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# The Highlands Voice

The Monthly Publication of the West Virginia Highlands Conservancy

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## COURT ORDERS FLYING SQUIRREL BACK ONTO ENDANGERED SPECIES LIST

By John McFerrin

The United States District Court for the District of Columbia has reversed a United States Forest Service decision and ordered that the Virginia Northern Flying Squirrel (*Glaucomys sabrinus fuscus* to its friends) be returned to the list of endangered species entitled to protection under the Endangered Species Act. The lawsuit to restore legal protection for the squirrel was filed by Friends of Blackwater, the Wilderness Society, The Center for Biological Diversity, Wild South, and the Southern Appalachian Forest Coalition on November 12, 2009, and was argued in November of 2010.

The U.S. Fish and Wildlife Service first placed the West Virginia northern flying squirrel on the endangered species list as an endangered species on July 1, 1985. At the time, the threats identified included: species rarity; habitat loss; human disturbance; and competition with, and transfer of, a lethal parasite from the more common southern flying squirrel.

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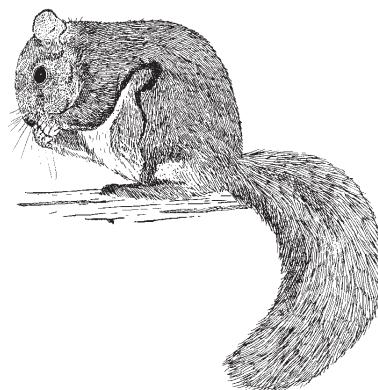
In 1990, the Fish and Wildlife Service did a recovery plan covering both the West Virginia northern flying squirrel. The recovery plan is a series of steps that the agency is supposed to take to help the species recover

be moved to the less protective "threatened" listing. If things continued to go well, then it would be removed from Endangered Species Act protection altogether.

The historic range of the Squirrel is believed to correspond roughly to the distribution of old-growth red spruce and northern hardwood forests that existed prior to the extensive logging and accompanying fires that occurred at the turn of the 20th century in the Allegheny Highlands, a section of the Appalachian Mountains extending into West Virginia and Virginia. This historic range encompassed an estimated 500,000 to 600,000 acres of old-growth red spruce forests.

This habitat was important in both the decision to put the squirrel on the list and in the recovery plan. It got on the endangered species list in part because its original habitat had changed so that it was restricted

(More on p. 7)



to the point that it can safely be taken off the endangered species list. The recovery plan included plans for a staged withdrawal of Endangered Species Act protection. If things were going well, then the squirrel would first

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## Disasters

The earthquake and tsunami in northern Japan, and the ensuing failure of a nuclear power plant, have gripped our attention and wrung our hearts. For some who have had experience of disasters, it brought back memories and fears. It may also remind us of a paradox familiar to West Virginians: the ongoing or chronic disaster.

Twenty-five years ago last fall, Hurricane Juan stumbled out of the Gulf of Mexico and stalled against the Allegheny Mountains. Rain fell for five days. Streams swelled over their banks. On November 4, ten inches fell, and the mountains let loose.

The Flood of 1985 swept broad swaths through West Virginia's northern mountains. County seats such as Parsons, Franklin and Petersburg were hard hit. Along the North Fork of the Potomac, in Pendleton and Grant Counties, a two-mile wide valley was submerged in minutes. Fifty people died in the state.

Mike Meador was then executive director of Woodlands Institute (now The Mountain Institute) on Spruce Mountain. He and his wife Rhoda enlisted in flood recovery work in the North Fork valley. The sequence he described to me was typical for such events in this country and other countries with well-developed economies.

First, the National Guard arrived, by truck where roads were passable, by helicopter where they were not. They distributed food, blankets, and medical supplies, relying on anyone who showed up to help. Local people who were able began to assess conditions in their neighborhoods and contact others doing the same. Lists of needs and questions were developed. Networking became more formal when the Federal Emergency Management Agency came in. Both FEMA and private relief organizations, such as the Mennonites, wanted to deal with representatives of whole communities.

At that stage, Mike found free-for-the-fixing office space for a North Fork Flood Recovery Center. A local printer donated stationery. Publicity triggered more donations: cash, clothing, tools, furniture, building supplies, and even cars. The Center advanced help to more than two hundred fifty families who had many months to wait for their federal disaster checks. Just as important, its staff was able to answer questions, make suggestions, arbitrate disputes, pass on news, and listen, listen, as the stories poured out.

Mike remembered the spirit of that time among the volunteers, including some who'd had total losses of their own: "It was exciting to see things happen. Excitement generates energy. Energy should be used."

Positive effects of a disaster flow to those strong personalities who are able to help themselves and others. They make new connections, develop new skills, overcome myriad obstacles. They can see the bigger picture and identify with the community. They resist the natural tendency to blame and complain.

Others may be too hard hit to recover, or for a long time teeter on the edge. One farmer Mike knew, who had lost his house, refused to move to the FEMA group trailer site near Seneca Rocks. FEMA would not place a trailer on his land. Eventually, Church of the Brethren volunteers from out of state built him a new house with the Flood Recovery Center's help. Would he feel powerless, helpless, but

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# VICTORY IN ANOTHER SELENIUM CHALLENGE

By Cindy Rank

On March 31, 2011 Judge Robert Chambers of the U.S. District Court for the Southern District of West Virginia ruled that several mines operated by Massey Energy and Arch Coal have been releasing illegally high levels of toxic selenium into local waterways in West Virginia, violating clean water and mining laws.

Fresh from attending the annual Mine Drainage Symposium in Morgantown WV I was culling my email when the announcement arrived in my inbox.

Citizen groups are frequently criticized for not working WITH the agencies to resolve issues with mine permits and operations, and I certainly heard that sentiment repeated on several occasions during the mine drainage symposium – both implied in some of the presentations and directly in conversations with regulatory agency personnel.

But the delays and extensions and foot-dragging we've seen with regard to the Arch and Massey operations at issue in this litigation are examples of why we so often feel compelled to exercise our legal responsibility to file Citizens Suits in order to achieve some on-the-ground relief from polluting mining operations.

The pollution from mines operated by Massey subsidiaries Independence Coal Company and Jacks Branch Coal Company, as well as from mines operated by Arch subsidiaries Coal-Mac and Mingo Logan, represents just one part of a pattern of toxic selenium pollution from surface mines across Appalachia.

Selenium severely harms fish and other water life, causing reproductive failure, birth defects and damage to gills and internal organs. Selenium in some West Virginia streams has been linked

to fish deformities, producing fish with two eyes on one side of their heads. At very high levels, selenium can be toxic to people, causing hair and fingernail loss, kidney and liver damage, and damage to the nervous and circulatory systems.

The citizen enforcement action that gave rise to this recent decision by Judge Chambers was brought by WV Highlands Conservancy along with Ohio Valley Environmental Coalition, Coal River Mountain Watch and the West Virginia Sierra Club.

In this first step to resolve this particular litigation Judge Chambers determined that the companies are violating the Clean Water Act and Surface Mining Control and Reclamation Act. Additional proceedings will be scheduled after April 15, 2011 to determine actions the companies must take to prevent future violations, and to assess penalties for violations cited in the case.

As you may remember, in September 2010, in a case brought by our same groups against a different mine operator, Judge Chambers ordered Patriot Coal to treat selenium pollution at just one of its coal mines in southern West Virginia at an estimated cost of \$45 million.

We're grateful for this decision and look forward to improvements at these and similar operations where selenium discharges continue to pollute the waters of our state, waters which we all depend on.

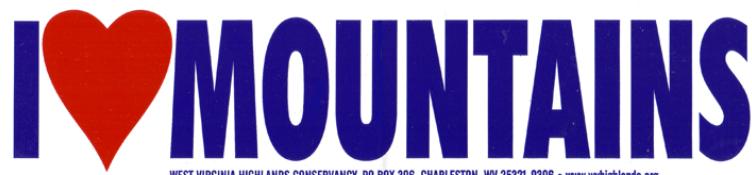
And we're ever so grateful to Joe Lovett and Derek Teaney of the Appalachian Center for the Economy and the Environment for representing us in these matters.

## 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.



WEST VIRGINIA HIGHLANDS CONSERVANCY, PO BOX 306, CHARLESTON, WV 25321-0306 • [www.wvhighlands.org](http://www.wvhighlands.org)

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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.

## LEGISLATIVE WRAP UP

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

At midnight on March 12, when the gavel came down ending the 2011 West Virginia Legislative Session, the Legislature had: failed to pass any bill regulating Marcellus shale drilling in the state; gutted the Water Quality Standards Rule; killed legislation ending the injection of coal slurry into underground mines; and simply refused to consider numerous proposals on energy efficiency and renewable energy that could have benefited every citizen of the state.

In large measure this was a session marked (or marred, depending on your perspective) by legislative leaders jockeying to become our next Governor.

But any way you look at it, this was a dismal session for the environment.

Here's a brief rundown:

**Marcellus shale legislation** was probably doomed to failure from the "get-go", when two different huge "comprehensive" bills were introduced, one developed by an Interim subcommittee of the Legislature, the other by the Department of Environmental Protection. Each of these bills took a couple of weeks to come up from bill drafting.

The House preferred the Interim subcommittee bill; the Senate preferred the DEP bill.

The Acting Governor took no position on either bill.

While both of these bills contained the basic water reporting provisions from last year's failed Marcellus legislation, they stopped way short of providing real protections for human health and the environment necessary due to the huge scope of the industrial activity resulting from Marcellus Shale drilling.

Late in the session the Senate passed a greatly pared down version of the DEP bill (SB 424). And with just three days left in the session, the House Judiciary Committee passed an amended version of the Senate bill and sent it to House Finance Committee. With just two days remaining in the session, the House Finance Committee passed the amended version and sent it to the full House.

And that's where the bill died. The Speaker and the House Rules Committee never put the bill on the House Calendar for a vote. (**Editor's note: For more about the angry words flying about as the House and Senate tried (more or less) to work this out, see the story on page 5**)

The end result is no new regulatory framework for the drilling of Marcellus shale gas wells, and no new funding for DEP to hire the inspectors necessary to oversee this activity.

As for the **Water Quality Standards Rule** (47CSR2), the Legislature passed SB 121 that contained a gutted version of the rule as originally proposed by DEP. Earlier in the session the Senate Natural Resources Committee approved amendments to the rule that removed "excessive water withdrawals" from the rule's list of activities not allowed in state waters, removed a new standard for phosphorous to prevent algae blooms in the Greenbrier River, and removed a new standard for "total dissolved solids" which would have provided cleaner drinking water for most West Virginians.

The Senate Judiciary Committee declined to restore the proposed standards, and even added an amendment that weakens the method for determining water quality standards for carcinogens for a section of the Ohio River.

An attempt to restore the original provisions of the rule failed in the House Judiciary Committee.

Industry lobbyists combined forces in opposition to the rule. And they won.

The "**Alternative Coal Slurry Disposal Act**" also went down to defeat. The Judiciary Committees in both houses gutted the provisions of the bill, which had been recommended for passage by the Interim Judiciary Committee. This bill would have prohibited new permits for the underground injection of coal slurry and phased out existing coal slurry injection operations. The bill also would have provided a tax credit to industry to assist in the transition to new technology to reduce and/or eliminate coal slurry.

Both versions of the bill died in the respective House and Senate Finance Committees.

On a positive note, the Legislature did pass (and the Governor has signed) an amended version of SB 245, to provide a funding mechanism for upgrading wastewater treatment plants to reduce nutrient pollution in the Chesapeake Bay watershed. The amended version includes upgrades to treatment plants in the Greenbrier River watershed.

It should be noted, however, that this bill would never have been considered were it not for pressure from the federal "Chesapeake Bay Restoration Initiative."

Finally, I want to acknowledge the Herculean effort put forth by the other members of the WVEC lobby team this session in my absence on the ground. While I am mending and should be back on my feet soon, I just cannot say enough about the extra effort put forth by Denise Poole, John Christensen and Leslee McCarty. I owe them, big time.

And WVEC is forever grateful for the continued critical support of the West Virginia Highlands Conservancy.

### 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.

### 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.

# BILL TO REGULATE MARCELLUS SHALE DRILLING DIES

By Phil Kabler and Alison Knezevich

Angry words flew at the Capitol on Saturday night as lawmakers ended their 60-day session without passing anything to regulate Marcellus Shale natural gas drilling.

Members of the House of Delegates and Senate blamed each other for the demise of legislation (SB424) that would have addressed environmental regulations, permit fees, protections for property owners and other issues related to development of one of the world's richest natural gas basins.

Senators had passed the bill earlier this month, but the House -- which favored stronger protections for the environment and landowners -- never voted on it. Among other things, the two sides disagreed on notice to property owners, the distances operators can drill from West Virginians' homes and water wells, and the hiring of gas well inspectors.

In a floor speech, Sen. Mike Green, D-Raleigh, called the House's failure to act on the bill "shameful."

"It makes us wonder what the commitment of the House leadership was to get this job done," said Green, who plans to ask state Senate President Earl Ray Tomblin, who is acting as governor, to adjust his budget proposal so the state can hire more inspectors.

But House Judiciary Chairman Tim Miley, D-Harrison, said the Senate was not willing to compromise.

In a meeting Saturday afternoon, Miley said, Green "resorted to talking about how we can't do anything because it's too late, and expressed no interest in trying to work out the differences."

Later in the day, Senate staff again told delegates that the Senate wouldn't budge, Miley said.

"I'm embarrassed for him, and it's a shameless attempt to try to cast dispersion on the House of Delegates," Miley said of Green's floor speech.

Lawmakers signed off on a proposal (SB465) to give tax breaks to the natural gas and manufacturing industries in hopes of luring a facility that converts ethane -- a natural gas byproduct -- into ethylene, which is used by chemical manufacturers and is a key ingredient in the plastics industry.

Delegate Bonnie Brown, D-Kanawha, questioned why legislators would approve these incentives without completing Marcellus regulation proposals.

"So we're just giving them a tax break before we even regulate the industry?" she asked.

Late Saturday night, Delegate Mike Manypenny, a Taylor County Democrat who has pushed for stronger drilling regulations, was collecting signatures from colleagues for a letter to the state Department of Environmental Protection. He wants the agency to use emergency powers to issue a moratorium on new Marcellus drilling permits.

Some lawmakers believe there could now be a special session called to craft Marcellus regulations.

DEP Secretary Randy Huffman said he is confident his agency will be able to regulate the drilling without changes in the law, at least for now.

"We don't have a crisis in the short term," he said. As far as the legislation, "I think it was a lot to expect to get so many issues and so many interests dealt with adequately in such a short period of time."

Delegate Sam Cann, who works in the industry and is a former president of the Independent Oil and Gas Association of West Virginia, called the legislative process for the measure "a train wreck."

"I think they never really defined the problems they wanted to work on," said Cann, a Harrison County Democrat. "And all the interest groups thought they could get the whole boat."

Dave McMahon of the West Virginia Surface Owners' Rights Organization questioned why the bill languished in the final hours of the session Saturday.

Without new regulations, McMahon said, the state "should not be giving out any more permits than they can review and inspect."

**Note: This is an excerpt from a longer story that previously appeared in The Charleston Gazette.**

## SPRING REVIEW WEEKEND APRIL 16-17

Join us for Spring Review weekend April 16 – 17 in Canaan Valley and Elkins. Saturday will feature tree planting, trail work, and garden tips in Canaan Valley and food, music, and sustainability discussions at Davis and Elkins College. The West Virginia Highlands Conservancy's quarterly board meeting will take place on Sunday at Saranam Retreat Center in Montrose, north of Elkins.

Tree planters meet Saturday morning at 9:30 a.m. at the National Wildlife Refuge visitor center. Information on the Highlands Conservancy's continuing project of red spruce restoration is available at [restoreredspruce.org](http://restoreredspruce.org). You may also help with trail restoration, beginning at the same place at 1:00 p.m., and further vary your day with a presentation on native plants for your garden, beginning at 3:00. If you choose to stay in the Valley, there will be a presentation on the Arctic Wildlife Refuge beginning at 7:00. Some doughty souls will return for more tree planting on Sunday morning at 9:30.

Meanwhile, on the Davis and Elkins College campus, the annual Sustainability Fair will kick off Saturday afternoon at 4:00 p.m. on the porch of Halliehurst Mansion with many green businesses and vendors showing their stuff, beer and wine tasting, and live music. The amazing Sustainable Feast (\$20 donation) in Hallie begins at 6:00. Afterwards, there will be more live music and socializing in the Ice House, just down the hill. The Fair is co-sponsored by the Center for Sustainability Studies at D&E and Sustainable Living for West Virginia, a non-profit that has kept this fine effort going for more than ten years. More info at [www.sustainablelivingforwv.org](http://www.sustainablelivingforwv.org)

If you'd like to stay on campus, rooms are available at a reduced rate for fair attendees. Call (800) 624-3157.

If you'd like to attend the board meeting on Sunday, contact Hugh Rogers for directions: [hugh.rogers@gmail.com](mailto:hugh.rogers@gmail.com).

## Join Now !!!

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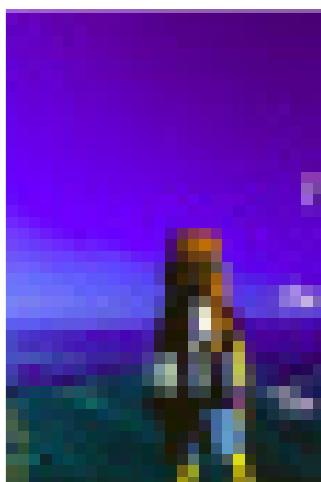
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Patron	\$ 250	\$ 500	\$ 500
Mountaineer	\$500	\$750	\$1000

**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 \$14.95, plus \$3.00 shipping, visit the Conservancy's website, [wvhightlands.org](http://wvhightlands.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 \$14.95 plus \$3.00 postage. We are offering it as a premium to new members. New members receive it free with membership.

Existing members may have one for \$10.00. Anyone who adds \$10 to the membership dues listed on the How to Join membership or on the renewal form will receive the history book. Just note on the membership form that you wish to take advantage of this offer.

### **LOOKING FOR PEOPLE TO TALK TO**

A group of folks from the communities along US 219 is looking for writers and people to interview for a project to update materials from the WPA Federal Writers' Project. Pocahontas Free Libraries is heading up this ambitious project, along with an Americorps VISTA named Roxy Todd who would like to talk with interested volunteers, storytellers, photographers, champions for the natural world, historians, etc.

The work will be published as "Traveling the Seneca Trail: A Guide to History, Culture and Natural Heritage along US 219 in West Virginia." This project will explore the historical, cultural and natural wonders along the US 219 route in West Virginia, focusing on five counties, Monroe, Greenbrier, Pocahontas and Randolph and Tucker.

The targeted audience for this publication is primarily tourists who want to learn more about the communities and attractions along the frequently traveled US 219, as well as local people (including middle school and high school students and their teachers) who want to learn more about the history of their own communities and neighboring towns.

We invite you to visit our wiki space or contact Roxy to find out more.

Roxy Todd, VISTA, Rebirth of Federal Writers' Project  
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# HIGHLANDS CONSERVANCY COMMENTS ON UPPER GREENBRIER NORTH PROJECT

The Public Lands Committee of the West Virginia Highlands Conservancy has commented on the draft Environmental Assessment for a timber management project on the Upper Greenbrier North section of the Monongahela National Forest has been released for public comment

The Upper Greenbrier North project area is located in the upper part of the Greenbrier River watershed, in Pocahontas County, West Virginia. The towns of Durbin, Frank, and Bartow are located at the southern end of the project area. The Pocahontas/Randolph County line, which follows the drainage divide between the Greenbrier watershed and the Laurel Fork and Dry Fork watersheds, forms the northern boundary of the project area. Shavers Mountain borders the area to the west, and the West Virginia/Virginia state line forms part of the eastern boundary.

For a more detailed description of the project, see the March, 2011, edition of *The Highlands Voice* or get a copy of the draft Environmental Assessment,, along with the Appendices and Maps, from the Monongahela National Forest website at <http://www.fs.fed.us/r9/mnf/>; click on "Land & Resources Management", then on "Projects", then on "View a Listing of All Projects", and then scroll down until you find "Upper Greenbrier North".

The proposed project involves some timber harvesting as well as timber regeneration activities. In general, the Highlands Conservancy opposed commercial timber harvest. Of the proposed alternatives, the WVHC supported Alternative 2.

The comments address the question of regeneration of the forest. The draft contains a proposal to build fences to keep deer away from the areas where the forest is regenerating. The comments point out that building fences treats the symptoms. If the real problem is too many deer, then the Forest Service should address the problem rather than just building fences. One possibility for addressing the overpopulation problem is the introduction of a large predator.

The comments urged caution in the use of herbicides. While the Highlands Conservancy supported the use of herbicides for specific, limited purposes such as control of invasive species, it did not support their wholesale application. On the contrary, the comments supported the use of herbicides only when absolutely necessary.

The comments also noted how the proposed plan was entirely deficient when it came to protecting the northern flying squirrel. The Forest Service has suggested that it would not be necessary to do anything to protect the squirrel because it could always flee from the timbering, spraying, etc. The WVHC comments pointed out that this was entirely inadequate.

The comments also suggested that the Forest Service do more to restore not only streams but riparian areas as well.

There is a related development that may make it necessary to begin the entire process of proposing a project, doing an environmental assessment, etc. The northern flying squirrel has recently been restored to the endangered species list. (See story, p. 1). Because so much of the area where the project is proposed is habitat for the squirrel, it may be necessary to start over so that the plan for the Upper Greenbrier North will contain protections befitting its restored status.

## MORE ON THE SQUIRREL (Continued from p. 1)

to isolated areas at high elevations separated by vast stretches of unsuitable habitat. Its remaining habitat was under pressure from human disturbance such as logging and development of skiing or other recreational activities.

In the recovery plan, the Fish and Wildlife Service agreed not to delist the squirrel until it had determined that the existence of the high elevation forests on which the squirrels depend is not itself threatened by introduced pests, such as the balsam wooly adelgid or by environmental pollutants, such as acid precipitation or toxic substance contamination.

In 2008 the Fish and Wildlife Service took the squirrel off the endangered species list. (In the jargon of the agency, it "de-listed" the squirrel.). At the time, it said that the recovery plan has been sufficiently successful that the squirrel could be removed from the list. The delisting meant that the squirrel would have to continue to survive as best it can without the special protections available to species which are on the endangered species list.

It kicking the squirrel off the list, the Fish and Wildlife Service did not contend that it had followed the recovery plan. The plan had specific goals and requirements for distribution of the squirrel, requirements that had not been met. Instead, it said that it had followed the general intent of the recovery plan and that the squirrel appeared to be holding its own.

The Court ruled that this was not sufficient. It is not sufficient to generally follow plan. The Endangered Species Act specifically calls for a plan setting out what the agency intends to do and how it will measure results. If it wants to change the plan or otherwise not follow the plan, the agency must announce that it is changing the plan and then follow a revised plan.

Neither is it sufficient, the Court ruled, for the species to hold its own. The goal of the Endangered Species Act is that species thrive, not just slow down on their road to extinction.

The Court left the door open for delisting the squirrel in the future. The Fish and Wildlife Service would have to properly revise the recovery plan, including public notice and comment on the revisions, and then follow the revised plan. If it did so and the plan was successful in restoring the squirrel, then the agency could delist the squirrel. For right now, however, the Virginia Northern Flying Squirrel remains on the endangered species list.



## 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.

# West Virginia Mountain Odyssey



## Outings, Education and Beyond ↗

**Saturday, April 9: 10 AM. Spark's Knob, Slaty Fork, WV. Red Spruce Ecosystem Restoration.** Join us for a day of volunteer work to help restore the red spruce ecosystem in Pocahontas County. We'll be planting tree seedlings, primarily red spruce. Dress for the weather, wear sturdy shoes or boots and bring work gloves and a water bottle. Snacks will be provided. Meet at the trailhead parking lot at the intersection of 219 and Mine Rd (State Route 219/1) at 10AM. For more information, contact Vince Weeks at [vaweks@fs.fed.us](mailto:vaweks@fs.fed.us).

**April 16 & 17, Red Spruce Ecosystem Restoration, Canaan Valley National Wildlife Refuge** Join us as we continue our efforts to restore the red spruce ecosystem in the West Virginia Highlands. This event will take place on the Canaan Valley National Wildlife Refuge. For more details about the outing see the story on the facing page. Come dressed for the weather, wear sturdy shoes or boots and bring gloves. For more information, visit [www.restoreredspruce.org](http://www.restoreredspruce.org), or contact Dave Saville at [daves@labyrinth.net](mailto:daves@labyrinth.net), or 304 692-8118.

**April 16-18, 2011, Wild Oak National Recreation Trail Backpack, George Washington National Forest, VA:** 25-27 mile strenuous loop. Lots of elevation change, vistas, pretty North River and nice campsites. Pre-registration required. Contact Mike Juskelis @ 410-439-4964 or [mjuskelis@cablespeed.com](mailto:mjuskelis@cablespeed.com).

**April 30-May 2, 2011** Backpack, Blacksburg Rd to Bluff City, VA: 30 mile Strenuous shuttle. Approximately 10 miles/day with two steep climbs. Visit Dismal Falls and 3-4 vistas. Pre-registration required. Contact Mike Juskelis @ 410-439-4964 or [mjuskelis@cablespeed.com](mailto:mjuskelis@cablespeed.com).

**May 14-15, 2011, Allegheny Trail-South Backpack/WV Rt92 to I-64, Monongahela National Forest, WV:** 28 mile moderate shuttle with a couple of steep climbs and a lot of ridge walking, some views. Pre-registration required. Contact Mike Juskelis @ 410-439-4964 or [mjuskelis@cablespeed.com](mailto:mjuskelis@cablespeed.com).

**June 11-14, 2011, Ohiopyle State Park Car Camping, PA:** 2 hikes: a 12 mile shuttle on the Laurel Highlands Trail and a 10 mile circuit in Bear Run Nature Reserve. If you wish to do your own thing there is a rail trail, canoeing and kayaking also available. Campsite reservation and pre-registration required. Contact Mike Juskelis @

410-439-4964 or [mjuskelis@cablespeed.com](mailto:mjuskelis@cablespeed.com).

**June 25-28, 2011, Mount Rogers National Recreation Area, VA;** Grindstone Car Camp: Two day hikes-Little Wilson Creek Wilderness and the Laurel Valley-Iron Mountain Loop. Both about 10 miles, moderate difficulty. Campsite reservation and pre-registration required. Contact Mike Juskelis @ 410-439-4964 or [mjuskelis@cablespeed.com](mailto:mjuskelis@cablespeed.com).

**July 9-10, 2011, Quebec Run Wild Area Backpack, Fuller SF, PA:** 15 mile moderate circuit with pretty streams and campsites shaded by Hemlocks. This trip is suitable for experienced hikers who want to try backpacking. Pre-registration required. Contact Mike Juskelis @ 410-439-4964 or [mjuskelis@cablespeed.com](mailto:mjuskelis@cablespeed.com).

**August 6-8, 2011, Dolly Sods Backpack/Rohrbaugh Plains to Bear Rocks, Monongahela National Forest, WV:** 18 mile moderate shuttle featuring vistas, waterfalls, streams, forest, open plains and bogs. Short first and third days. Pre-registration required. Contact Mike Juskelis @ 410-439-4964 or [mjuskelis@cablespeed.com](mailto:mjuskelis@cablespeed.com).

**September 3-5, 2011, Reddish Knob Backpack, George Washington National Forest, VA:** 20 mile Circuit featuring views from one of the highest peaks in VA at the halfway point. Daily mileage: 3/12/5 (Subject to change.). Pre-registration required. Contact Mike Juskelis @ 410-439-4964 or [mjuskelis@cablespeed.com](mailto:mjuskelis@cablespeed.com).

**October 29-November 1, 2011, Coopers Rock State Forest Car Camp, WV:** Two hikes: Scotts Run Loop and a hike through a virgin Hemlock Forest, both about 8 miles. Campsite reservation and pre-registration required. Contact Mike Juskelis @ 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

# CONSOL, CHLORIDES AND POSSIBLY A CALAMITY AVERTED

By Cindy Rank

## BIGGER PICTURE

Northern West Virginia is known for many things, but perhaps her best kept secret lies deep under the earth's surface where miles and miles of abandoned, mined out coal seams under more than a million acres gradually fill with water.

Not news to readers of the Highlands Voice who – at least since Richard diPietro's October 1996 article MINE POOLS – have known about the existence of the major deep mine pools that promise to bring heartbreak and strain the wallets of state agencies and residents for generations to come.

In other areas of the state similar water-filled deep mine workings reportedly serve as untreated source water for commercial trout rearing and potable water. In Northern WV something far different lurks beneath our feet.

I've visited the much touted trout ponds maintained by Mettiki Coal near the WV/MD state line, but fully understand that when mining is finished and the company is no longer treating the discharge from its deep mines, those ponds will require someone else to keep the water quality at levels favorable to trout or any other fish or aquatic life, i.e. to keep the money flowing to treat the fouled water that flows from the filled mines.

Not many years back WV highlands Conservancy challenged Mettiki's plans for expanding those mining operations, but to no avail. So it will be tens or twenties of years before others who follow will live and deal with the consequences of that mining.

Further west – around Fairmont, Morgantown and into Greene County PA and the northern panhandle counties of West Virginia we are already beginning to experience the harmful effects of acid or metal laden waters from deep underground pools that are following the paths of least resistance from their dark homes to the streambeds, water wells and other surface areas above.

The latest, greatest [read most disastrous] impact of this upwelling mass of water was the terrible killing of 30+ miles of Dunkard Creek that snakes its way back and forth between WV and PA north of Morgantown.

## RECENT ACTION

Problems in the Monongahela River watershed – including the scaling of home and industrial equipment and fouling of drinking water for thousands in the fall of 2008 and the notorious kill of fish and other aquatic life in Dunkard Creek in the fall of 2009 – from the ever expanding mine pools of northern West Virginia and southwestern Pennsylvania proved to be the last straw.

Unlawful chloride discharges from CONSOL were challenged by WV Highlands Conservancy and others in early 2010, and were well-known but woefully addressed by WV DEP and others for several years before that.

But finally, in 2011 federal and state agencies are actually taking action to at least attempt to resolve some of these unacceptable and harmful discharges.

On March 14, 2011 the federal Environmental Policy Agency (EPA) filed suit against Consolidation Coal Company (CONSOL) and Windsor Coal Company for violations of the Clean Water Act at four mines in the Mon River drainage and several tributaries that flow directly to the Ohio River.

Concurrent with filing the lawsuit, the Department of Justice (DOJ) also filed a proposed consent decree between EPA, West

Virginia DEP and CONSOL.... After 30 days of public comment that ends April 28, 2011, the Court will then approve or deny the agreement.

## THE CONSENT DECREE(S)

CONSOL agreed to pay a \$5.5 million in civil penalties for Clean Water Act violations at six of its mines in West Virginia – half to go to EPA, half to WV DEP.

In addition to paying the penalties, in order to come into compliance with the Clean Water Act Consol will spend an estimated \$200 million for construction of an advanced treatment system that is to be operational by May 30, 2013. The Consent Decree also sets out interim effluent limits for the various discharge points in the Monongahela River watershed and changes to several outlets that discharge into the Ohio River tributaries in the northern panhandle of West Virginia.

A complete set of documents (the complaint, consent decree, appendices, location maps, the Federal Register Notice with directions about commenting, etc.) can be found at the DOJ website: <http://www.justice.gov/enrd/5207.htm>.

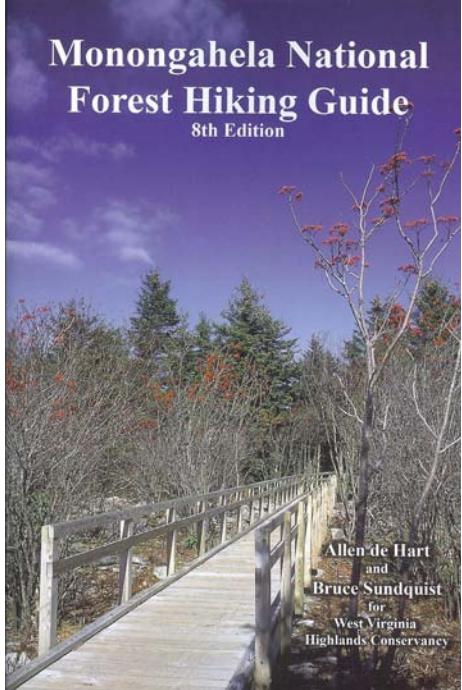
According to EPA's news release, this agreement "will substantially reduce pollution by keeping nearly 100 million pounds of total dissolved solids, including chloride, from reaching these waterways each year. The U.S. EPA complaint filed concurrently with the settlement agreement alleges that six Consol mines violated pollution discharge limits in their Clean Water Act permits hundreds of times over the last four years. The complaint alleges chronic exceedances of chloride discharge limits at the Blacksville No. 2, Loveridge, Robinson Run and Four States mines in the Monongahela watershed and the Shoemaker and Windsor mines discharging into tributaries of the Ohio River."



The complaint also alleges that discharges of high amounts of chloride and total dissolved solids from Consol's facilities at Blacksville No. 2 and Loveridge, contributed to severe impairment of aquatic life and conditions favorable for golden algae to thrive in Dunkard Creek. In September of 2009, a species of golden algae bloomed in Dunkard Creek killing thousands of fish, mussels and amphibians.

The advanced wastewater treatment plant using reverse osmosis technology will be built near Mannington, W.V., and is to remove high levels of chloride from mining wastewater. When completed, the plant will be the largest such treatment plant in Appalachia and capable of treating 3,500 gallons of mine water per minute, substantially reducing chloride and other salts in mining waters discharged to streams. This treatment will eliminate over 96 million pounds of total dissolved solids, including over 11 million

(Continued on p. 10)



## 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.

## MORE ABOUT CONSOL, CATASTROPHE, ETC. (Continued from p. 9)

pounds of chloride. High levels of chloride and dissolved solids can harm aquatic life, clog irrigation devices and carry toxic chemicals that impact drinking water.

### ADDITIONAL WEST VIRGINIA AGREEMENT

In addition, the State of West Virginia, EPA and CONSOL propose to enter into a Consent Decree for Natural Resources Game Fish and Aquatic Life Claims, which is meant to resolve a state claim alleged in the same pending enforcement action. In accordance with this separate Consent Decree CONSOL has agreed to make a payment of \$500,000 to the West Virginia Natural Resources Game Fish and Aquatic Life Fund for the loss of game fish, aquatic life, and other wildlife.

(See the WV DEP website for details about this agreement and comments:

[www.dep.wv.gov/pio/Documents/FINAL%20Consent%20Decree%20for%20NRD.pdf](http://www.dep.wv.gov/pio/Documents/FINAL%20Consent%20Decree%20for%20NRD.pdf))

## THE PASSING OF A FRIEND

We are sad to note the passing of long time *Charleston Gazette* reporter and columnist Skip Johnson.

Mr. Johnson had a long history of writing about the activities of the Conservancy. He wrote about the fight over prospecting for coal in Otter Creek in 1972. In 1977 he wrote a column calling the Stonewall Jackson Dam—which the Conservancy opposed—a “boondoggle.” He was there in 1971, raising questions about the routing of Corridor H, questions he would again raise in 1982 when the project reappeared (It appeared to have died; the February, 1982, issue of *The Highlands Voice* had declared in a headline, “Ding, Dong, the Wicked Road Is Dead).

It was Mr. Johnson who broke the story that Governor Moore was suppressing evidence relevant to the Davis Power Project because he wanted the project to be built. Mr. Johnson later reported the news that the project had been canceled. He was there to report on efforts by the Highlands Conservancy to protect Canaan Valley, efforts that ended in the establishment of a wildlife refuge there.

Throughout his career Mr. Johnson was a skilled reporter making known to the wider public the issues the mattered to the Highlands Conservancy. His passing is a loss indeed.

## HUGH-THE REST OF THE STORY (Continued from p. 2)

"just lucky"? Or would he feel uplifted, grateful and ready to rebuild his life? For some time he reeled between optimism, numbness, and despair.

The farmer's stubbornness was deeply rooted. Kai Erikson, an emeritus professor of sociology at Yale, has explained it: "In rural communities especially, there's a very strong feeling that the land belongs to you and you belong to it. And if you lose that, you're not just dislocated physically, but you start to lose a sense of who you are."

Erikson had his first experience with disaster nearly forty years ago here in West Virginia. Out of it came his classic study Everything in Its Path: Destruction of Community in the Buffalo Creek Flood. What he had learned in Logan County after that 1972 disaster would be true for the farming and fishing communities in Japan. The tsunami, like the collapse of a coal company impoundment, wiped the land bare.

In the 1985 flood, the fifty fatalities were spread over several counties. In 1972, in the densely-populated coal mining communities on Buffalo Creek, one hundred twenty-five people died in a narrow seventeen miles. Both calamities were violent, but the one in southern West Virginia was concentrated.

The other difference is that it was man-made. Those who have studied the effects of disasters agree that mental distress tends to persist longer after man-made disasters, like an oil spill or radiation leak, than after purely natural ones like a hurricane.

Steven Picou, another sociologist recently interviewed by the New York Times, said, "The script for a purely natural disaster is impact, then rescue and inventory, then recovery. But with technological crises like these nuclear leaks it can go quickly from impact, to rescue, straight to blame, and often for good reason. ...

[T]he story line is contested, there's no clear-cut resolution, you never have agreement on what exactly happened."

The point I want to make here is that people affected by the disaster of mountaintop removal mining have two strikes against them. First, the destruction of the land is permanent, irreversible; losing the mountains, they have lost a part of themselves. Second, the destruction is not only man-made, but part of the community aggressively collaborates in it. The "story line" is even more contested than it was on Buffalo Creek. Communities that once felt like one big family are torn apart.

The dictionary definition of disaster presumes a sudden event. In his book on Buffalo Creek, Erikson explained how an ongoing condition may be regarded as a disaster. "Instead of classifying a condition as a trauma because it was induced by a disaster, we would classify an event as a disaster if it had the property of bringing about traumatic reactions." His examples included war, plague, famine, and *spoilage of natural resources*. In such situations, "The person is unable to mobilize his normal defenses against the threat, sometimes because he has elected consciously or unconsciously to ignore it, sometimes because he has been misinformed about it, and sometimes because he cannot do anything to avoid it in any case."

I remember the volunteers on the North Fork disliked the implications of the term "flood victims." With characteristic black humor, they came up with an acronym: FWP's, for "formerly wet persons." Neither do we, now, want to get involved in victimology. But the undeniable chronic trauma that Erikson described, that was punctuated by the Buffalo Creek flood, has further escalated since the mining of coal began to level entire mountains. We ought to call it what it is. We ought to do everything we can for those affected. But our first duty is to stop the disaster.

## GROUPS FILE SUIT OVER SELENIUM POLLUTION

The West Virginia Highlands Conservancy, Ohio Valley Environmental Coalition, and the West Virginia Chapter, Sierra Club, have filed a lawsuit against ICG Eastern mining company in the United States District Court for the Northern District of West Virginia. The goal of the lawsuit is to end the discharge of toxic selenium into the waters of West Virginia from its Knight-Ink #1 mountaintop removal mine in Webster County, West Virginia.

Selenium, a naturally occurring element found in many rocks and soils, is an antioxidant needed in very small amounts for good health. In slightly larger amounts, selenium can be toxic.

Selenium impacts the reproductive cycle of many aquatic species, can impair the development and survival of fish, and can damage gills or other organs of aquatic organisms subject to prolonged exposure. In humans it can cause deadly kidney and liver damage, as well as damage to the nervous and circulatory systems.

Reports from the mine discharge show that the mine has been and continues to discharge water with toxic levels of selenium. The West Virginia Department of Environmental Protection has attempted to allow ICG to continue to discharge the toxic pollutant.

The United States Environmental Protection Agency has objected to West Virginia's attempt to allow ICG Eastern and other companies to continue their illegal pollution.

The suit was filed pursuant to the federal Clean Water Act. It allows citizens to file suit when, as here, there is ongoing pollution and the state officials are not taking any steps to enforce the law.

Cindy Rank, of the West Virginia Highlands Conservancy, said "If we don't stop these illegal and harmful discharges of selenium now, we have only ourselves to blame for the destruction of our valuable water resources and for the long term liabilities that will be passed along to our children, grandchildren and future citizens of the state."

## WHOLE LOT OF SHAKING NEAR RICHWOOD

Something is going on in and around the Monongahela National Forest east of Richwood. There are survey ribbons in the trees, trucks all around, etc.

What is going on is searching for natural gas using what is called seismic surveying. This involves drilling holes and setting off small explosions about twenty feet underground as well as using what are called "vibrator vehicles." It also involves using a device called a geophone. From the pattern of vibrations that results, the operators can determine the location of rock formations that might contain gas. Apparently it is more complicated than it was back in the day when "Jed was shooting at some food and up through the ground came a bubbling crude."

The total project will cover 12,940 acres. Part of this is on the Monongahela National Forest; most of it is not. Of the whole project, almost all of the minerals are privately owned. This includes the minerals on National Forest land.

To do the project, the company will make lines on a map about 1,300 feet apart across the tract. Then they will establish either a dynamite shot or something else to create a vibration every 330 feet along these lines. These are called the "source lines."

The company will also establish what are called receiving lines about every thousand feet, running perpendicular to the source lines. Every 165 feet along these lines there will be devices to detect and measure the vibrations when the dynamite charges are set off.

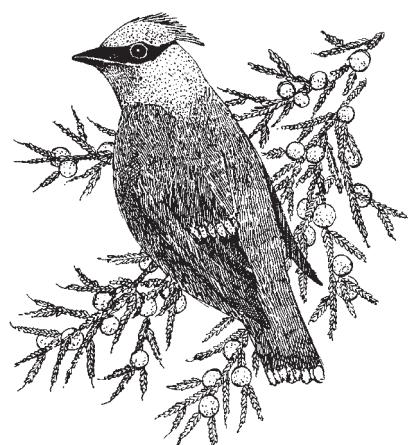
The dynamite charges are small, particularly in a state where mountains are being blown apart. They are designed to create vibrations, not move rock.

Getting all this set up and accomplished creates a lot of surface activity—vehicles everywhere, surveyors, helicopters, noise, etc.

Because part of the project is located on National Forest land, permission of the District Ranger was required. The District Ranger gave that permission in October, 2010.

As a part of the permission, the Ranger placed 34 conditions covering such things as limiting brush cutting, requiring cleanup, prohibiting fording streams with equipment, etc.

While the project creates a lot of activity and may disturb people who live in the area, the exploration itself is a relatively minor threat to the Forest. The more significant threat would come if the exploration finds something and a company seeks to drill in the Forest. The West Virginia Highlands Conservancy hopes to continue to monitor this situation should actual drilling be proposed.



## ALTERNATIVE (TO) ENERGY

My tiny bathtub submarine cereal box premium fueled by kitchen vinegar and baking powder made me feel like Neptune ruling Lilliput Sea

but fascination with the sub would suck heat out of bathwater until my blue lips weren't from the bends but from the cold

so I'd warm up with a vigorous towel rub.  
Now I think with Pascal how if we could be content to sit alone in our room we'd be energy secure.

No fracking chemical stew to turn our faucets into firey torches or to make our cows' hair fall out in patches from this corporate mange.

With God's word perched on his own tongue  
the prophet Isaiah cried *My people, I am your security.*  
in the Mideast deserts we're now held hostage to.

— Ed Zahniser, Shepherdstown

## US FOREST SERVICE – A NEW DIRECTION

By Don Gasper

Some time ago, Secretary of Agriculture Secretary Thomas Vilsack described a new direction for the US Forest Service. Don Gasper provides this brief of his remarks

"Restoration is a driving principle in forest policy." Problems confronting the Forest Service are many. One is firefighting costs which consume so much of the budget that forest management programs suffer. They have now obtained sufficient fire funding.

"The second problem is distrust between environmentalists, the US Forest Service, and the forest community. This has resulted in appeals and litigation. This has served as a useful back-stop against misplaced management decisions. Now the US Forest Service hopes to develop a shared vision based on collaboration in order to move forward. There's much to do {-} and quickly. Hopefully, less confrontation will be needed. now the US Forest Service charts the path forward by building trust among diverse stakeholders through collaboration and engagement....."

..."A new National Forest Plan is needed. The courts struck down the rules of 2005 and 2008, The planning rule now under development integrates restoration, climate, resilience, watershed protection, wildlife conservation, vibrant local communities and collaboration in management. We all appreciate clean water and forests. The well-being of our forest and of our lives are inseparable."

Don Gasper notes the environmental community has, all along, attempted to engage the USFS to develop a shared vision, "a desired future condition" based on collaboration. We hope also to move forward into the 20/20 Vision that we have for the Monongahela National Forest.

## OUR READERS WRITE

### VA GOVERNOR McDONNELL – COAL INDUSTRY STOOGE

Dear Editor

Republican VA Governor Bob McDonnell would ravage the Appalachian mountaintops in Virginia and West Virginia for his coal mining handlers, erase them from the horizon, destroy what's green, historic and vital, and depress nature's landscape lower than the lowest known valley, leaving behind a scarred, unusable pale-colored waste land, with acrid pools of poisonous water and toxic gas.

On February 1, 2011, Governor Bob announced at a coal "awareness" breakfast in Richmond, Virginia that he would join forces with former West Virginia's Governor Joe Manchin and fight the EPA's effort to prevent mountain top removal in West Virginia.

Dave Bourne, who lives in Purcellville, said, "I was born and raised in West Virginia, my family was a coal mining family and many still live there. My relatives attended the church where the families of the Sago mining disaster held funerals. Why doesn't Bob McDonnell mind his own business?"

Perhaps it's because Governor Bob wants to ruthlessly exploit Virginia in the same fashion as former Governor Manchin did West Virginia, and help the A&G Coal Corp tap into the 1,300 acre Ison Rock Ridge mine in Southwest Virginia, unconcerned about the communities nearby, that is, Andover, Appalachia and Inman.

Governor Bob once promised Virginia more jobs but the removal of Thomas Jefferson's mountains with machines will dramatically reduce the number of miners, hiring fewer machine operators to do the deed, cutting job benefits and labor costs, and guaranteeing greater profits to out-of-state mining companies. Mountain top removal despoils valuable resources forever, and impoverishes the communities. Families not only lose work, they are displaced from their homes. Afterwards, they can't dig wells in poisoned aquifers. Nor can they breathe the air.

EPA's published code orange and code red alerts inform us, at some distance from these mining sites, that the particle pollution is so severe that the 1.5 million area residents who have lung disease (asthma, emphysema or chronic bronchitis), or are children, older adults and active outdoor workers really should stay inside; it's as if the coal industry turned a key in the lock, and imprisoned the fragile, in their greed for profit.

Bourne observed that these political leaders "don't live downwind of the toxins they release into the air we breathe and they don't drink the water that's been polluted by the runoff. I know the people who do and the terrible conditions those miners work in and where their families live. What Bob McDonnell is doing will spread the misery right here into Virginia."

True enough if Governor Bob has his way and Ison Rock Ridge Mine dumps 11 million cubic yards of rock, dirt and poisonous metals in nine neighboring valleys in Southwest Virginia, and destroys and pollutes their streams.

Know Governor Bob by his corrupting contributors over the last five years including Cumberland Resources (\$500,000), Alpha Natural Resources (\$155,000), AT Massey Coal Co. (\$80,000), and Consolidated Energy Inc. (\$80,000).

Bourne said, "If McDonnell wanted to do something worthwhile; he'd stand up for those families in West Virginia and he'd stand up for the families of the Commonwealth. In McDonnell's world, however, it appears political contributions are more important than what's right."

Warmest regards,  
John P. Flannery II  
Leesburg, VA 20176

### ROGERS NOT SEEING WHOLE PICTURE

Dear Editor,

In his editorial "Slipping Away," Mr. Hugh Rogers discusses Richard Louv's book Last Child in the Woods and many of our observations that fewer youngsters are spending time outdoors. I agree nature and the outdoors must be relevant to their lives. And, yes, environmental education, access to parks, and career opportunities can make the outdoors relevant.

However, as an Independent Conservative who reads The Highlands Voice, I am somewhat offended by Mr. Roger's attitude or position that Republicans, many of which are Conservatives, are to blame for our youths' lack of outdoor activities. Interior and Agriculture Departments suffer from past Liberal Democratic spending. Conservatives and Independents are attempting to halt such spending. This nation is broke. We all must "tighten our belts."

Mr. Ron Reagan's criticism of his father is not relevant to Mr. Roger's arguments. Mr. Reagan's estrangement with his father was not mentioned in Mr. Louv's book as a cause of today's children not going outside.

One hindrance to taking advantage to the outdoors was not discussed in Mr. Roger's editorial: Lawyers, who often serve gratis for conservation and environmental organizations, have not been criticized for allowing outmoded tort laws which prevent youngsters from enjoying the outdoors. Why are "posted" signs today seen in fields where we played many years ago? Individuals and organizations fear being sued if children are hurt on their properties. Both Republican and Democrat Liberals must take responsibility for not correcting our tort laws. I don't remember Thomas Jefferson saying those who serve in Congress must exclusively represent the legal profession.

Sincerely,  
Carl M. Patsche  
Weirton, WV

#### 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 WV Highlands Conservancy, PO Box 306, Charleston, WV 25321.

#### 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.

# EASTERN COUGAR TO COME OFF ENDANGERED SPECIES LIST

By Helen McGinnis

It came as no surprise. On March 2nd, four years after it began a review of the status of the Eastern Cougar, the US Fish & Wildlife Service (FWS) announced it had determined that no breeding populations of cougars exist in its assumed former range. The subspecies had been listed since 1973 when the current version of the Endangered Species Act was enacted. Cougar Rewilding Foundation had already reached the same conclusion, leading to our decision to change our mission to cougar recovery, and our name from the "Eastern Cougar Foundation."

The 110-page report, prepared by Dr. Mark McCollough of the Fish and Wildlife Service Field Office in Orono, Maine, includes an exhaustive summary of reports and possible evidence of cougars in the assumed former range of the eastern cougar in the northeastern quarter of the United States and eastern Canada. Although some cougars have been documented in the past 100 years, no evidence of a breeding population was found.

McCollough speculates that the last eastern cougar was trapped and killed in January 1938 east of Little St. John Lake in west-central Maine near the Quebec border. Another cougar had been shot and skinned in 1932 near Mundleville, Kent County, New Brunswick, near the Atlantic coast. Until the last few decades, few specimens

were recorded and preserved, so we will never know for sure when the last cougar descended from cougars present when European settlement began was killed. We know about the 1938 and 1932 confirmations only because the late Bruce Wright went to great effort to locate them.

### **Did the Eastern Cougar Ever Exist?**

The FWS report notes that the eastern cougar subspecies, *Puma concolorcouguar*, is based on a handful of specimens from three states—New York, Pennsylvania, and West Virginia.

Edward A. Goldman assigned them to the subspecies in his 1946 classification of cougars, which recognized 30 subspecies, 14 of them in North America. The report notes that Goldman's approach

to taxonomy was outdated even when it was published.

In their study of the DNA of cougars throughout their range in North, Central and South America, Melanie Culver et al. (2000) determined that all North American cougars belong to a single subspecies. According to the rules of zoological nomenclature, this subspecies is *P. c. couguar*. Subsequent studies of cougar DNA and viruses in the western US have supported Culver's conclusions. Cougars have developed morphological adaptations throughout their range in North America. Classifying them as populations or subspecies remains a topic of considerable debate.

In its review of the eastern cougar the FWS reiterated its 2008 decision, when the last recovery plan for the Florida panther was released. They noted that not all cougar biologists agree with Culver's reclassification of North American cougars, and chose to continue to recognize separate subspecies on the continent.

### **Eastern Canadian Perspective**

At least three eastern Canadians biologists with a strong interest in cougars have commented on the report. They are much less concerned about the survival of genuine native cougars than the US Fish & Wildlife Service and state wildlife agencies.

Rick Rosatte, Senior Biologist with the Ontario Ministry of Natural Resources, has been searching for evidence in his province and has documented more than 30 recent confirmations dating from 1994 to 2010, most of them after 2004. They include tracks and scats identified by DNA analyses. Rosatte has submitted his report for publication. He concludes that cougars do exist but are extremely rare. The Ministry is considering developing a cougar recovery plan.

Marc Gauthier, a Quebec biologist who designed a pheromone lure and "hair pole" to snag hair from cougars rubbing against them, is responsible for several confirmations in Quebec and New Brunswick. On March 8th, Gauthier told McGinnis, "In my opinion, if we accept the hypothesis that the Eastern cougar never existed as a genetically distinct subspecies, we also have to admit that the cougar has not disappeared in the East."

Don McAlpine, the research curator of zoology at the New Brunswick Museum in Saint John, said he doesn't think there ever was a species of an eastern cougar. He does not believe that there is a population of cougars in New Brunswick. Three cougars have been confirmed in New Brunswick since 1990. Two were identified as cougar by DNA analysis of hair samples collected from Gauthier's hair poles in 2003: one was North American; the other, South American.

### **Cougar Rewilding Foundation's Response**

We issued a press release pointing out that without the return of cougars and wolves, our eastern forests face "ecological collapse" from the well-documented ravages of white-tail overbrowsing. The problem is especially acute in the Northeast and Mid-Atlantic.

Cougar Rewilding questions why no recovery plan for an endemic species was included in the review. Bald eagles, peregrine falcons and elk have been restored to the East from western sources, while non-native game species such as brown and rainbow trout



Photo by Roy Grant (Copyright B. S. Wright.)  
The only New Brunswick panther ever photographed. It was shot near Mundleville, Kent County, in March, 1932. The hide was thrown away before its value as a specimen was known; this photograph is all that remains for the record.

**(Continued on p. 15)**

# THE MOUNTAINTOP REMOVAL ROADSHOW REPORT

By Dave Cooper

**Editor's Note:** For several years, Dave Cooper has been roaming around Kentucky, West Virginia, and nearby states offering educational talks about mountaintop removal. The West Virginia Highlands Conservancy has from time to time helped Mr. Cooper with some of his expenses for the Mountaintop Removal Road Show. Here he offers some thoughts on the Show and his future plans. He made 53 appearances during the second half of 2010.

At the end of 2010, I decided to re-evaluate my work on the Mountaintop Removal Road Show. As you all know, I have been doing the MTR Road Show since 2003 - over 800 talks in 23 states. I've been working full-time or almost full-time on the MTR issue since the Martin County spill in 2000 and I've also been doing Mountain Justice organizing since 2004. This has all gotten to be way too much for me to do as a volunteer.

I've decided to cut back on the MTR Road Show at least for a while and so I am writing to encourage you and your organizations to support other individuals and organizations doing this MTR outreach and public education work.

We \*really\* need to have a dedicated crew of people doing this work in a coordinated way, and I hope one day there will be some dedicated funding for a MTR road show. Thanks so much to those of you who have supported me financially over the years, I'm very grateful.

I know that Larry Gibson and Danny Chiotos have started this with their "On The Road Again" program. Volunteer Eric

Blevins of MJS is also doing some talks in Florida at the moment. And App Voices and other groups have had staff doing many talks over the years.

So I'm concentrating right now on leading some tour groups of college students for a week in Appalachia. I have 30 students from three colleges (Michigan State, Georgetown University and Drew University) for a week in eastern Kentucky March 6-12, and we will be showing them MTR sites, going to the Coal Mining Museum in Benham, doing service work with ARRI and home weatherization, talking to local residents about mining and MTR and learning about Appalachian culture and mountain music. And having fun.

Then I have another group of 18 college students coming at the end of March. We also had a group of 10 students from University of Illinois-Chicago right before Christmas that was a lot of fun.

I'm also organizing a festival near Berea called The Whippoorwill Festival - Skills for Earth-Friendly Living, which will be 4 days of workshops on sustainable living skills like raising backyard chickens, worm composting, edible and medicinal plants etc. There will also be speakers and music in the evening. I think this will be a pretty big thing - all volunteer - we are just getting started but things are looking good. The festival will be at HomeGrown Hideaways and we expect about 200 people to attend. Stay tuned.

In April and May I'm planning to walk across Kentucky (Ashland to Paducah) on a listening tour. Wish me luck.

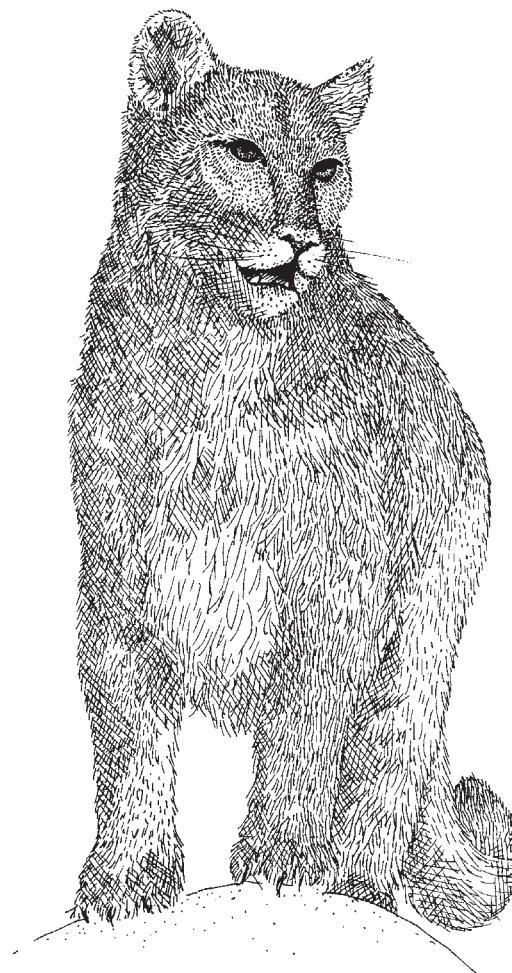
## THE REST OF THE STORY ON COUGARS

(Continued from p. 14)

and ring-necked pheasants enjoy the benefit of state-sponsored stocking programs. Maine, New Hampshire, Vermont, New York, Pennsylvania and West Virginia combined contain the same area and human density as California, which supports the largest cougar population of any western state, about 5,000 cats, and boasts the lowest ratio of conflicts —a testament to California's model management program. With more deer and cover in the East, there is no doubt that reintroduced cougars would thrive in many regions.

### What Next?

The next step will be an announcement and call for comments of the proposed delisting of the eastern cougar in the Federal Register. If the delisting is approved—and we have little doubt that it will—it will be up to individual states to decide if any wild cougars that now exist in their states or disperse from elsewhere will be protected, and if cougars should be reintroduced. While the political outlook for cougars in the East is not good, the Cougar Rewilding Foundation has begun preparing to campaign for a national cougar recovery plan spear-headed by the Fish and Wildlife Service throughout the two-thirds of the country where cougars remain endangered/extirpated



# JOIN THE “2011 GARLIC MUSTARD CHALLENGE!”

## KEEPING WEST VIRGINIA “WILD AND WEED FREE”

Would you like to become a steward of West Virginia’s beautiful landscape? The Monongahela National Forest, Appalachian Forest Heritage Area (AFHA), and Potomac Highland Cooperative Weed and Pest Management Area are offering outdoor enthusiasts an opportunity to make a difference in the forests across West Virginia. We are back with our third annual “Garlic Mustard Challenge.” The goals of this exciting event are to provide quality time outdoors that everyone can enjoy, offer the opportunity to learn about invasive species, and also to remove a staggering amount of garlic mustard - at least 20,000 pounds from our forests.

Garlic Mustard has gained much attention in recent years for its ability to rapidly invade wooded habitats from disturbed areas. Garlic mustard threatens the abundant wildflowers and diverse forest ecosystem of West Virginia. Many native wildflowers that we all enjoy seeing during the spring (such as spring beauty, wild ginger, bloodroot, Dutchman’s breeches, trilliums, and ramps) occur in the same habitat as garlic mustard. When garlic mustard is introduced to a new area, it out competes our native plants by aggressively monopolizing

Garlic Mustard is a particularly nasty, non-native invasive species that rapidly spreads into disturbed wooded habitats and is making its way throughout the beautiful and diverse forest ecosystem of West Virginia. Those favorite native wildflowers which we strain to spot nestled in early spring (such as spring beauty, ramps, Dutchman’s breeches, and trilliums) occur in the same habitat as garlic mustard. Garlic mustard can quickly take over an area pushing out our native plants by monopolizing light, moisture, nutrients, and soil. Many wildlife species that depend on spring native plants for their pollen, nectar, fruits, seeds, and roots are deprived of these important food sources when garlic mustard becomes established. And we are deprived of the vibrant display of beautiful spring wildflowers.

Originally introduced by European settlers for medicinal purposes and used in cooking, garlic mustard is now spreading throughout river floodplains, forests, roadsides, edges of woods, and along trails. That’s why we have teamed up to challenge you to do your part to keep West Virginia “Wild and Weed Free.” A number of garlic mustard pulls are being hosted throughout West Virginia and we need your help! You can get a group of friends together and join one of our organized pulls, or you can even pull from your own yard. Every bag counts. And, a trophy will be given to those that pull the most! We will even teach you how to cook the plants that we collect (there are many popular recipes).

Please join us for the “2011 Garlic Mustard Challenge” and together we can stop the spread of one of the most invasive species found in our state. The dates and locations are:

- Summit Lake – April 30<sup>th</sup>
- Ice Mountain Preserve – April 30th
- Greenbrier State Forest – May 7<sup>th</sup>
- Seneca Rocks Discovery Center – May 7<sup>th</sup>

- Sugar Grove Naval Base- May 13<sup>th</sup>
- Big Bend Campground- May 14<sup>th</sup>
- Fernow Experimental Forest – May 20th
- Greenbrier State Forest- May 21<sup>st</sup>
- Blue Bend Campground- May 21<sup>st</sup>- 22<sup>nd</sup>\*
- Pocahontas 4-H Camp- May 28<sup>th</sup>

This event is designed to be an enjoyable and memorable experience for all who participate, and we will have lots of great prizes thanks to our partners and sponsors: AFHA, C.J. Maggie’s Restaurant, Dick’s Sporting Goods, Elkins Cinema 7, Good Energy Foods, Highland Prospects, Kroger, Mainline Books, Steer Family Steakhouse, Theatre West Virginia, and White Grass. All of these pulls begin at 10:00 a.m. (contact [dpowell@tnc.org](mailto:dpowell@tnc.org) to learn more about the Ice Mountain pull) and more details will be available soon. Please check our website at: <http://www.phcwpma.org/GarlicMustard.cfm> to learn the latest information about the pulls and to report your bags. Or, contact Charissa Bujak at 304-636-1800 ext. 285. Take matters into your own hands and join us for this important event!

***Among the greatest threats to the native plants of West Virginia is the invasive garlic mustard. Join us this spring and help us reach our goal of removing 20,000 pounds of garlic mustard from public lands.***

