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# *The Highlands Voice*

The Monthly Publication of the West Virginia Highlands Conservancy

Volume 44 No. 12 December, 2011

## **FOLA COAL TO TREAT MINE POLLUTION IN TWENTYMILE CREEK**

By Cindy Rank

### **THE SETTLEMENT**

As the December 2011 issue of *the Highlands Voice* goes to press the West Virginia Highlands Conservancy (WVHC) and Sierra Club have filed with U.S. District Court in Charleston a proposed settlement with FOLA Coal Company which will require the company to clean up toxic runoff from a mountaintop removal coal mine in Nicholas County, West Virginia.

The two groups filed suit against FOLA in October 2010, alleging violations of the Clean Water Act and surface mining permits at the company's Surface Mine No. 3 on Boardtree Branch of Twentymile Creek of the Gauley River.

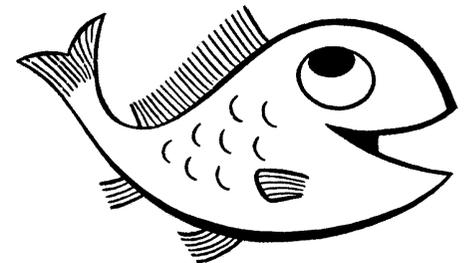
This settlement requires the company to end the pollution and repair the damage already done. To ensure that outcome a court-appointed independent aquatic ecologist will be watching every step of the way.

As written about in previous issues of the Voice, mountaintop removal coal mining and other forms of surface mining release dangerous pollutants that can destroy aquatic life in the streams that receive those discharges.

The WVHC and the Sierra Club brought suit after the U.S. Environmental Protection Agency's (EPA) monitoring results from Boardtree Branch showed that water quality in the stream below the mine is acutely and chronically toxic to aquatic life and contains levels of electrical conductivity (a measure of impurities in water) up to ten times the recommended EPA benchmark.

Jim Hecker, attorney with Public Justice who along with the Appalachian Center has represented WVHC in many of our mining complaints beginning with the Bragg v Robertson case in 1998, is quick to point out that this settlement marks the first time that such monitoring results have been used to establish violations of West Virginia's narrative water quality standards, which are designed to protect aquatic life.

The settlement requires FOLA to restore 3,000 feet of the Boardtree Branch waterway and to construct wetlands which are designed to remove sulfates from mining discharge.



**(More on p. 3)**

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## MESSAGE FROM THE PRESIDENT

By Cynthia D. Ellis

It was suggested that I introduce myself.

Hello, my name Cindy [Cynthia D.] Ellis. I'll use "Cynthia D." sometimes so Cindy Rank won't get blamed for something that I did.

I am a native West Virginian and have always lived here, except for 10 months in Louisiana, near Fort Polk. In recent years my husband and I have lived on some acres on a ridge above the Kanawha River. I enjoy gardening and hiking, and am a retired teacher. Since 1982 I have watched and studied birds. In that year I joined Brooks Bird Club. Through that group, I met long-time West Virginia Highlands Conservancy supporters, Mary Moore Rieffenberger and her husband Joe. Meanwhile, I was becoming more interested in not only observing birds, but also in conservation of them and of their habitats.

When Mary Moore wished to step down from her post on the board of the Highlands Conservancy in 2002, she suggested I might like to serve as liaison from the bird club. Although I knew of the Conservancy's reputation, this was my real beginning with Highlands, and especially with the WVHC Board of Directors. Thus began the heady experience of working with the knowledgeable and seasoned veteran volunteers who serve on the board.

One reason offered for why I should take a turn as president was that I am a West Virginian. This was posed as a positive thing. In the mountain state, we have a reputation for asking, "Where you from?" and for sometimes warming a bit more quickly to home folks. It isn't true that ONLY West Virginians ask it, still the question is often raised. But, have Highlands Conservancy presidents during our history been homegrown? Trying to decide if past presidents have been West Virginians gets a little tricky. Do we mean "native" or "resident"? It may be correct that about one half of my thirteen predecessors have fitted the "born here" label, although certainly all have had strong ties with our region and this usually included many years of residency. When queried about his roots, one said, "I was born elsewhere, but got here as soon as I could!"

My ties are strong also. I'm decidedly a proud West Virginian. You must like it too...or at least the idea of saving mountains and highlands here, since you are one of our valued members from West Virginia, 43 other states, and Great Britain and Canada. Yes, we do have members in Alaska and Hawaii. It would be great if you could recruit someone from Alabama, Arkansas, Idaho, Montana, North Dakota, or Rhode Island, so that we might have members in all 50 states.

Thanks in large part to Brooks Bird Club, I have had the opportunity to go to varied locations within West Virginia. Recent activities for the Highlands Conservancy have expanded my in-state travel list also. It has been exciting to sample the highlands and beyond. It occurred to me to list some highlights, and I had fun listing a few of the places I've been. Some non-mountainous areas insinuated themselves, but...here's my list:

I've been to---

- Adrian and Alpena
- Bartow and Blair and Big Ugly
- Crum and Comfort and Confidence
- Dunlow and Durbin
- Eleanor and Edray

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(Continued on p. 7)

## FOAL COAL HAS TO STOP POLLUTING

(Continued from p. 1)

The settlement also requires FOLA Coal to pay a total of \$225,000 up front.

\$200,000 is to be directed to the West Virginia Land Trust (WVLT) to support sustainable development and land use planning in the state. As part of this settlement WVLT will work in close partnership with the West Virginia College of Law's Land Use and Sustainable Development Clinic as well as various governmental and private conservation agencies and organizations to develop a Riparian Area Preservation Project that benefits watersheds affected by the discharges at issue in the litigation.

The remaining \$25,000 in civil penalties will be paid to the US Treasury.

Further, the settlement requires additional chemical, biological and toxicological monitoring into the future, overseen by an independent Special Master of Biology/Aquatic Ecology. If the mine continues to discharge pollutants above permit limits, FOLA Coal will have to install a treatment system to bring the mine's discharges into allowable limits and pay an additional \$500,000 to the West Virginia Land Trust.

The settlement was lodged with the U.S. District Court for the Southern District of West Virginia. The U.S. government will have an opportunity to review the settlement before its terms take effect.

[West Virginia Highlands Conservancy and Sierra Club were represented by Jim Hecker with Public Justice, and Joe Lovett and Derek Teaney with Appalachian Mountain Advocates.]

### WHERE TO FROM HERE

This is just the tip of the iceberg. We know that mines across Appalachia discharge runoff with the same high conductivity and toxicity to aquatic life as this FOLA mine, and we will keep pressing until the mines clean up their messes and our streams meet water quality standards.

For an easy to understand primer on the importance of conductivity as a measure of stream health I happily refer you to the new website and blog of the Appalachian Mountain Advocates (formerly the Appalachian Center for the Economy and the Environment) at: <http://www.appalmad.org/2011/11/10/explaining-conductivity/>

Written by Dan Radmacher (and duplicated here) is a summary of an interview with Dr. Margaret Palmer which is arguably the most concise and clear explanation of conductivity.

*Evidence that conductivity causes harm in Appalachian streams has only been discovered recently, thanks to a growing body of research demonstrating that conductivity levels are highly correlated with degradation of a stream's ability to support aquatic life.*

*Dr. Margaret Palmer, director of the National Socio-Environmental Synthesis Center and a professor at University of Maryland's Department of Entomology who has done much of the research on this issue, said the measure of a stream's specific conductivity – how well it conducts electricity – turns out to be a better way of measuring the impact of a wide array of pollutants common in streams below mine sites.*

*When coal is mined, rock and other material is exposed to air and water for the first time in hundreds of thousands, perhaps even millions, of years. That material is broken up and reacts with oxygen and water. Many natural elements dissolve and run off in the water.*

*This creates a toxic soup. Alone, many of these elements aren't at high enough concentrations to cause problems. "But the net effect of those together is what becomes dangerous," Palmer said.*

*Conductivity is the best way to determine when those net effects can impact life in an Appalachian stream impacted by mining. "It's a measure of the combined effect of all those constituents," Palmer said.*

*The alternative would be to run hundreds or thousands of experiments trying to determine which exact combinations of individual elements and in what quantity cause problems. But there are so many different possible combinations, that's simply not practical, or necessary.*

*"Measuring conductivity is an excellent way to measure the level of impacts in this setting," she said.*

*That's why the U.S. Environmental Protection Agency determined that conductivity above a certain level hurts aquatic life in Appalachian streams. Its [water quality guidance](#) [currently being challenged by the National Mining Association] is designed to help coal companies and state and federal regulators minimize the harmful effects of mountaintop removal mining.*

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*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.

# HIKING FOR FUN AND A GOOD CAUSE

Did you happen to see them on the website? A young couple vowed to hike the Pacific Crest Trail and seek donations for each mile traveled. They wanted to give the money to the West Virginia Highlands Conservancy. At the trip's end, they had been responsible for collecting \$1043.75!

A link from our website <http://www.wvhighlands.org/> to their blog <http://trackgarrettmayaonpct.blogspot.com> shows a more complete story of their 2650 mile trek. On the blog, a reader can relive the journey in either direction---end to beginning, or beginning to end. Stunning photographs document their journey, including one of very dusty legs commemorating the two thousand mile marker and another of very weary feet after an especially grueling day. To find out even more, I contacted Garrett and Maya Werner, to express gratitude, and to ask a few questions.

## 1. How did you two become acquainted with West Virginia and the West Virginia Highlands Conservancy?

I first became acquainted with West Virginia when I was in high school. I was active in a Boy Scout Venturing Crew that took trips to West Virginia hiking in several wilderness areas including: Otter Creek, Spruce Knob and Roaring Plains. To explore these areas, we used the guidebooks produced by the Conservancy. Maya first went to West Virginia in college when she guided a group of middle school girls on a trip through George Washington National Forest. When we met in 2006 we started taking regular trips to West Virginia to go climbing and backpacking. We've made it an annual tradition to go to Dolly Sods at least once each winter to go snowshoeing. We also continued to volunteer with the Boy Scout Venturing Crew which has become more environmentally conscious. We've hosted speakers from the Conservancy and included the issue of mountaintop removal in many educational events that the Crew organizes.



*The Werners at San Jacinto Peak*

## 2. What part of the work of the Highlands Conservancy is most important to you?

There is no one issue that is more important--everything is connected. Conservation starts in people thinking about the health and sustainability of their community which leads them to want to preserve the natural environment around them, thereby encouraging the preservation of wilderness areas for generations to come. Each effort the Conservancy takes part in, from fighting to stop Mountain Top Removal to producing guidebooks helps take us one step forward in making a difference. Coming back from out West with the extensive wild lands there really brings home the idea of important it is for us to protect lands that have yet to be developed.



*The Werners in Oregon*

## 3. What were the beginning and ending dates?

We started at the Mexico border on April 28th and reached the US border with Canada on September 28th.

## 4. You had some faithful followers and comment makers on your blog. Were they a mix of friends and strangers? It seemed that one [a little girl? named Cassie?] gave her "life savings." Can you tell any more about that comment?

That's kind of funny actually--Cassie is my sister's (Annie) one-year-old dog. She 'gets' all the change that Annie cleans up around the house. Cassie gets to determine how Annie will spend it. Apparently Cassie decided to donate to the Conservancy instead of getting new doggie toys. The commentary was from a mixture of friends, co-workers, and strangers--some whom we met along the trail.

## 5. Do you currently eat oatmeal cream pies? Did you come to crave one/some food items while hiking?

While we were on the trail, we really craved all forms of dairy products and breakfast foods, particularly biscuits and gravy. In addition to seeking out a breakfast place for the biscuits and gravy, I tried to get my hands on a milkshake every time I went to town. A successful trip to town included those two food items. We currently avoid eating anything that we had on the trail. Maya still can't stomach the thought of even eating peanut butter. I still love

(Keep hiking on the next page)

## MORE HIKING, MORE FUN (Continued from previous page)

peanut butter, but don't think I could eat a snickers or Clif bar any time soon.

### 6. Are you planning more challenging hikes soon?

We are currently planning on another big adventure: the adventure of parenthood! We found out we were expecting just before we finished the trail. We do have a long-term goal of hiking the complete Appalachian Trail in sections.

### 7. What else would you like readers of the WVHC "Voice" to know?

During our hike, we learned it was okay to make ourselves vulnerable and to ask for help. To accomplish such a big goal it was important to take it one step at a time with a lot of support. Those lessons can be applied everywhere--to the Conservancy's continued efforts too. Keep it up! Thanks to everyone at the West Virginia Highlands Conservancy for all your efforts that you continue to support and fight for; every step takes us closer to our goals.

*Note: West Virginia Highlands Conservancy President Cynthia D. Ellis conducted this interview.*



***The Werners finish the hike.***

### 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

## NATIONAL PARK SERVICE TO CONSIDER NEW PARK IN WEST VIRGINIA

By Paul J. Nyden

Next month, the National Park Service will begin conducting a survey to determine if some areas within the Monongahela National Forest should be made into a national park - something West Virginia doesn't currently have.

Sen. Joe Manchin, D-W.Va., requested the survey, which is scheduled to be completed by September 2012.

On Monday, Manchin said he "is pleased that the National Park Service is undertaking this survey to evaluate whether this beautiful part of our state should be designated as a national park."

In a recent news release, the NPS said the survey would "determine whether the historic, natural and recreational resources in the project area are 'likely' or 'unlikely' to meet Congressionally-required criteria for a national park.

Judy Rodd, executive director of the group Friends of Blackwater Canyon, said the proposed High Allegheny National Park would be formed from "lands in the northern area of the Monongahela National Forest, which is already federal land," as well as Blackwater Falls and Canaan Valley state parks.

"It would not cost anything," Rodd said.

The new park would offer visitors a unique ecology, the chance to see a wide variety of beautiful and rare birds, as well as historical battlefields and forts from the Civil War era, Rodd said. Lands in the proposed park would also include those improved during the Great Depression, under projects run by the Works Progress Administration and Civilian Conservation Corps.

The proposed new national park would include lands east of Elkins, north to the towns of Thomas and Davis, east to Petersburg, and south to Seneca Rocks and Franklin.

The park could also include well-known sites such as Spruce Knob, Seneca Rocks, Blackwater Falls, the Otter Creek Wilderness, Canaan Valley National Wildlife Refuge and Dolly Sods.

The headwaters of the Potomac, Monongahela and Greenbrier rivers would all be within the park. Recreational activities available to visitors could include hiking, biking, kayaking, skiing, horseback riding, rock climbing and spelunking.

Last year, T. Destry Jarvis, president of Outdoor Recreation and Park Services LLC, prepared a report given to Manchin that stated, "The High Allegheny Plateau, currently a portion of the Monongahela National Forest, is the best preserved and least 'developed' region of the state. ...

"The High Allegheny Plateau offers outstanding scenery, composed of nationally significant natural features and cultural sites, abundant wildlife and rare species of plants and animals -- as well as the hospitable, well-cared-for communities that offer the service amenities needed by the recreational visitors [and] tourists," Jarvis wrote.

"This would help put West Virginia on the map as a place to visit. It would be an economic engine for the highlands," said Rodd.

***Note: This article previously appeared in The Charleston Gazette. The Board of the West Virginia Highlands Conservancy listened to a presentation on this proposed park at its July, 2011, meeting. The presentation was for information only; the Board did not consider whether or not to support this idea and has never taken a formal position one way or the other.***

## Join Now !!!

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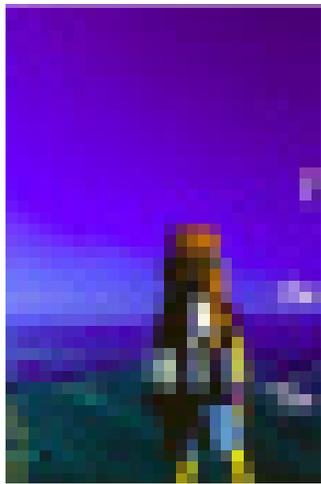
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Senior	\$ 15		
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Introductory			
Other	\$ 15		
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Associate	\$ 50	\$ 75	\$ 100
Sustaining	\$100	\$ 150	\$ 200
Patron	\$ 250	\$ 500	\$ 500
Mountaineer	\$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 \$14.95, 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 \$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.

### MOUNTAINTOP REMOVAL—UP CLOSE AND PERSONAL

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 Daniel Chiotos, (304)886-3389 – cell, (304)205-0920 – office.

### 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.

## THOUGHTS FROM THE PRESIDENT (Continued from p. 2)

- Frost and Flat Top
- Gem and Genoa
- Harpers Ferry and Heaters
- Isaban and Ireland
- Judy Gap and Job
- Kermit and Keyser
- Lansing and Liberty
- Minnehaha Springs and Mossy
- New Vrindaban and Norton
- Oak Hill and Onego
- Pliny and Pie
- Queen Shoals, and Quick
- Red Creek and Rupert
- Spanishburg and St. George
- Tornado and Tennerton
- Union
- Vienna
- Waiteville and Whitmer
- Yawkey
- Zenith

Of course, just visiting places does not give a person advocacy credentials. Here is what our Vice-president for State Affairs, Julian Martin, once wrote. "I don't have to go to a place to want it protected and preserved. I have been to Alaska only once and then not to the Arctic, but I sure don't want them drilling there." The Highlands Conservancy is glad to have so many members who live both here and elsewhere but have similar sentiments for our mountains. And while I'm proud of my list and my state and my familiarity with much that's here, I realize too birth and propinquity are not enough. So I'm enjoying continuing on-the-job training with the skilled folks on our board. They're helping me learn more about the issues and how to make efforts toward preserving all that's best about West Virginia... from Alpena to Zenith and in between. Our group bumper stickers proclaim---"I ♥ Mountains!" and many among us are helping others see how to team up energy with that emotion.

So, I say thank you, to the Rieffenbergers, for nudging me in this direction, and, to all--- nice to meet you!

[Notes---The roster of past presidents can be found on page 469 of Dave Elkinton's "Fighting to Protect the Highlands: The First Forty Years of the West Virginia Highlands Conservancy".

Please be aware that we have added the word "archives" to the left side of our website [www.wvhighlands.org](http://www.wvhighlands.org) to allow readers to search older editions of *The Voice* more easily. Copies starting from 1998 are shown and others will be added soon.]

## MINI-REVISION OF MONONGAHELA NATIONAL FOREST PLAN

There is a "revision" of sorts of the planning document that governs management of the Monongahela National Forest.

This is not the big kahuna of forest plan revisions. Every ten to twenty years the Forest Service does a master plan for how it will manage the Forest. It did this for the Monongahela National Forest in 1986 and again in 2006. This Plan sets the tone for forest management and lays out how the Forest Service will manage different parts of the Forest, what kind of activities will be allowed, etc. Writing or revising that Plan requires a long process with opportunities for public comment. Since the Forest Service did the most recent Plan in 2006, we are not due for such a major revision for several more years.

This is not to say that nothing is happening. The Forest Service recently made administrative revisions in the 2006 plan. It corrected some typographical errors, reorganized some things, etc. It did not change directives on how the Forest will be managed. Anyone who wishes to see a copy of the Plan as revised may contact David Edes at [dede@fs.fed.us](mailto:dede@fs.fed.us).

Even though the most recent "revision" of the Plan may not make substantive changes, there is the possibility that more significant changes to the Plan will take place next year. This is a result of a different development, unrelated to the Forest Service's recent "revision" of the Plan for the Monongahela National Forest.

The development is the change in the procedures that the Forest Service uses when making up a Plan for any National Forest. During 2011 the Forest Service published proposed new rules setting up the procedure it will follow when writing Plans for each individual National Forest. The Forest Service accepted comments, including some from the West Virginia Highlands Conservancy, on these new rules. They will become final in 2012.

When those rules become final, they will probably require some revision in the Plans that are in effect for all National Forests, including the Monongahela. It is unlikely that the new rules will trigger a wholesale rewriting of the 2006 Plan but there most likely will be changes. Those changes will be put out for public comment. We will have to see what changes are proposed and decide how to react.

*Note: Thanks to Don Gasper for bird dogging these changes and keeping us informed and on our toes.*

## 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 by mail; **long sleeve** is \$15. West Virginia residents add 6% sales tax. Send sizes wanted and check payable to West Virginia Highlands Conservancy ATTN: James Solley, WVHC, P.O. Box 306, Charleston, WV 25321-0306.

# COAL ASH AS FILL AND BACKFILL IN MINE SITES

By Petra and John Wood

*Note: A version of this article first appeared in the WV Sierra Club's November/December newsletter, MOUNTAIN STATE SIERRAN.*

Readers have heard about the massive inputs of coal combustion waste (aka fly ash) on minelands around Morgantown, WV. On ~3,500 acres in 3 watersheds, up to 10,000 tons per acre (~10 ft of ash/acre) have been added during reclamation as a supposed beneficial use to reduce acid mine drainage. There is abundant evidence, however, that it does not necessarily reduce AMD and at the same time reduces air quality and especially water quality because toxic metals and TDS (Total Dissolved Solids) leach from fly ash dumped in minefills.

Several new and expanded mine permits proposing to dump ash are in the works, including the New Hill West and Coresco permits.



**Mine complex ~3 mi in length visible from I-79 just north of Morgantown. Part of New Hill West permit area is in lower left of photo**

## STATUS OF NEW HILL WEST PERMIT

When the National Pollution Elimination Discharge System (NPDES) permit was approved for this 225 acre mine in 2010, Sierra Club and Appalachian Mountain Advocates (formerly the Appalachian Center for the Economy and the Environment) challenged the permit in an appeal before the WV Environmental Quality Board (EQB).

To prevent degradation of water quality in Scott's Run before the hearing could be held, a stay on the permit was requested and granted in November, 2010.

A four day EQB hearing in early December, 2010 featured expert witnesses who presented scientific evidence that high TDS, conductivity, and sulfates can impair aquatic life which is a violation of the Clean Water Act and of the WV Narrative Water Quality Standards (WQS). The WQS specifically state that NPDES Permit limits must ensure compliance against discharges of ... "materials in concentrations which are harmful ... to ... aquatic life" (47 C.S.R. § 2-3.2.e) or that cause "significant adverse impact to the ... biological components of aquatic ecosystems ..." (47 C.S.R. § 2-3.2.i).

In March 2011, the five member EQB unanimously found that DEP's issuance of the permit was unlawful, that they failed to include enforceable effluent limits sufficient to ensure protection of water quality standards, and that discharges from the New Hill West surface mine have the reasonable potential to cause or contribute to degraded water quality. The EQB remanded the permit back to DEP

to set appropriate and enforceable limits for conductivity, sulfate, total dissolved solids, manganese, and selenium.

But even though the EQB decision was based on scientific evidence and the law, the WVDEP and the mining company appealed the decision to Kanawha County circuit court. Interestingly, the circuit court did not actually make a ruling on this appeal. Instead, in late September 2011, Judge James Stucky remanded the case back to EQB with the following statement. "The EQB shall provide written supplemental findings detailing a reasoned and articulate decision in the Final Order. Additionally, these findings should include guidance to calculate threshold values for regulating conductivity, TDS, and sulfate."

In the meantime, the mining company filed an appeal to the EQB to lift the stay on the permit so that mining can commence. Additionally, their lawyers argue that because the company is losing

\$2 million a month in revenue that Sierra Club should have to post bond in this amount

(<http://blogs.wvgazette.com/coaltattoo/2011/10/11/judge-sends-patriot-permit-back-to-eqb/>).

At the time this article was written, the EQB had not made a final ruling on the stay or the bond and has asked the lawyers for all parties to provide input on how to proceed with judge Stucky's order. Apparently, this is an unusual ruling and the EQB is "feeling its way" on how to proceed. It does appear that the issuance of a valid NPDES permit for this mine will be delayed.

[Editorial/CLR update: As of mid-November EQB did lift the stay on the mining, but the basic permit issues await Board action with regard to further clarifications, guidance or thresholds values for conductivity, TDS and sulfate as ordered by Judge Stucky.

However, there has been an ironic – though perhaps not unexpected – twist. Just days before Thanksgiving newly elected Governor Tomblin removed two Board members who had expressed very strong opinions in the New Hill West case. ]

## STATUS OF CORESCO PERMIT SITES NEAR MAIDSVILLE, WV

Two permits are in play here.

One is an existing ~140 acre ash dump. An application for renewal of this permit is pending even though there is evidence that the site is degrading water quality and is contributing to air pollution problems. All of the white and gray material in the upper half of the photo included here is fly ash and coal waste (note the large dozer near center top of the ash pile).

A new 338 acre SMCRA mine permit application is pending even though the application specifically states that there will be NO coal mining. The application proposes to dump ~86 million tons of fly ash over 25-30 yrs which will result in an unlined and uncovered ash pile 500 ft thick. This site, if permitted, will simply be a way for area power plants to dump their waste for free rather than have to pay for

**(More on the next page)**

## MORE ABOUT COAL ASH (Continued from previous page)

liners and treatment of run-off that would keep toxic metals and total dissolved solids (TDS) out of our surface and ground water.

A public meeting with WV DEP took place on Monday, October 17 and was attended by 20 some citizens, delegates Barbara Fleischauer and Mike Manypenny, and several media. The overriding theme of comments from attendees was that these sites are fly ash dumps that degrade our environment, affect human health, and should not be permitted under SMCRA.

Earlier that day the Sierra Club, the West Virginia Highlands Conservancy and the Fort Martin Community Association filed notice of intent to sue Coresco and affiliated company and property owner Mepco for violations of the Clean Water Act and the Surface Mining Control and Reclamation Act.



**Coresco ash dump site**

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### ADDITIONAL INFORMATION ABOUT POSSIBLE CORESCO ACTION

Adapted from Public Justice press release issued October 17, 2011.

According to a new report from Downstream Strategies in Morgantown, WV coal combustion waste (CCW) and acid mine drainage (AMD) have seriously harmed aquatic life and aquatic ecosystems in a local stream, Crafts Run, which spans multiple miles and discharges into the Monongahela River.

The report's data shows elevated levels of dissolved solids, aluminum, iron and manganese in water samples collected from the stream.

High amounts of boron and selenium indicated CCW pollution specifically, and in certain places, the concentration of iron violated state surface water quality standards.

Self-monitoring data by Coresco LLC—the company that owns and runs the disposal sites adjacent to Crafts Run—showed that violations of state criteria have occurred in the past for dissolved aluminum, iron and pH, all indicators of AMD pollution.

Coresco is now asking the WVDEP to allow it to expand its disposal operations within the watershed.

The 46-page report by Downstream Strategies states that as a result of those revisions, Coresco could potentially place 2.8 million tons of CCW and refuse waste within the Crafts Run watershed each year.

After years of undemonstrated assumptions that dumping coal ash is a good thing, monitoring reports are finally showing that

there are indeed harmful impacts to waters downstream from mine and refuse sites. Expanding Coresco's current coal ash disposal practices will not only further pollute Crafts Run but will also add additional stress to the Monongahela River, a valuable resource for tens of thousands of people all the way to Pittsburgh, Pa.

The notice letter details the groups' position that Coresco must come into compliance with water quality standards. The letter was written to coincide with the WVDEP hearing concerning Area No. 4—the area into which Coresco is hoping to expand.

Public Justice and Appalachia Mountain Advocates plan to file a lawsuit on behalf of the Sierra Club, the West Virginia Highlands Conservancy and the Fort Martin Community Association if the streams are not cleaned up within sixty days.

The potential lawsuit would allege multiple violations of the Clean Water Act by both Coresco LLC and Mepco LLC. (All of the waste disposal areas in the Crafts Run watershed are operated by Coresco on Mepco property. Both companies are subsidiaries of a common corporate parent, Mepco Intermediary Holdings.)

The lawsuit would also claim violations of the Surface Mining Control and Reclamation Act (SMCRA) by Coresco solely, and would seek both civil penalties and injunctions compelling Coresco and Mepco to come into compliance

with the Clean Water Act, and Coresco with the SMCRA.

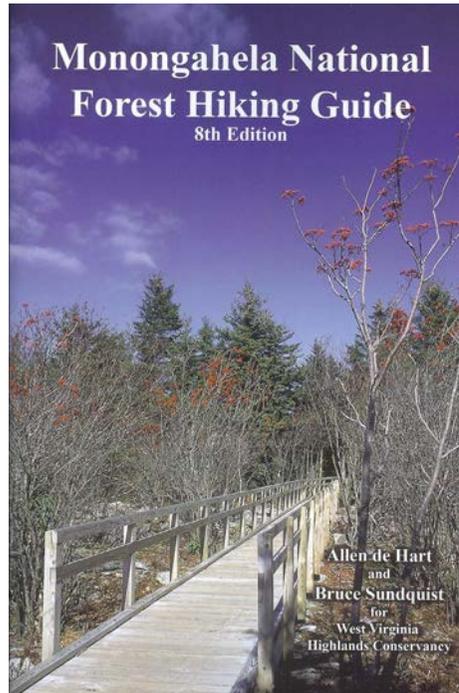
### HATS FOR SALE

We have West Virginia Highlands Conservancy baseball style caps for sale as well as I ♥ Mountains caps.

The WVHC cap is beige with green woven into the twill and the pre-curved visor is light green. The front of the cap has West Virginia Highlands Conservancy logo and the words West Virginia Highlands Conservancy on the front and I ♥ Mountains on the back. It is soft twill, unstructured, low profile, sewn eyelets, cloth strap with tri-glide buckle closure.

For the I ♥ Mountains caps, the colors are stone, black and red.. The front of the cap has I "HEART" MOUNTAINS. The heart is red. The red and black hats are soft twill, unstructured, low profile, sewn eyelets, cloth strap with tri-glide buckle closure. The stone has a stiff front crown with a velcro strap on the back. All hats have West Virginia Highlands Conservancy printed on the back. Cost is \$15 by mail. West Virginia residents add 6% tax. Make check payable to West Virginia Highlands Conservancy and send to James Solley, P.O. Box 306, Charleston, WV 25321-0306





## The Monongahela National Forest Hiking Guide

By Allen de Hart and Bruce Sundquist

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

Send \$14.95 plus \$3.00 shipping to:  
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.

## CHANGES ON THE ENVIRONMENTAL QUALITY BOARD

By Cindy Rank

Perhaps not surprising, but quite disappointing, newly elected WV Governor Earl Ray Tomblin took swift action just days before Thanksgiving to replace two valued members of the Environmental Quality Board (EQB).

The five-member EQB hears appeals from companies and citizens who object to water permits granted by WV Department of Environmental Protection.

While the terms of both Dr. Jim Van Gundy and Ted Armbrrecht had expired, that's rarely been cause for any governor to move quickly to appoint new board members. ... In fact, most - if not every - member of all three appeal boards (environmental quality, surface mine, and air) are serving well beyond the expiration date of their terms.

While I'm not saying the move is politically motivated, it is surely interesting that the appointments were announced on nearly the same day that newly elected Governor Tomblin was sworn into office.

Whether prompted by the Board's recent (and unpopular to industry) decision about the Arch Coal/Patriot Mining New Hill West permit in northern WV [article elsewhere in this issue] or not, citizens who follow the actions of the EQB are bitterly disappointed.

Dr. VanGundy is a highly qualified and knowledgeable scientist who brought great depth to the discussions and opinions of the Board these past few years. His breadth of understanding and clarity of thinking will be difficult to replace.

Ted Armbrrecht will be a significant loss as well. A respected business man with a strong sense of conservation, Mr. Armbrrecht brought an important perspective and sense of balance to the Board.

... To be fair, we'll have to wait to learn more about the two replacements, Charles Somerville (Dean of the College of Science at Marshall University) and Mitch Blake (manager of coal programs at the WV Geologic and Economic Survey). But having watched and attended many Board meetings since the early 1980's when it was the Water Resource Board, I am deeply saddened. Board members' comprehension of the often complicated interaction of scientific, technical and legal issues has improved over the years -- with this recent Board being the most thoughtful and even handed.

Both Dr. VanGundy and Mr. Armbrrecht will be missed.

# CLEARCUTTING IN THE MONONGOHELA NATIONAL FOREST: ITS STATUS IN 2011

By Don Gasper

For many years I have believed that the policy of the United States Forest Service on clearcutting in the Monongahela National Forest was unwise. I have engaged in an ongoing dialogue on the topic, contending that the practice was hydrologically damaging to stream channel recovery.

That dialogue included a letter dated November 14, 2011, which I received from the Forest Service. In the letter, it repeated its support for clearcutting.

That letter included these paragraphs, offered in response to my questions or assertions (reproduced in bold).

## **What is your position on clearcutting?**

*Our position on clearcutting has not changed. Unless we are clearing an area to construct a road or well pad or building, we do not typically do clearcutting, which is the removal of every tree in the activity area. We almost always leave residual trees on site in our timber harvests. We do use regeneration harvests, which are designed to remove most of the trees from a site in order to stimulate regeneration. Regeneration harvesting has been a successful tool in creating age class and habitat diversity.*

## **There must be no clearcutting as it reverses channel recovery.**

*Research has shown that extensive clearcutting can have impacts to stream channels, including changes to water yield and timing, and increases in sedimentation. However, we are careful to schedule the timing and amount of regeneration harvests on the Forest so that these types of impacts do not occur. In fact, Forest Plan Standard TR06 states: "No more than 20 percent of NFS lands within each prescription area unit shall receive regeneration harvest over a 10-year period." We also have direction that limits timber harvest in streamside buffer zones, and we have many management requirements and mitigation measures that we apply to timber harvest that reduce the potential for impacts to stream channels. Therefore, we are not seeing any harvest-related reversal of channel recovery on our Forest.*

The term "regeneration cuts" is little more than a euphemism for clear cuts and we see them as such. In regeneration cuts the few trees left are cut a few years later.

The Forest Service is clinging to an indefensible position: if "no more than 20% will be clearcut over a 10 year period, then there will be no impact to stream channels. They mean 20% of the watershed above, and the canopy removed at the time of the clearcut will begin to function again within 10 years. They fail to realize this same 20% is 100% of the clearcut area. If clear cuts over 23% of the watershed will result a measurable increase in flow, surely 100% will.

Clearcuts remove the forest canopy and its interception and evaporation of precipitation (rain and snow) and also the transpiration of soil water up and out of the leaves. If 58" of precipitation falls, as it does at the Parsons, West Virginia, U.S.F.S. research station, under forested conditions 27" is evapotranspired, and 24" runs off. If the area is clearcut then none is evapotranspired and all must run off. Runoff must now be 27+24 for a total of 51" until the canopy begins to function again. In the interim the stream channel immediately below, and within the clearcut, is likely to carry 51 inches. This is over twice as much flow as it has carried for the last 100 years! The channel erodes from within causing sediment that impacts the channel downstream-far off-site. Thus clearcuts destabilize stream channels, reversing recovery. These hydrological processes of destabilization are suggested to be the driving forces resulting from clearcuts.

The U.S.F.S. has not been able to deny these. It is suggested that on these special watersheds caution be used-and clearcuts banned.



### **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.

### **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 mail to WV Highlands Conservancy, PO Box 306, Charleston, WV 25321.

# WILL THE GOVERNOR CALL A SPECIAL SESSION TO REGULATE MARCELLUS SHALE DRILLING?

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

Whether or not the West Virginia Legislature will go into Special Session to pass a bill regulating Marcellus shale drilling before the 2012 regular session is now up to Governor Earl Ray Tomblin.

At the November Legislative Interim meetings the Legislature's Select Committee on Marcellus Shale Drilling finished its work.

Working from SB 424 as a "base" bill (the bill the Senate passed during the 2011 Regular Session), the Select Committee adopted another six amendments to that bill (making a total of 33 amendments to the bill), and voted to approve the amended bill with a recommendation to the Joint Committee on Government and Finance that the full legislature pass the bill.

The vote on final approval was 8 to 1, with Senator Karen Facemyer (R-Jackson) casting the only "no" vote, and Senator Corey Palumbo (D-Kanawha) not present.

The Select Committee also approved a motion by Delegate Woody Ireland (R-Ritchie) that the committee chairmen, Delegate Tim Manchin (D-Marion) and Senator Doug Facemire (D-Braxton), send letters to the Speaker of the House and President of the Senate asking them to urge the Governor to call a Special Session on the bill in December.

Governor Tomblin has said repeatedly that he would call a special session to deal with a Marcellus bill if the House and Senate could agree on a bill.

But now the Governor (and his staff) is telling the media that he has "concerns" about the bill crafted by the Select Committee, and he will only call a Special Session if those concerns can be addressed before hand.

Not surprisingly, the concerns expressed so far by the Governor mirror the concerns listed in a letter to the Select Committee from Robert Orndorff (Dominion Gas), president of the West Virginia Oil and Natural Gas Association (WVONGA). WVONGA represents the "major" producers in the industry. These are the "big boys," the companies most active in drilling Marcellus shale wells.

Some of the specific things WVONGA opposes in the Select Committee bill include:

- Expanded well location limitations that preclude drilling within 100

feet of any "watercourse," lake, pond or reservoir, or 200 feet from a "wetland and values of a wetland," or 300 feet from a naturally producing trout stream, or 1,000 feet from a surface water or groundwater source of a public water supply.

- Expanding the rebuttable presumption of liability of well operators for contamination or deprivation of a water supply from the existing legal standard of 1,000 feet to 2,500 feet.

- Imposing additional reporting requirements to the State Division of Labor on the residency of workers hired by well operators and drilling contractors (industry *really* hates this requirement).

- The casing and cementing standards and practices the Select Committee included in the bill.

The other industry association in the state is the WV Independent Oil and Gas Association (WV IOGA) which represents the smaller, independent producers. From their press statements, it appears IOGA opposes the Select Committee bill altogether.

So according to press statements from the Governor's staff, the Governor wants the WVONGA concerns to be addressed or "tweaked" by legislative leadership before he agrees to call a Special Session.

In addition, Jason Pizatella, the Governor's director of government legislative affairs, reportedly said at a recent meeting of the West Virginia Business and Industry Council that "Earl Ray will not sign any legislation that puts us out of step with other states."

Meanwhile, Delegate Manchin, House chairman of the Select Committee, said in a recent interview that he fears that Tomblin's "tweaks" could gut the bill.

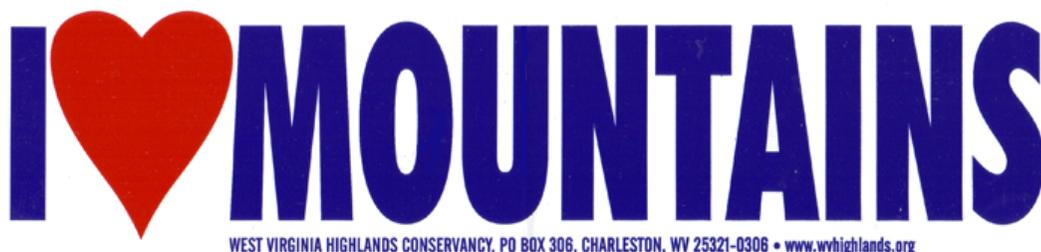
The December Legislative Interim meetings are scheduled for Dec. 12-14. That doesn't leave much time to do all this "tweaking."

So that's where we are.

If the Governor calls the Legislature into Special Session in December to deal with Marcellus shale drilling regulation, you can read about here in the January *Voice*.

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

# VIRGINIA BROOK TROUT STREAMS MOSTLY RECOVERING FROM ACID DEPOSITION

By Fariss Samarrai

Virginia's brook trout streams are showing encouraging signs of recovery – in most cases – from the debilitating effects of acid rain, according to the most recent results from a long-term study led by University of Virginia environmental scientists.

"This is good news and real evidence for the value of our national investment in improving air quality," said Rick Webb, a U.Va. environmental scientist in the College of Arts & Sciences and coordinator of the Virginia Trout Stream Sensitivity Study. "At the same time, there is more to be done, and many Virginia brook trout streams may never fully recover."

U.Va., with the support of the conservation organization Trout Unlimited and several state and federal agencies, has been studying the health of Virginia's remote mountain streams since initiating a large-scale survey in 1987. Another such survey was conducted in 2000, and again in the spring of 2010. Quarterly sampling of stream water chemistry also is conducted in 66 streams and regularly in Shenandoah National Park.

The study demonstrates a clear improvement in water quality between the 2000 and 2010 surveys. Little improvement was noted between the 1987 and 2000 surveys. Webb attributes this to a delayed effect of streams' ability to purge acidification that has settled for years into surrounding soils and that continues to leach into streams.

Janet Miller, a graduate student in environmental sciences who analyzed survey data, found that 77 percent of the sampled streams in 2010 were suitable for brook trout reproduction. The 1987 and 2000 surveys showed that only 55 percent and 56 percent, respectively, were suitable for brook trout reproduction.

Webb attributes the improvement to the Clean Air Act Amendments of 1990 that imposed strict regulations on emissions from coal-fired power plants, as well as improvements to technologies that reduce emissions from power plants, automobiles and other machinery.

Between 1990 and 2009, sulfur dioxide emissions from coal-fired power plants declined by 64 percent. Dominion Virginia Power, as a notable example, removes 95 percent of the sulfur dioxide emissions from its largest coal-fired power plant, located at Mount Storm, W.Va., which is upwind of Virginia's mountains and Shenandoah National Park.

Organizers plan to continue long-term monitoring by conducting surveys every 10 years, and have launched a \$500,000 fundraising campaign to support the ongoing studies. They emphasize the importance of maintaining such long-term research on trout streams in Virginia – not only for monitoring their recovery from acid rain, but also for understanding the potential effects climate change and other man-made disturbances.

The Virginia Trout Stream Sensitivity Study is one of the nation's largest and most comprehensive long-term stream chemistry surveys. It is designed to track the effects of acidic deposition (often called acid rain) and other factors affecting water quality and related ecological conditions in Virginia's native trout streams.

The brook trout is the only native trout in Virginia and the eastern United States. The fish require clean water to propagate and are highly susceptible to acidity deposited to the water from pollution in the air. Brook trout, and the generally pristine and remote streams they inhabit, are considered indicators of the overall health of the environment.

In the study, water samples are analyzed for sulfate levels and a stream's natural ability to neutralize acidity. The researchers are finding that sulfate levels are dropping in most streams, indicating that air pollution reductions are having a positive effect on the environment. Due to prevailing winds that carry pollution from coal-burning power plants – primarily sulfur dioxide and nitrogen oxides – many mountain streams and forests in Virginia and throughout the Southeast have suffered long-term damage.

A given stream's level of susceptibility to acidification is affected by its bedrock composition and the chemistry of nearby soils. Streams with sandstone or quartzite bedrock – about one-third to one-half of the native trout watersheds in Virginia – are most vulnerable to acid deposition because they do not neutralize acid even years after pollution has been reduced.

During the 2010 survey, 165 volunteers, mostly from Trout Unlimited and some government agencies, sampled 384 streams, which, together with the program's 66 routinely sampled streams, represent about 80 percent of the forested mountain headwater streams in the state that contain reproducing brook trout.

"Through the years this has continued to be a team effort between U.Va. scientists, Trout Unlimited and the U.S. Park and Forest services, the EPA and the Virginia Department of Game and Inland Fisheries," said Jack Cosby, an environmental scientist who co-directs the stream study effort. "We've even received a lab equipment grant from the Dominion Foundation. The cooperation between entities that might sometimes seem to be at odds has been inspiring."

Data from the survey helps scientists determine the health of headwater streams throughout western Virginia. The U.S. Environmental Protection Agency and other federal and state agencies use such data to inform resource management and to develop, evaluate and recommend national air pollution control policies.

"It's a cause for hope that so many people share a determination to protect and preserve our brook trout streams and the natural world they represent," Webb noted. "The remarkable volunteer contribution to the trout stream surveys over more than two decades is a real testament to this determination."

**Note: This article previously appeared in UVA Today, an online publication of the University of Virginia. Rick Webb is a longtime WVHC member and former Braxton County resident known for his vigorous opposition to acid mine drainage.**

# WHO OWNS THE WILDLIFE AND WHO SHOULD HAVE SAY IN HOW THEY ARE MANAGED OR MISMANAGED?

John W. Laundré

More and more we as a society are facing problems with how wildlife of all types are managed in the United States. We see increasing conflicts and polarization between hunting and anti-hunting groups.

On the one side, invoking the pioneer tradition of our ancestors, hunting groups contend that the right to hunt is undeniable and is essential to the sound management of our wildlife resources. On the other hand, anti-hunting groups contend that the need to kill wildlife animals is no longer justified and hunting represents a next to barbaric act against living, feeling animals.

On one side, hunters contend that because they pay the bills for the management of wildlife resources through their licenses and a federal excise tax on their hunting equipment, they are the only ones who should have a say in how wildlife manage. On the other side, anti-hunters argue that moral objections to the slaying of innocent animals overrides any priority as to who has a say in these matters.

And the arguments go on and on. Both sides have their army of lawyers and donating members to support the lawyers. Each spends millions of dollars for their causes and sometimes hunters win and other times anti-hunters win battles but the war goes on, seemingly without end. Should it be that way? Should we manage or mismanage our wildlife resources through the press, through the courts? Who should have the say over wildlife management and what should that say be?

Given that hunters only comprise 5% of Americans of hunting age and approximately 16% of Americans disapprove of hunting, anti-hunters outnumber hunters by three to one. In the land of majority rule, should not the majority hold sway over the minority? But 16% is far from a majority of the American people. What about the other 79% of America? Should they also have a say? And if they do, what would it be?

Of that 79%, 74% approve of hunting but do not hunt. Thus, the majority would seem to fall squarely on the side of hunters. But do non-hunters (the 79% who don't hunt but are not anti-hunting) approve of how hunting is used in wildlife management and if they do or do not, is their voice heard? Are they allowed to express an opinion? Who then has the say over how wildlife are managed in

America, the hunters, the anti-hunters, or the rest of the American people?

Again, in all this, majority or not, hunters fall back on their basic proposition, they pay for wildlife and so they should have the say, the only say. In doing so, they are denying this right to even the 73% of Americans who favor hunting and 95% of the American people are left out of these decisions. One has to ask how such a system differs from the European one our Founding Fathers tried to avoid: wildlife being owned and managed by a small fraction of landowners versus a small fraction of the population who feel they own the "right" to wildlife and how they are managed. In both cases, the majority of the public is left out of the decision process.

Central to the answers to all these questions are two more fundamental questions of first, who owns the wildlife in America and second who is paying for their management/conservation? If we can answer these questions, then we at least define the "rights" of the different sides in the overall argument.

So, first, who owns the wildlife in America? As mentioned above, our founding fathers abhorred the European system where large landowners also owned the wildlife on those lands.

To avoid these problems in the new more egalitarian society they were forming, the formers of our government declared that each state claimed ownership of wildlife on behalf of its people. This state ownership was reinforced by the Greer v Connecticut Supreme Court decision that forbid interstate transport of wildlife killed within a state and "to confine the use of such game to those who own it, the people of the state".

So, from the beginning to today, we the people, ALL of us own the wildlife within our respective states. Not only do we own the wildlife, imbedded in that ownership is the right to regulate it by all of us. Further, if that wildlife is migratory or lives on Federal lands in a state, not only do state residents have the right to regulate it but so does the rest of the nation. As stated in the Constitution, "Congress (all of us) shall have the power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States" (Article IV). This puts most wildlife in the National public trust and this right has been

repeatedly upheld by the Supreme Court. So clearly stated, all wildlife belongs to all the people and all the people should have a say in how it is managed.

What about the argument that those who pay should have the most, if not all, the say in how wildlife is managed?

This brings us to the more fundamental question of who actually does pay for wildlife management in the U.S.? Is it just the hunters? And what wildlife are they paying to manage?

There is no doubt that hunters pay a large amount of money to manage wildlife. For many states, game agencies are strictly funded by hunting license fees, to the tune of millions of dollars. Figures range around 600-700 million dollars nationwide. In addition to the hunting license and fees, the Pittman-Robertson act in 1937 dedicated a 10% excise tax on firearms and ammunition to be spent on wildlife restoration. This fund generates around 150 million dollars a year to be distributed to the states. If we add to this figure an estimated 10 billion dollars hunters spend when they go hunting, it all comes up to an impressive amount of money they spend on wildlife. So, maybe they should get the say?

But wait a minute, let's look at the possible contributions from non-hunters. Regretfully, non-hunters who use and enjoy the outdoors do not pay an excise tax on sporting equipment. They had a chance to do so but did not follow through, but that is another story. Though they do not contribute to wildlife by an excise tax, do they contribute in other ways?

Let me count the ways. First fees. It is true we don't have a wildlife watching fee or license, though that might be a good idea! But non-hunter, when they use the great outdoors do pay fees, camping fees, entrance fees. How much? On the state level, it varies from state to state with a state like California generating 81 million dollars in park fees and more modest 3-10 million dollars in other states. If we use a modest 10 million dollars a year average by state, nationwide, park users pay 500 million dollars a year toward the maintenance of the lands and the wildlife on those lands. Add to that, the fact that general tax revenues

**(Keep going, more on the next page)**

## MANAGING WILDLIFE (Continued from previous page)

are also used to make up any difference in expenditures probably in an equal amount. This means general taxpayers, 95% of which do not hunt, pay several hundred million dollars in state taxes to support parks AND the wildlife on these lands. Add to that the average 1 million dollars per state taxpayers check off on their tax forms for nongame species and the total state contributions come up to around 1.5 billion dollars a year.

What about the Federal level? For National Parks, entrance fees generate around 25 million dollars a year. But the National Park budget, is around 3 billion dollars a year, again, paid for in grand part by the 95% non-hunters.

We have to add to that the annual budget of the U.S. Department of Fish and Wildlife of 2.5 billion dollars. Also, the U.S. Bureau of Land Management (960 million dollars) and the Forest Service (5.1 billion dollars), which maintain large tracts of land for wildlife, add another 6 billion taxpayer dollars to the pot. I am sure I missed some other state and federal agencies whose goal it is to maintain lands and thus the wildlife on them but this should do for now.

Adding up the state revenues and the various Federal sources, we see that recreation users and general taxpayers support wildlife to the tune of around 12 billion dollars annually. This compares to the annual 800-900 million generated by sportsmen.

But how about that 10 billion dollars generated by sportsmen spending? If we compare the number of people participating in hunting versus other outdoor activities, the latest figures are: 24 million hunters vs 317 million outdoor enthusiasts.

Of those, more people go birdwatching (67 million) than hunting. If we assume a similar per person spending as hunters, then these non-hunters are spending over 130 billion dollars! So, I leave it up to you to decide, are hunters the only ones paying for wildlife?

One last important note. Although hunters do pay hundreds of millions of dollars for wildlife management, that money is normally earmarked for specific wildlife, the ones they hunt. Though some money is spent on nongame species, it is done grudgingly or is listed as a side benefit. Most game agencies are not paid to nor really care to manage non-game species. They know where the money comes from and cater to hunters to "put more game in the bag". State

game commissions are the same in that they know who they are paid by and as the name indicates only deal with game species.

What this does is produce single species management where wildlife in general, the supposed great benefactor of the hunters largess, are ignored or worse yet, like predators, treated as vermin to be hunted without control because they interfere with game species.

This also leaves the other 95% of the population, who is really paying the lion's share for wildlife habitat, with little or no say on how the other 99% of the wildlife are managed. This is wrong and needs to be changed. If game agencies cannot, will not, manage the rest of the wildlife resources in a proper manner, then they should only be allowed to manage the ones they are being paid for, game species. This excludes predators which they only "manage" (kill) in response to hunters' cries for more game.

All nongame species should be wrenched from game agencies' grasps and given to new stand alone state wildlife agencies who cater to the 95% of the people who really pay the bill for wildlife habitat.

We need a dramatic change in how wildlife are managed in this country and the separation of "game" management and wildlife management is the first critical step. Let the game agencies with their millions of hunter dollars manage the deer and the ducks but let the new wildlife agencies manage the rest of the wildlife the way they should be managed, based on sound ecological science, not hunter demands. It is time we stop sacrificing the many for the few in the wildlife world and start managing our wildlife as the integral part of the ecosystems they are.



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## PLANS TO MERGE AGENCIES DELAYED

By John McFerrin

In late October, 2011, the United States Department of the Interior announced its intention to merge the federal Office of Surface Mining into the Bureau of Land Management.

The Office of Surface Mining, while nominally a part of the Department of the Interior, has always been a stand alone agency whose sole mission was to enforce the federal Surface Mining Control and Reclamation Act. In most states, including West Virginia, it does this by overseeing the regulation of the coal industry, including making sure that state regulatory programs are as effective as federal law requires.

The proposal would make the Office of Surface Mining a part of the much larger Bureau of Land Management. The Bureau of Land Management is a huge bureaucracy that manages federally owned lands. Among its duties is the management of minerals on public lands, including leasing of minerals for development.

In November there were Congressional hearings on this proposal. At the time, the Secretary of the Department of the Interior had announced that the Department intended to issue a report on the proposed merger by December 1. The merger itself would follow.

In the hearings, the opponents of the merger made several points. First, in the Surface Mining Control and Reclamation Act, Congress intended to create a separate agency that would focus on coal. Opponents pointed to language in the Act and in the legislative history of the Act that demonstrated this intention.

Second, the Bureau of Land Management leases minerals on federal land, including coal. It is not oriented to the regulation of the coal industry.

Finally, and most importantly, the opponents pointed out that the Office of Surface Mining is one of the few places that coalfield citizens can have hope of getting protection from the damaging effect of coal mining. Merging it into the Bureau of Land Management would send it swimming off into a sea of bureaucracy, less accessible to citizens and less effective in addressing citizen concerns.

Professor Pat McGinley of the West Virginia University Law School spoke on behalf of many coal field organizations, including the West Virginia Highlands Conservancy. In his testimony he said:

*Historically Secretaries of the Interior have treated OSM as a poor stepchild of the Department – an agency with a narrow focus on only one mineral and on enforcement rather than federal public land management. The agency has long been significantly underfunded, as Director Pizarchik recently conceded. However, the burial of an underfunded half-alive OSM in the behemoth bureaucracy of BLM is beyond any prior marginalization of the agency.*

*Many coalfield citizens who understand the role of OSM under SMCRA feel that Secretary Salazar's issuance of Order 3315 shows a fundamental disrespect for them and their communities. I suspect, however, that the decision to issue this Order was grounded in a failure to recognize and appreciate the mission of the long beleaguered OSM.*

*Let me briefly explain. Over the years since enactment of SMCRA those whom I represent have at times been very critical of regulatory and policy decisions made by OSM political appointees. Nevertheless, the field personnel and technical experts within OSM have frequently taken citizen complaints and concerns seriously. These front-line OSM inspectors, geologists and mining engineers have been crucial in OSM's efforts to implement SMCRA's mandate to protect those who live over and near coal mines from environmental and socio-economic injuries that accompany violations of SMCRA*

*There are numerous examples of OSM's field inspectors and technical experts using their expertise to prevent mining operations that would have harmed coalfield communities and families. These professional OSM staffers also have, in some situations, been permitted to use their expertise to develop facts that allow coalfield families who have suffered injuries to have their rights vindicated through SMCRA-created administrative or judicial remedies. These efforts of front-line men and women of OSM are accomplished using their skills, expertise and savvy garnered from years of working cooperatively with coal operators and state program regulators.*

*Sadly, one can examine Secretarial Order 3315, DOI news releases and the statements of agency officials without finding a reference to the OSM mission regarding coalfield communities. Whether grounded in disrespect of coalfield citizens or ignorance of OSM's mission and its impact in the coalfields, Order No. 3315 dishonors the letter and spirit of the SMCRA and should be withdrawn. Perhaps, at the highest levels of the Department of the Interior the controversy triggered by this ill-considered and cavalier administrative decision will give rise to a new understanding and appreciation of OSM's mission - and renewed respect for coalfield citizens.*

Now the Department of the Interior is apparently rethinking its merger plans. It announced in late November that it was delaying a report on the proposed merger until February 15, 2012. It did not say that it is abandoning its merger plan but only that it needs more time to consider them. The idea may just quietly fade away; it may reappear in February. We will see.