ON EPA'S VETO OF THE SPRUCE #1 PERMIT

By Cindy Rank

West Virginia Highlands Conservancy joined several other local, state and national citizens and environmental organizations in rather lengthy and detailed comments in support of the proposed Environmental Protection Agency (EPA) veto of the Spruce #1 permit for the Blair area of Logan County, WV.

After more than a decade of legal and political wrangling over this 2,278 acre mine permit (originally proposed for 3,113 acres) that became the focus of our 1998 *Bragg v. Robertson* litigation challenging the validity of valley fill mine permits, the EPA at long last has suggested the evidence of environmental and social harm in the Spruce Fork drainage of the Coal River is undeniable and that to allow Mingo Logan Coal to proceed with its Spruce #1 plans to fill Pigeonroost, Oldhouse Branch, and more of Seng Camp Creek would add substantially to the cumulative impact of persistent and permanent harm.

In requesting comments on the proposal veto, EPA asked whether the discharge should be 1) permanently prohibited, 2) allowed as authorized by the Corps, or 3) restricted in time, size or other manner.

EPA further requested any additional information commenters might offer to fill in perceived gaps about personal and recreational uses of the waters in the area of the permit, quality of the streams, adverse impacts to fish and values of the receiving waters, potential cumulative impacts to human health and the environment within the Spruce Fork watershed and Coal River sub-basin, effectiveness of the proposed mitigation, etc.

Our comments of course support the permanent prohibition of all discharges covered by this permit insisting that no middle of the road alternative of sequential permitting can be justified.

The April 2, 2010 Federal Register Notice of EPA's proposed veto included extensive legal findings and scientific evidence to support the proposed action. The record presented demonstrates the environmental and related community impacts that hang in the balance.

Our comments urge EPA to follow the valid science and legal requirements under the Clean Water Act by ensuring that the Spruce No. 1 Mine cannot proceed to cause irreversible and unacceptable adverse effects in an area of West Virginia that has already seen much more than its fair share of harm from mountaintop removal mining.

Researching census data and legal and historical records our friends at Earthjustice, Public Justice, the Appalachian Center and others helped flesh out the already substantial defense offered by EPA when announcing the proposed veto.

Links to both our comments and EPA's informative Federal Register notice proposing the veto can be found at: [www.wvhighlands.org](http://www.wvhighlands.org). Additional information can also be found on EPA's website at: <http://www.epa.gov/owow/wetlands/guidance/mining.html>.

## THREATENING LEGAL ACTION OVER NICHOLAS COUNTY MINE

On May 24, 2010 the WV Highlands Conservancy and the WV Chapter of Sierra Club issued a notice of intent to sue FOLA Coal Company for violations of the Clean Water Act and Surface Mine Act at its FOLA #3 mine that discharges into Boardtree Branch, a tributary of Twentymile Creek of the Gauley in Nicholas County.

In particular, the results of water quality testing performed by the U.S. Environmental Protection Agency (EPA) just downstream from the valley fill in Boardtree Branch showed, under several measures, that the company's mining operations have caused significant negative impacts and have harmed aquatic life in the stream. EPA's testing revealed levels of conductivity more than five times EPA's benchmark for protecting stream health. In addition, the testing revealed levels of acute toxicity for the stream over ten times EPA's criteria for aquatic life protection, as well as chronic toxicity levels over six times the EPA criteria.

FOLA has sixty days to come into full compliance with the laws or we will file a citizens' suit seeking civil penalties for ongoing and continuing violations and for an injunction compelling FOLA to come into compliance with the Surface Mine and Clean Water Acts.]

## Another Delay Requested for PATH

By Frank Young

The applicants for PATH, a proposed hundreds of miles long 765 KV power transmission line across western, central and eastern West Virginia, have asked the WV Public Service Commission (PSC) for yet another extension of time in which to present their case to.

This request for an 81 day tolling (extending the case schedule) would push the final PSC decision date for the PATH application to May 16, 2011.

In November the PSC granted a 9 month tolling of the PATH application case.

The PATH companies' second motion to toll said: *"The Applicants believe that the Commission's approval of the Second Proposal is appropriate for two reasons. First, the Staff has requested additional time to review the Applicants' supplemental testimony on issues of electrical need and other issues that may require supplementation. The Applicants have agreed to accommodate the Staff's request, and through the Second Proposal they propose to afford significant additional time to the parties to evaluate the Applicants' supplemental testimony and file any necessary discovery requests on that information. Second, the new evidentiary hearing date and extended decision due date in the Second Proposal are expected to align more closely to the procedural schedules that are likely to be established in Maryland and Virginia"*.

The PATH application process is currently stalled in both Maryland and Virginia.

## Join Now !!!

Name \_\_\_\_\_

Address \_\_\_\_\_

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

Phone \_\_\_\_\_ E-Mail \_\_\_\_\_

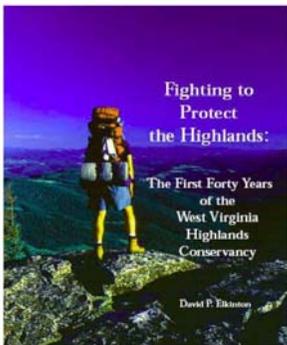
### Membership categories (circle one)

	Individual	Family	Org
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!**

### 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.

### 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 ATTEN: James Solley, WVHC, P.O. Box 306, Charleston, WV 25321-0306.

### 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

# West Virginia Mountain Odyssey



## Outings, Education and Beyond 🇺🇸

**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 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).

**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 or Larry Gibson (304) 542-1134; (304) 549-3287.

## FOLLOWING THE 3R'S TO STAY SAFE IN THE DOLLY SODS WILDERNESS AREA

By Nick McHenry, Environmental Engineer, U.S. Army Corps of Engineers, Huntington District

The whistling of a cool Fall wind. A song bird noting the arrival of spring. The snow-fed rush of Red Creek through the valley. These are all sounds that visitors of the Dolly Sods Wilderness Area have come to cherish about the remote haven, located just west of Petersburg, WV in the Monongahela National Forest. Had a visitor to Dolly Sods been there sixty-seven years prior, the sounds they would have encountered would have been much different than the serenity encountered today.

In 1943 and 1944, visitors to the Dolly Sods Area would have been welcomed with the boom of artillery cannons, the crack of mortars being fired, or the pop of rifles echoing over the bogs and through the valley as U.S. troops prepared for World War II. During that time, regiments from all over the eastern United States were coming to train in an Army installation known as the West Virginia Maneuver Area (WVMA).

In preparation for full scale war in Europe, the Department of Army found it necessary to look for a rugged mountainous area that would replicate the conditions soldiers would encounter during an invasion of Italy. They found that place in the rugged mountainous region of north-central West Virginia. The West Virginia Maneuver Area was a vast expanse of nearly 2-million acres that stretched from Elkins in the west to Petersburg in the east, from Franklin in the south to the West Virginia-Maryland border in the north.

Within the West Virginia Maneuver Area, the Army focused on training soldiers in various aspects of low altitude mountain warfare. Activities located within the WVMA included a rock climbing school at Seneca Rocks, teaching pack mule techniques at a mule school near the community of Gladwyn, teaching mountaineering skills to soldiers involved with large scale tactical problems, or conducting a firing range for artillery and mortars.



**105-mm howitzer round. Typically they are found partially buried in the ground/dirt/leaves with either just their nose or fins being visible. It is very rare to find them the way the one in the picture is shown.**

This firing range is where Dolly Sods' role in World War II comes into focus. During the selection process for the site of the WVMA, land was needed that was sparsely populated and provided advantageous sight lines for firing artillery and mortars. The land they agreed upon was a stretch of land from State Route 32 in present day Canaan Valley to Jordan Run Road on the Petersburg side of

Dolly Sods. Artillery and mortar firing occurred within and around this area, generally resulting of the firing of artillery shells or mortars into what is now the Dolly Sods Wilderness Area or at surrounding mountains.

Remnants of this World War II training camp at Dolly Sods, and the surrounding land, can still be found to this day. Unexploded ordnance (UXO) still exists throughout the Dolly Sods Region, and



**In 2007 a howitzer round was discovered and detonated in place by Canaan Valley National Wildlife Refuge and WV State Police Bomb Squad personnel. The gash in the tree and the bomb crater were results. Just because they have been lying there for 65 years doesn't mean they can't go off.**

potentially on neighboring properties. Unexploded ordnance are military munitions that were fired, but failed to detonate as intended once fired. The exact amount of ordnance remaining in the Dolly Sods region is undetermined. However, ordnance-related risk is illustrated by a sporadic but continuous discovery of unexploded ordnance by recreational visitors.

To address ordnance-related concerns in the Dolly Sods Area, an ordnance removal project was authorized under the Defense Environmental Restoration Program (DERP) for Formerly Used Defense Sites (FUDS). Such projects are established for sites that were contaminated while under the control of the Department of Defense (DoD), but were transferred out of Department of Defense control prior to 1986. The U.S. Army Corps of Engineers, Huntington, WV District, is the Corps District with responsibility for overseeing this project.

In the mid-1990's an ordnance removal action was selected to reduce public risk when visiting the Dolly Sods Area. In 1997-98 ordnance removal activities in the Dolly Sods Wilderness, Dolly Sods

**(Continued on p. 9)**

## BOMBS IN THE SODS: THE REST OF THE STORY

(Continued from p. 8)

North and Dolly Sods Scenic Areas occurred. Contractors for the Corps cleared trails (plus 20' on each side of the trail) and campsites within these three areas. The 1997 to 1998 ordnance removal action was the most feasible alternative based on the influencing factors of cost, environmental impact, and reduction of public risk. The removal/disposal of 22 live mortars, 19 inert mortars, and 1151.5 pounds of OE-related scrap, significantly reduced the quantity of items posing a hazard to the public in the most widely used areas of the Dolly Sods Region.

Following the completion of the ordnance removal action, the WVMA/Dolly Sods Formerly Used Defense Sites Project went into what is termed "Long Term Management (LTM)". During this phase, the Corp's main efforts have been placed on making the public aware of the unexploded ordnance issue at Dolly Sods and ensuring they know what to do in the event that unexploded ordnance is encountered while visiting the area. The Corps has pursued the following public awareness items in an attempt to increase public knowledge of the unexploded ordnance issue at Dolly Sods:

- Website – The USACE, Huntington District has set up and maintains a project website that highlights the Dolly Sods Region while also promoting unexploded ordnance safety tips. The website can be found at [www.lrh.usace.army.mil/projects/current/derp-fuds/wvma](http://www.lrh.usace.army.mil/projects/current/derp-fuds/wvma).
- Presentations – Every year the Corps conducts several presentations at local schools, organizations, government agencies, local fire departments, etc. which focus on increasing the public's awareness of the history of Dolly Sods, the unexploded ordnance present there, and how to enjoy Dolly Sods safely.
- Informational Booths – Every year the Corps hosts an informational booth at the Mountain State Forest Festival held every October in Elkins, WV. This booth allows Corps employees the opportunity to talk with the public, pass out informational materials and increase public knowledge.
- Publications – Yearly the Corps publishes a Newsletter which highlights activities that have occurred at the District's

Formerly Used Defense Sites Projects. One of the projects highlighted in this newsletter is the WVMA/Dolly Sods FUDS Project.

In the event that you are at Dolly Sods, or a property surrounding Dolly Sods, and believe you have encountered a UXO, you should consider it extremely dangerous. It is important that you familiarize the **3R's of Explosives Safety**:

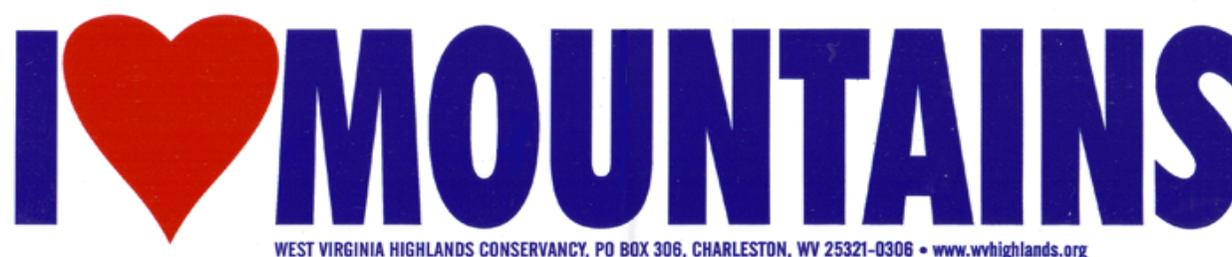
- 1) Recognize – Recognize that you may have encountered a unexploded ordnance and the potential danger inherent to that encounter.
- 2) Retreat – Do not touch, move or disturb the unexploded ordnance. Walk back the way you entered that location.
- 3) Report – Notify officials of what you saw and where you saw it. In the Dolly Sods Wilderness Area there is a special U.S. Forest Service phone number that has been established to report such ordnance encounters (24 hours a day). That phone number is **1-888-283-0303**. In the event that you are off Forest Service property and encounter a potential UXO, please report it to the nearest law enforcement authority.

For more information on the Army's General 3R Program, please visit: [www.denix.osd.mil/portal/page/portal/UXOSafety](http://www.denix.osd.mil/portal/page/portal/UXOSafety).

The Dolly Sods Wilderness is a beautiful, natural treasure. It is not the intention of this project to dissuade anyone from using the Dolly Sods area. It is, however, the intention of this project to educate the public on how to enjoy the Dolly Sods safely, with respects to unexploded ordnance.

For additional information on the Dolly Sods FUDS Project or to inquire about conducting a presentation to your organization, please contact Nick McHenry, USACE, Huntington, WV District at 304-399-5909 or via email at [Nickolas.L.McHenry@usace.army.mil](mailto:Nickolas.L.McHenry@usace.army.mil).

### 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.)

# TWO WEST VIRGINIA RIVERS “MOST ENDANGERED”

By Cindy Rank

For each of the past 25 years the national organization AMERICAN RIVERS has selected ten rivers in America for their “most endangered” list. Both the Gauley and the Monongahela Rivers made this years top ten list.

Rivers are nominated by concerned citizens and river groups across the country as being imperiled by some specific activity.

Choosing ten as the “Most Endangered” is meant to draw attention to the threat itself and to a major action in the coming year that might lessen the threat. The listing encourages the public to voice support for those actions... e.g. by writing to Congress or some federal or state agency that is considering some new regulation or legislation.

## **CHECKING IN AT #3 THIS YEAR IS THE GAULEY.**

**THREAT:** Mountaintop Removal Coal Mining

Rising in the Monongahela National Forest and flowing southwest through the Gauley River National Recreation Area before joining the New River at Gauley Bridge to form the Kanawha River, the Gauley is well known and enjoyed by river runners, fishing enthusiasts, hikers, bikers and a myriad of communities throughout the basin.

However, major tributaries such as Twentymile and Peters Creek in Nicholas County are being impacted by massive mountaintop removal mines. Drainage from coal mines in these as well as other streams in the Gauley watershed degrades water quality in the basin. Many fear for the future of the famed Gauley River if these drainages are allowed to continue – or worse, to increase in number.

Partners with American Rivers on listing the Gauley are the Appalachian Center for the Economy and the Environment and the Ohio Valley Environmental Coalition as well as the WV Highlands Conservancy.

“The Army Corps of Engineers must start to follow the science showing the devastating impacts throughout central Appalachia and put an end to mountaintop removal. Business as usual is destroying of one of the most biologically diverse and culturally rich areas in the world,” said Margaret Janes, Appalachian Center for the Economy and the Environment.

“Headwater streams that feed the lower reaches of the Gauley are no less

healthy and thriving and worthy of protection than those that rise further upstream in our beloved Monongahela National Forest,” said Cindy Rank with the West Virginia Highlands Conservancy. “If we continue to allow companies to emaciate streams like Twentymile, Peters Creek and Muddlety the Gauley basin is in peril.” (See related story on page 5 of this issue about legal action to protect one of those watersheds)

“We can act now to protect the Gauley by stopping mountaintop removal,” said Vivian Stockman, with the Huntington, W.Va.-based Ohio Valley Environmental Coalition. “Not only will ending mountaintop removal protect the revenue generated by recreation and tourism around the Gauley, we will protect human health, too. Studies show that mountaintop removal mining is polluting streams to the point that people’s health is compromised.”

Collectively, the issues below have the potential to change the way mining is practiced in the Gauley River watershed and throughout Appalachia.

In March 2010, the U.S. Environmental Protection Agency (EPA) proposed new water quality guidelines for conductivity resulting from mountaintop removal mining. High conductivity harms aquatic life and can cause toxic algae blooms that destroy stream habitat. EPA must adopt this conductivity standard as regulation and apply the standard to all surface mining activity. The agency is accepting comments on the conductivity guidance until December 2010.

In addition, EPA must issue strong revisions to the national selenium water quality criteria guidelines and must offer clear guidance to states and the Ohio River Valley Water Sanitary Commission (ORSANCO) on how to implement them. States must adopt and enforce these standards. EPA must also work with the U.S. Army Corps of Engineers to complete the review of a list of 79 permits and prohibit destructive valley fills or harmful pollution discharges into streams. These agencies must set limits on the cumulative damage from multiple valley fills and pollution discharges to watersheds.

Ultimately, EPA and other regulatory agencies must prohibit the further destruction of Appalachian rivers from the practices associated with mountaintop removal mining in order for rivers like the Gauley to remain healthy for communities, businesses, industry, and tourism.

The public is being urged to contact Lisa Jackson/EPA and Jo Ellen Darcy/Army Corps to issue critical new water quality safeguards and to ultimately prohibit further destruction of Appalachian rivers from mountaintop removal mining.

## **# 9 THIS YEAR IS THE MONONGAHELA RIVER.**

**THREAT:** Natural Gas Extraction

Though there is much to be said about the major rivers in the upper reaches of the Monongahela River basin, this year American Rivers’ listing of the Mon focuses mainly on the threat of pollution by large amounts of water withdrawal for and discharge of untreated wastewater from Marcellus Shale gas well drilling in the portion of the river that spans the state border between Fairmont WV and Pittsburgh PA.

The Mon Basin is located within the region of the Marcellus Shale, a geological formation that lies between 5,000 and 8,000 feet below the earth’s surface. Energy companies have already begun to extract the natural gas in the shale through a process known as hydraulic fracturing. In this process, millions of gallons of water, often taken from streams, lakes, and rivers, are mixed with chemicals and injected deep into the shale to release the gas. Furthermore, diminished flows caused by excessive water withdrawals can impair wildlife, recreation, and decrease a water body’s ability to dilute and assimilate pollutants from wastewater discharges.

Problems with drinking water and industrial equipment at power plants along the river during low flows in the fall of 2008 and the death of Dunkard Creek in 2009 put a spotlight on high levels of dissolved solids in the Mon River between northern West Virginia and southeastern Pennsylvania.

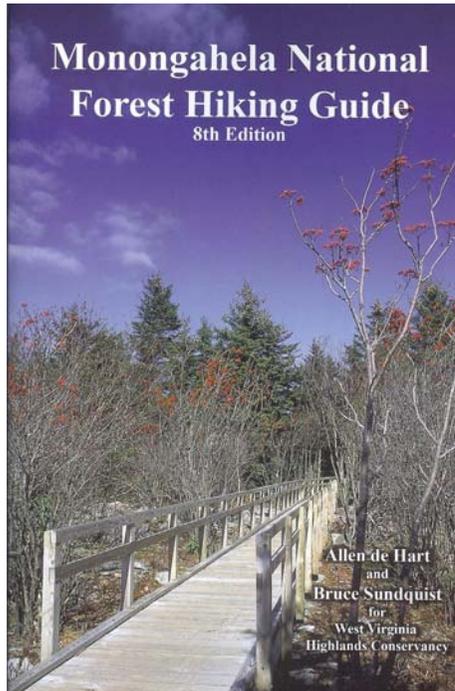
Partnering with American Rivers and the West Virginia Highlands Conservancy on this listing are the Pennsylvania based Center for Coalfield Justice and the West Virginia Rivers Coalition.

“Residents, landscapes, and waterways of the Monongahela River Basin and nearby areas are already suffering community disintegration and environmental destruction at the hands of longwall coal mining and other under-regulated fossil fuel industry practices. The futures of these regions may

**(Continued on the next page)**

## 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.

## ENDANGERED RIVERS (Continued from p. 12)

be grimmer still if our legislators and government agencies don't take immediate action to implement better environmental protections for Marcellus Shale development," said Emily Bloom with the Center for Coalfield Justice.

"This scale of this gas drilling boom has caught regulators by surprise, and the environmental problems associated with it are affecting millions of people. State and federal governments must move quickly to put regulatory safeguards in place that protect our resources for the benefit of all," said Shanda Minney with the West Virginia Rivers Coalition.

"Just as mountaintop removal coal mining is rightfully known as '*strip mining on steroids*', horizontal drilling and hydrofracing deep in the Marcellus Shale is surely '*gas drilling on steroids*'" said Cindy Rank of the WV Highlands Conservancy. "Enforceable standards are needed to control fresh water withdrawals, the use and disposal of chemically laced frac and flowback water, and the treatment and disposal of the brine and NORMs (naturally occurring radioactive material) in the produced water."

The listing urges people to support the states of West Virginia and Pennsylvania in efforts to revise regulations for natural gas extraction in the Marcellus Shale, particularly with regard to allowable concentrations of total dissolved solids in wastewater discharges. The Departments of Environmental Protection for both states must promptly issue and enact revised regulations to set wastewater

standards that adequately protect the aquatic life and drinking water supplies for communities within the Marcellus region.

The public is also encouraged to support federal legislation called the Fracturing Responsibility and Awareness of Chemicals (FRAC) Act of 2009 (S. 1215/H.R. 2766) introduced by Senator Robert Casey (D-PA), Senator Charles Schumer (D-NY), Representative Diana DeGette (D-CO), Representative Maurice Hinchey (D-NY), and Representative Jared Polis (D-CO). This legislation would repeal the exemption for hydraulic fracturing in the Safe Drinking Water Act and require disclosure of the chemicals used in hydraulic fracturing fluids. The FRAC Act must be passed by Congress to improve the protection of drinking water throughout the Marcellus Shale region.

For more see: [www.wvhighlands.org](http://www.wvhighlands.org)

### 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.



Bret Gasper and his dad Don take a break from planting trees to have some lunch. A beautiful sunny April day, over 100 volunteers enjoyed lunch provided by White Grass Ski Touring Center and Cafe.

As a US Fish & Wildlife Service Biologist, Ken Sturm has been spearheading the red spruce restoration efforts on the Canaan Valley National Wildlife Refuge. Evan Burks is a VISTA Volunteer, working with The Nature Conservancy, now in his second year coordinating the efforts of the Central Appalachian Spruce Restoration Initiative (CASRI). This year at our annual Spring planting event we had over 100 volunteers on Saturday and 80 on Sunday.



## THE PLANTING OF THE SPRUCE

Jack Tribble, Ecosystems Staff Officer for the USDA Forest Service on the Monongahela National Forest, not only plants trees, but is responsible for implementing the Land & Resource Management Plan for the Forest, which includes over 200,000 acres of lands being managed to restore the red spruce ecosystem.



April 10th, and 11th, nearly 50 WVU students traveled to Canaan Valley and helped plant over 11,000 Red Spruce seedlings on the Canaan Valley National Wildlife Refuge, Monongahela National Forest and Blackwater Falls State Park. The students included members from the WVU Sierra Student Coalition, the WVU Society of Environmental Professionals, the Recreation, Parks, and Tourism Professional Society, Campus Crusade for Christ and others. Also attending was the entire Conley-Zerbe family, led by its patriarch, Carter Zerbe. The event was the 6th annual spring tree planting that WVU Students have been involved in. Dr Jim Kotcon (right) is the Faculty Advisor for the Sierra Student Coalition and joins the group each year. We are also fortunate to get help annually from Davis & Elkins College Biology Students.



# United States Department of the Interior



## FISH AND WILDLIFE SERVICE

Canaan Valley National Wildlife Refuge  
HC 70 Box 200  
Davis, WV 26260  
304-866-3858  
304-866-3852 (FAX)

Dave Saville  
West Virginia Highlands Conservancy  
PO Box 569  
Morgantown, WV 26507

April 12, 2010

Dear Dave,

I am writing to thank you and the West Virginia Highlands Conservancy for helping organize and conduct our spring spruce planting on the Canaan Valley National Wildlife Refuge (NWR). This marks the 10<sup>th</sup> year of the partnership between the West Virginia Highlands Conservancy and the Canaan Valley NWR in the restoration and conservation of balsam fir and red spruce habitat. Our efforts this spring resulted in 8,000 red spruce trees planted in 56 acres of the Idleman's Run riparian corridor on the Canaan Valley NWR. This spring's project was another great display of the importance of groups working together under a common goal to achieve a conservation target.

This spring's project focused on increasing the spruce cover along the headwaters section of Idleman's Run, a native brook trout stream. Additionally, the planting will help increase the patch size of an existing stand of spruce on the refuge as well as provide an improved movement corridor between the valley floor and the high elevation plateau of Cabin Mountain. This will increase the overall habitat connectivity between the Refuge and the USFS Dolly Sods Wilderness Area, directly adjacent to refuge land. This habitat is especially important to a host of species considered rare and in need of conservation by the State as well as the federally threatened Cheat Mountain salamander.

Without the help of the West Virginia Highlands Conservancy and particularly the support that you personally provide, the ability for agencies and organizations to conduct red spruce and balsam fir restoration projects would be severely limited in this state. Your tireless hours of organizing volunteers, fund raising, cone collecting and facilitating the growth and distribution of native balsam fir and red spruce trees are the backbone of the conifer restoration program in West Virginia.

Through the invaluable support from partners like West Virginia Highlands Conservancy, West Virginia University, Davis & Elkins College and The Nature Conservancy, over **46,000** red spruce and balsam fir trees have been planted in high priority areas on the Canaan Valley National Wildlife Refuge in the past nine years. Additionally, through grant opportunities and volunteer events, we have helped to educate college and high school students on the importance of the red spruce ecosystem and the value of lending a hand in active conservation practice. Again I want to thank you for continuing to support red spruce and balsam fir conservation and of course helping out with this fall's red spruce planting efforts. Truly, without the support of the West Virginia Highlands Conservancy, the red spruce restoration efforts for the Allegheny Highlands would be greatly impaired. The refuge looks forward to the time when we can work together again.

Sincerely,

Ken Sturm  
Supervisory Wildlife Biologist  
Canaan Valley NWR



# COAL ASH AS “BENEFICIAL USE”

By Cindy Rank

Nearly twenty years ago WV Highlands Conservancy participated in discussions about and objected to the use of coal ash (CCW, Coal Combustion Waste, Coal Combustion Byproducts, etc) in backfill at an experimental mine at the inactive Tenmile mining complex along the Buckhannon River.

Though it's my understanding that the company continues to monitor discharges at that small site, the results of that monitoring are not publicly available. However, WV Department of Environmental Protection (WVDEP) routinely allows strip mines in and around the Monongahela River basin in the northern part of West Virginia to use coal ash from nearby power plants as part of the mine plan.

Readers of *the Highlands Voice* may remember previous articles that questioned the designation of coal ash as “beneficial” when used in backfilling potentially acid producing strip mines and about the lack of any long term water testing near these mines. – i.e. January 2009 (WHAT HAPPENS WHEN WE TAKE THE “DIRTY” OUT OF “CLEAN” COAL ?) and February 2010 (TENMILE AND TENNESSEE — COAL ASH COMPANIONS).

The February 2010 article mentioned the high concentration of mines utilizing coal ash as backfill amendments in three northern WV counties (Monongalia, Marion and Preston).

I also wrote that rather than the highly alkaline ash neutralizing the pyritic, acid producing rock in the backfill as we were promised at Tenmile, Jeff Stant of EIP (Environmental Integrity Project) cited research showing that the chemical interactions between the two types of materials actually create conditions ideal for leaching heavy metals from the ash. (A 2005 report we referred to in the January 2009 article also indicated high levels of several toxic metals were found down gradient in surface and groundwater at two sites in Preston County.)

Local citizens are currently objecting to two recent draft mine permits that will incorporate coal ash waste from the nearby Hatfield's Ferry, Fort Martin and the new Longview power plants.

Both mine permits are in the Monongahela River basin and both have the potential to add more total dissolved solids (TDS) to the already tenuous condition of the Mon River – especially during periods of low flow similar to those in the fall of 2008 when

TDS levels caused problems for industry along the river as well as for the hundreds of thousands of people who rely on the Mon for their drinking water.

Following are summaries of some of the issues that concern residents near the proposed mines. Thanks to John and Petra Wood of Cassville, WV for providing these statements. The Woods were among some one hundred plus citizens who attended and commented at a WVDEP public hearing May 26<sup>th</sup> about the New Hill West mine. (This is an extension of the mining one sees to the west of I-79 just south of the PA/WV line.)

## SUMMARY STATEMENT – SURFACE MINE APPLICATION (SMA) S200909 NEW HILL WEST

**Subject:** Submitted by Patriot Mining Company, Morgantown, WV to WV Department of Environmental Protection (WVDEP), Philippi, WV. [WV Code §22-3 and §38 CSR 02]

**Purpose:** Surface disturbance of approximately 225 acres for strip mining of the Waynesburg and Waynesburg A coal seams, near Cassville, WV. The reclamation plan proposes, as a beneficial use, to deposit 2.4 million tons (10,000 tons/acre) of coal combustion waste (CCW) in the backfill area.

**Objections:** **The cumulative impact of groundwater and surface-water pollutants that may be accumulating in the Monongahela River, which is the drinking-water source for hundreds of thousands of persons downstream of the proposed surface mine, has not been determined. There is no consideration of the long-term costs of these adverse impacts [WV Code §22-11].**

Cumulative adverse impacts of CCW-related pollutants must be ruled out before WVDEP approves new CCW permits. **The permit application contains evidence of metals leaching from nearby CCW disposal sites** [§46CSR 12, §47CSR 2, EPA 822-R-06-013-August]. Baseline Water Quality stations BWQ-C and USR-5 have high levels of iron, manganese, dissolved aluminum, selenium, and beryllium. The Pond 1 Plan and Profile diagram, states: “Area of existing AMD seepage to be collected to a point source and discharged to the pond.” This is contradictory to the assertion in section J-6

where the applicant stated that, “No known acidic or metal laden discharges are present at adjacent surface mines in the Waynesburg coal.” This application must state for how long, and why, AMD seepage has been allowed to occur at reclaimed sites.

**Overuse of CCW, beyond that needed for attainment of net neutralizing potential (NNP), is not a beneficial use. It is a violation of toxic waste management law [§33 CSR 01].** The applicant specifically stated that the overburden itself has enough alkalinity to neutralize the acidity from the coal seam, implicitly acknowledging that no CCW is actually needed. **WVDEP must reconsider the validity of adding toxic waste material to the overburden unless quantitative analyses of surface water and groundwater data provide scientific evidence that there are no adverse affects due to surface mining and reclamation that have already occurred or that may occur in this region.** A mechanism whereby adjacent mines with CCW disposal include water treatment facilities for recovery of toxic metals should be evaluated by WVDEP. No new SMA should be considered for approval until WVDEP can develop a long term, permanent solution to AMD and toxic waste runoff. It is illegal for WVDEP to approve this permit unless the application demonstrates that pollution discharges, with no treatment, will have a defined endpoint.

The applicant has a history of at least 38 violations for exceeding NPDES outfall effluent limits, 41 violations of blasting procedures, 8 violations for sediment-control failure, 22 violations for inadequate drainage control, and 15 violations for offsite damage to private property. **This application does not demonstrate how it will protect productive use and appraised value of private property, and lacks objective evidence to say that there will not be long-term human health and environmental effects.**

Many families would be affected by blasting and fugitive dust [§47CSR 17], as has been the case for most of the recent surface mines in this part of Monongalia County. This SMA identifies 413 structures within the 7/10-mile blasting zone; 14 homes are within 300 feet of the proposed mine; an additional 17 homes would be demolished. **The applicant's site-**

**(More on the next page)**

## MORE ON COAL ASH (Continued from p. 14)

specific blasting plan does not assure that the interests, of the public will be protected [WV Code §22-3-22a(e)].

### SUMMARY STATEMENT – SURFACE MINE APPLICATION (SMA) O200709 COAL REFUSE AREA NO. 4

**Subject:** Submitted by Coresco, LLC, Morgantown, WV to WV Department of Environmental Protection (WVDEP), Philippi, WV. [WV Code §22-3 and §38 CSR 02]

**Purpose:** Coresco, LLC is applying for permission to develop “Coal Refuse Area No. 4” for deposition of 2.85 million tons of coal refuse and coal combustion waste per year, for 25 to 30 years on 355 acres in Madsville, WV. The final reclaimed depth of the refuse pile will be approximately 500 feet. The applicant claims that this will be a beneficial use of coal combustion by-products even though, “...the proposed Refuse Disposal Area No. 4 will not include coal removal and will strictly be a refuse disposal site (all mining has been completed)... No mining is proposed under this application.”

**Objections:** West Virginia Code §22-3 applies to surface coal mining and reclamation. It does not regulate beneficial-use exemptions for depositing CCW in a refuse area. Furthermore, the applicant provides little to no data that would justify a beneficial use of coal combustion by-products (§33 CSR 01.5.5.b.4). The applicant presents no long-term monitoring data from the previous coal refuse area permits on the site. The limited data that are presented indicate that groundwater and surface water are polluted by acid mine drainage, total dissolved solids, and heavy metals. The applicant states that, “All surface and subsurface drainage will be routed to sediment control ponds for treatment prior to discharge to the receiving stream.” These underdrain systems are poorly depicted on a few cross-sectional design maps. The location of the underdrains must be shown on all sediment control drawings and on the Proposal and Drainage Map. The applicant states that no treatment facilities other than sediment control would be required. The applicant further states that “The area proposed for refuse placement has been extensively deep and surface mined. A high degree of fracturing exists due to mine subsidence; ...The proposed operation is also not anticipated to result in water supply contamination for the existing water sources used for domestic, agricultural, industrial or any other legitimate purpose.” On the contrary, a high degree of fracturing suggests that, without an impermeable liner system, leachate will enter the groundwater and that groundwater could move in any direction. The cumulative impact of groundwater and surface-water pollutants that may be accumulating in the Monongahela River, which is the drinking-water source for hundreds of thousands of persons downstream of the proposed refuse area, is not being monitored and would not be the responsibility of this applicant if this SMA was approved.

The West Virginia Department of Environmental Protection is charged, first and foremost, with protecting public and environmental health. Therefore, the proposed SMA must be denied, and the new Coresco, LLC facility must apply for a “coal combustion by-product facility” permit, subject to all requirements of the West Virginia Solid Waste Management Rule (§33 CSR 01).

## HUGH FINISHED UP (Continued from p. 2)

touting for years.”

Cindy Rank replied, “Absolutely. First conservation, then efficiency, then on-site and/or local (community/residential where possible, and especially at and for large installations/plants/buildings/complexes).”

These are e-mails, not carefully composed white papers, but they’ll give you a sense of the direction we’d like to go.

The problem, Cindy noted, is scale. “What if we can’t break away from our continued reliance on centralized energy production and distribution?” She pointed out that our objections to coal had to do with the negative impacts incurred during the whole life cycle of its use—and “we have to carefully consider the whole life cycle of whatever other source(s) are developed in its stead.”

Which brings me back to nuclear power. Together with Vince Collins, Peter wrote a very favorable review of William Tucker’s book, *Terrestrial Energy*. The title is meant to be reassuring: on the one hand, we have solar energy stored underground in fossil fuels; on the other hand, we have terrestrial energy stored underground in elements (uranium, thorium) that have been there since the earth was formed. A controlled release of the energy stored in the nucleus of a uranium atom is way more powerful than a release of the energy stored in coal or petroleum.

The energy available from sources we think of as renewables, such as wind, solar, and hydro, is so much more dilute than even coal or petroleum that it’s unlikely to replace them at the current scale of power generation. Tucker deals with each alternative to clear the way for his pro-nuke argument—which is essentially another clearing operation: he thinks the only obstacles to nuclear power are our unreasonable fears.

Peter and Vince summarized them: “the terrorist problem, the nuclear accident problem, and the waste disposal problem.”

But something’s missing. Mindful of Cindy’s warning to consider the whole life cycle of any energy source, I wondered what the author had to say about the mining problem. Nothing at all, it turned out. No index entry for “mining,” and no sub-heading under “uranium,” either.

Tucker promotes the French, who get 80% of their electricity from nuclear power, as the model we should follow. They have “solved” their waste disposal problem by recycling nearly all the spent uranium. Is that the solution to the mining problem as well? Jacques Besnainou, vice-president for disposal and recycling for Areva, the French nuclear power company, likes to call spent fuel “the new uranium mines,” but he doesn’t claim they’ll replace the old ones. He told Tucker, “We’ve cut our need for uranium 30% by reprocessing.”

The French have closed their last uranium mine. Now they get it from Niger, a former colony. Radiation poisoning of workers and contamination of groundwater are a growing scandal there. Our country is very slowly and expensively dealing with the same problems left over from mining in the Southwest.

Tucker wants to persuade us that nuclear power is cheap, safe, reliable—and clean. But his silence on the mining problem is too much like what we don’t hear in all the bombast about “clean coal.”

... and a grand time was had by all ...

## SPRING REVIEW THANK YOU

By Cindy Rank

***Many thanks to all who helped organize and participated in Spring Review at Tygart Lake State Park !!***

It was a busy, tightly programmed weekend, but comments I heard lead me to believe it was well worth the exhausting schedule.

We could not have had such a full and fine weekend without the incredible TEAM team led by Beth Baldwin (Sandy, Linda, Josh and others) who hosted us for the weekend and filled our eyes and ears and minds with much to absorb.

I would be remiss were I not to give special thanks to our program folks who prepared and delivered thoughtful, entertaining and informative presentations....

- to Frank Jernejcic who started us off on the right foot Friday night with slides and stories about the Mon River, Dunkard Creek, Marcellus drilling, mining and water quality issues in the Mon.

- to Beth, Linda, Sandy and Josh for Saturday's noontime introduction to the challenging history of TEAM organizing and efforts these past several years

- to the Army Corps (I wasn't on the tour and don't know the guide's name) Tygart Dam Tour --- steps, steps and more steps, but great inside story for those who ventured down into the depths.....

- to Beth Little for her comprehensive overview of concerns associated with facing the Marcellus Shale, the need for huge amounts of water withdrawals and uncertain methods of treatment/discharge of wastewater ... and to Lewis Baker for a bonus presentation about Marcellus concerns for the Rural Water Association.

- to TEAM tour guides who led our caravan of cars over hill and dale that will be undermined when ICG begins to longwall mine the area. They occasionally had to block traffic and herd stragglers who might otherwise have been lost along the way to dinner in Grafton.

And thanks to the great Saturday evening panel:

- for the *Subsided Ground – Fallen Futures* documentary that cast a sobering shadow over our earlier view of neat homes and farms and fields and spring fed watering troughs that are likely to experience the same harms that have been foisted on residents not many miles

to the north where longwall mining is leaving its indelible mark on south eastern PA.

- to friends from PA (Cassie McCrea of the Center for Coalfield Justice and Aimee Erickson with Citizens Coal Coalition) who affirmed and expanded on all that the film documented.

- to Beth Baldwin along with Martin Christ (Friends of Deckers Creek) and Evan Hansen (Downstream Strategies) who led the packed house through the history of community organizing efforts, water monitoring and administrative appeals to the WV Surface Mine Board.

- And to T Mitchell Bell for his patience waiting for us to wrap up the program ... and especially for his heartfelt performance for those awake enough to stay around for his many fine tunes.

Food we had a-plenty

- thanks to Valerie and the Blue Moon at Tygart Lake State Park,  
- and especially thanks to Mary Kay Stover at Grafton 1,2,3 who graciously hosted our Saturday night gathering making room for the hordes who feasted on her great lasagna dinner and homemade desserts while seated on both the main floor of the coffee house and the newly completed second floor balcony level. ... With the Four Corners Restaurant gone for good, I highly recommend a stop at Grafton 1,2,3 for anyone visiting or just passing through Grafton. YUM !!

It was gratifying to see new faces intermixed with the more familiar ... and to have so many from Save the Tygart (a group supporting TEAM from day one) join us Saturday evening. We hope their group and the local and state political folks who were also with us for dinner Saturday will help TEAM keep the pressure on the state regulators and the coal company to do right by everyone who lives over the planned mine area than spans some 6,000 acres south of Grafton and west to where it practically butts up against Tygart Lake.

THANKS TO ALL.



***The Dam at Tygart Lake Photo by Jean Rodman***