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After two steps forward, a step back

CORPS OF ENGINEERS RENEWS GENERAL PERMIT FOR MOUNTAINTOP REMOVAL MINES

By John McFerrin

The United States Army Corps of Engineers has decided to renew Nationwide Permit 21, the permit it uses to authorize the valley fills that are a part of mountaintop removal mining operations. The West Virginia Highlands Conservancy (along with many, many other groups and citizens) had opposed the renewal. Even though the renewal was a disappointment, it contained so many conditions that it will, if enforced, improve the regulation of mountaintop removal mining.

How we got here (If you're in a hurry and just want to know where we are, not how we got there, you can skip this part)

Nationwide Permit 21 is what is known as a "general permit." General permits are designed for activities that produce minimal environmental impact. They allow such activities to go forward with less scrutiny than there would be for activities that produce a more substantial impact.

Nationwide Permit 21 was issued in 1982 to allow dredged or



Minimal adverse environmental effects
Photo courtesy of Ohio Valley Environmental Coalition

fill material to be discharged into the waters of the United States from all surface mines without the scrutiny that would come if projects were examined individually.

The world has changed since 1982. Here is how the Corps of Engineers explains it:

Since NWP 21 was first issued in 1982, surface coal mining practices have changed, and surface coal mining activities in the Appalachian region of Kentucky, Ohio, Pennsylvania, Tennessee, Virginia, and West Virginia have become more prevalent and have resulted in greater environmental impacts. Mountaintop surface coal mining activities increased because many of the remaining coal seams in the Appalachian region were less accessible to non-surface coal mining techniques. Since the late 1990s, there have been increases in concerns regarding the

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Ramblin' the Ridges

By Cynthia D. Ellis

A FEW UGLY WORDS

"The world is so full of a number of things, I'm sure we should all be as happy as kings." And as far as natural "things" go, the West Virginia mountains, with their rich diversity, have long been noted as being especially biologically "full."

So it was pleasant to get news of the two recent court decisions ---"FOIA Coal to treat mine pollution"---and---"Alpha Natural Resources must treat selenium pollution"--- that could go some way to preserving, or repairing, that diversity.

Pleasant news could be celebrated with fanfare; with uplifting words and images. Images that might come to mind could be... soaring eagles? Or bunnies---nibbling grass at the edge of now-clean streams?

Certainly imagining Bald Eagles here is easier than in the past. Some remember hiking in the area of the "Trough" of the Potomac, to peer up in awe at the first eagle's nest in recent history, in the 1980's. Now multiple sites host nesting pairs and there are regular reports of double-digit groups at wintering locations.

Populations for two of our bunnies here remain small and localized. The Appalachian Cottontail [similar to the Eastern Cottontail] and the Snowshoe Hare are both unique to our high elevations. Imagining those soft-pelted creatures safely thriving could make us glad for the work of the WVHC mining committee and partners. Even so, we'd realize that the eagles and bunnies might not be directly affected by those court decisions.

So, it is a stretch, but that news, coupled with awareness of our "full" mountains, might make some other animals come to mind. These might not be perceived as noble or heartwarming, but yet they are valuable and interesting.



Photo by Jim Stevenson

Could coyotes, vultures, hellbenders, rattlesnakes, wood rats, mollusks, salamanders, and spiders be representative of creatures worth saving? Sure.

Here are notes on a few of these "uglies." Have you seen them? The first few have declining numbers.

Hellbenders are large [2'] salamanders found in fast moving streams. They have 5 toes on each hind foot and gill slits in dorsoventral folds. Despite their fearsome name, they simply try to fit in their own niche, and are prey as well as predator. The male alone guards eggs at the brood site and rocks back and forth to increase oxygen there.

Timber rattlesnakes have a true nature that is both passive and secretive, despite the "horridus" part of their scientific name. They can be beautifully colored, in hues showing black, brown, gray, brown and even sulphur yellow. They also serve as both predator and prey and are noted for quite a low reproductive rate. Females in the mountains might not bear young until they are as old as 12, and do so only about every 3 years. Habitat degradation and

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MORE ON NATIONWIDE PERMIT (Continued from p. 1)

individual and cumulative adverse effects of those activities on the human environment and the natural resources in this region, including streams and other aquatic resources.

In light of this new reality, the Corps of Engineers wants to suspend NPW 21. This would mean that mining projects which discharge dredged and fill material into the waters of the United States after more exacting scrutiny of review of individual projects.

It has, of course, been the position of the West Virginia Highlands Conservancy for many years that NWP 21 was bad policy and probably illegal as well. As United States Supreme Court Justice Felix Frankfurter said, "Wisdom so often never comes that we should not reject it simply because it comes late." Even if the Corps of Engineers should have eliminated it decades before, in 2009 it finally started down the path to doing it.

Of course the path to doing anything is not easy or straight. The Corps of Engineers held public hearings to accept comments. These included the October, 2009, "hearing" at the Charleston Civic Center that turned into a pro-coal rally, complete with intimidation, railing against the Environmental Protection Agency, braying about environmentalists, etc. Fortunately, all the trees close to the Civic Center are scrawny, city trees, totally unsuitable for a proper lynching. This (and the timely intervention of the Charleston Police) kept things from getting ugly. For more about the atmosphere, see the November, 2009, issue of *The Highlands Voice*.

After considering the comments, the United States Army Corps of Engineers decided in June, 2010, to suspend Nationwide Permit 21 in six Appalachian states. In its press release announcing the suspension, the Corps said:

The U.S. Army Corps of Engineers announced today it has suspended the use of Nationwide Permit 21 (NWP 21) in the Appalachian region of six states. NWP 21 is used to authorize discharges of dredged or fill material into waters of the United States for surface coal mining activities. The suspension is effective immediately and applies to the Appalachian region of Kentucky, Ohio, Pennsylvania, Tennessee, Virginia and West Virginia. NWP 21 continues to be available in other regions of the country.

The suspension in Appalachia will remain in effect until the Corps takes further action on NWP 21 or until NWP 21 expires on March 18, 2012. While the suspension is in effect, individuals who propose surface coal mining projects that involve discharges of dredged or fill material into waters of the United States will have to obtain Department of the Army authorization under the Clean Water Act, through the Individual Permit process.

The individual permit evaluation procedure provides increased public involvement in the permit evaluation process, including an opportunity for public comment on individual projects.

The Corps determined after a thorough review and consideration of comments that continuing use of NWP 21 in this region may result in more than minimal impacts to aquatic resources. Activities that result in more than minimal impacts to the aquatic environment must be evaluated in accordance with individual permit procedures. Therefore, NWP 21 has been suspended in this region and coal mining activities impacting waters of the U.S. in this region will be evaluated in accordance

with individual permit procedures.

As we moved along toward the March 18, 2012, expiration date for Nationwide Permit 21, the Corps of Engineers the Corps of Engineers reversed itself. Instead of eliminating Nationwide Permit 21 it proposed reissuing it with conditions. It proposed three ways to address the questions raised by NWP 21. Option one is no reissuance. Option two would reissue NWP 21 with a ban on valley fills and a 300 linear foot limit on stream loss, but would allow that limit to be waived by the district engineer for ephemeral and intermittent streams. The third option is the same as Option two except without the ban on valley fills.

The Corps said that its preference is Option two. It had convinced itself that mountaintop removal mining could be carried out with minimal adverse environmental impact.

The West Virginia Highlands Conservancy and the other groups supported the first option. Under this option, there would be no more Nationwide Permit. Each operation would have to apply for an individual permit and have its operation evaluated separately.

In February, 2012, the Corps of Engineers reissued Nationwide Permit 21 with conditions.

Where we are (Anybody who skipped the history part has to start reading again)

Since the Highlands Conservancy had supported not reissuing Nationwide Permit 21, its reissuance under any conditions was a disappointment. At the same time, the conditions in the reissued permit make the results of the controversy over NWP 21 a step toward the effective regulation of mountaintop removal mining.

As part of the reissuance, the Corps has decided that the renewed NWP cannot be used in the future to authorize any valley fills that bury streams, regardless of their size. The Corps has also rejected stream creation as a mitigation measure.

Without a viable NWP -- and without being able to use stream creation to offset impacts -- mining companies will now have to apply for more stringent individual permits and will have a harder time showing that they can offset the harm from disturbing streams.

The reissued permit would allow companies to mine through streams, destroying them that way instead of filling them. It would also allow the waiver of some of the limitations by the district engineer if he *determines, in writing, that that activity will result in "minimal individual and cumulative adverse effects on the aquatic environment."*

As always, how effective all this is depends upon how the reissued permit is carried out, interpreted, etc.

So we go on, comforted by the simple principles of physics and geometry: two steps forward (suspension of NWP 21) and one step back (reissuance of NWP 21 with conditions) still leaves us a step closer to the goal.

**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 or real, honest to goodness, mentioned in the United States Constitution mail to WV Highlands Conservancy, PO Box 306, Charleston, WV 25321.

“A HILLBILLY, A WOMAN, AND A POET”

By Hugh Rogers

This was Irene Durrett McKinney: “I’m a hillbilly, a woman, and a poet, and I realized early on that nobody was going to listen to anything I had to say, so I might as well just say whatever I wanted to.”

Irene didn’t shy from exaggeration. She could call herself a hillbilly—she grew up on a hardscrabble Barbour County farm—and no one could deny her femininity and poetry. But it wasn’t true that nobody listened. As the best poets must, she trained us to read her, and her audience grew. Not to mention the many students who hung on every word. As for saying whatever she wanted to, all she really wanted to say was the truth.

Among the purposes set out in the Conservancy’s by-laws is to promote appreciation of our state’s natural resources. Irene, who died on February 4, was West Virginia’s Poet Laureate and a natural resource for the nation.

We had the luck to meet Irene when we moved here in the mid-70s. She liked to say that she had been born in the 19th Century. I was struck by her piece called “The Pig’s Head,” a memory of life on the farm, intimate with animals, even those she’d rather avoid, and how by slipping on a floor all greasy from a pig-sticking she’d become the butt of an unintended practical joke. It was all so physical.

She would return to her childhood many times over the years: “I wanted to walk without clothing in the woods beside the creek, and to come to the barn at night and sleep beside the horses, curled in the smell and scratch of hay with the bitch and pups.” Her mother, hard-pressed, abused the useless pets that “ate the food and dirtied the floor.” Irene planted her flag early: “If we must choose sides, I said as a child, I take the side of the animals.” (From the poem, “Atavistic”; line breaks aren’t shown, a breach of etiquette that is, however, consistent with how Irene said her poems aloud.)

Her older sister Eleanor told me, “Irene never did the chores. She was off in the woods or the barn, reading whatever she could find.” Their mother, Celia, had described Irene as “an independent, ornery little thing.” The red hair set her apart. She wore it as a warning. But their father, Ralph, read her Emerson, Wordsworth, Poe, and Pinocchio. When the time came for her return, he gave her thirty acres of the farm, and she built a perfect little house/library/gallery near the berry barn. By then, the family “who I imagined could never understand me” was a great comfort. In a wonderful eulogy, Maggie Anderson said: “Only one so deeply rooted and held could afford to be so wild.”

Irene saw broader implications of the way she’d grown up: “Whatever direction this state takes, my deep hope is that the sense of self-sufficiency will hang on, not just for us but because there are a lot of mainstream people that look to cultures like this to see how you do it. They know that somehow or another their background hasn’t given that to them, and they want to look to cultures where people still feel that it’s a virtue to be self-sufficient, not a weakness, not a psychological peculiarity, not a neurosis; but a virtue, an accomplishment.”

Irene was already a mother of two when she decided to go to college. She had been making poetry that wasn’t good enough—she needed training, she needed to know more. From West Virginia Wesleyan in nearby Buckhannon, she went on to West Virginia University (M.A.) and the University of Utah (Ph.D.). English-teaching and writer-in-residence positions took her far away: Albuquerque, New Mexico; Bellingham, Washington; Santa Cruz, California; Delhi, India.

On sabbatical from a college in upstate New York, she came home: “It was a choice I didn’t know I was making, in my rational mind. My unconscious knew better.” She began to build the house. It would take years. In 1986, she returned to Wesleyan as Professor of English. Her poems were published in major journals and six books. Her Selected Poems, “Unthinkable,” came out in 2009. Next year, we’ll have a posthumous collection titled, “Have You Had Enough Darkness Yet? No, I Haven’t Had Enough Darkness”.

“I am formed by this place,” she said in a 2005 interview on West Virginia PBS that was rebroadcast after her death. Writing about that was the best way to see and say who she was. It wasn’t all pretty: “The roads get lost in the clotted hills, in the Blue Spruce maze, the red cough, the Allegheny marl, the sulphur ooze. The hill-cuts drain; the roads get lost and drop at the edge of the strip job. The fires in the mines do not stop burning.” (“Twilight in West Virginia: Six O’clock Mine Report”) She told people like us, who had moved here with somewhat romantic notions, “The positive side is nothing without the gritty side.” In “The Durrett Farm, West Virginia: A Map,” she wrote, “Nostalgia has a sticky flypaper surface and we can’t afford it.”

Irene thought loneliness and isolation were intrinsic to life in the country. Although solitude enabled her work, she called herself “a malcontent”.

She relished road trips to conferences with fellow poets and teachers; then she would hole up again. Especially in the years after she got sick, her family and friends pressed against her hermit tendency. She taught us yoga; we cooked her dinners; she taught us how to live and die.



From her late poem “Daytime”: “However, as I’m fond of saying, or addicted to saying. Nothing need follow that. I have entered the realm of however, have wholly occupied however since the diagnosis that my bones are colonized by cancer cells.”

Death was not a new subject. See “Sunday Morning, 1950”: “Outside, the shaven hilly graves we own. Durrett, Durrett, Durrett.” And “Visiting My Gravesite: Talbott Churchyard, West Virginia”: “Maybe because I was married and felt secure and dead at once, I listened to my father’s urgings about ‘the future’ and bought this double plot . . . I plan now to use both plots, luxuriantly spreading out in the middle of a big double bed. —But no, finally, my burial has nothing to do with marriage, this lying here in these same bones will be as real as anything I can imagine for who I’ll be then, as real as anything undergone, going back and forth to ‘the world’ out there, and here to this one spot on earth I really know.”

On February 8, in persistent snow, we buried her there. After a meal in another nearby church we went back to her house with all its books and masks and “gee-gaws,” her name for the incredible density of stuff. Upstairs we stood in front of her low altar, the things most carefully chosen, “Displayed,” she had written, “to help me remember the great gift, this precious human birth, this life like no other.”

THE CENTRAL APPALACHIAN SPRUCE RESTORATION INITIATIVE: LEARN WHAT IT HAS BEEN UP TO

The Central Appalachian Spruce Restoration Initiative (CASRI) is a partnership of diverse interests who share the common goal of restoring the red spruce-northern hardwood ecosystem across the high elevation landscapes of Central Appalachia. This ecosystem, which supports many species that are rare in the region, was decimated by exploitative logging a century ago and is now making a slow recovery. Central Appalachian Spruce Restoration Initiative is comprised of private, state, federal, and non-governmental organizations that recognize restoration of this ecosystem as imperative for maintaining the ecological integrity of the Central Appalachians.

Central Appalachian Spruce Restoration Initiative includes the following partners: West Virginia Highlands Conservancy, Appalachian Mountain Joint Venture (AMJV), Appalachian Regional Reforestation Initiative (ARRI), Canaan Valley National Wildlife Refuge (CVNWR), Natural Resources Conservation Service (NRCS), The Mountain Institute (TMI), The Nature Conservancy (TNC), Trout Unlimited (TU), U.S. Forest Service Northern Research Station (NRS), U.S. Fish and Wildlife Service (USFWS), U.S. Forest Service Monongahela National Forest (USFS-MOF), West Virginia Division of Natural Resources (WVDNR), West Virginia Division of Forestry (WVDOF), West Virginia State Parks, and West Virginia University.

The Central Appalachian Spruce Restoration Initiative partnership began as a small working group that was formed to conserve the endangered West Virginia northern flying squirrel (*Glaucomys sabrinus fuscus*), which depends on the red spruce-northern hardwood ecosystem. As the partnership grew, it broadened into a multi-faceted ecosystem restoration effort that seeks to address such issues as plant diversity, wildlife diversity, climate change, spruce regeneration, recreation, aesthetics, pollinator recovery, public education and interpretation, soils, private land timber restoration, and connectivity between public and privately owned habitats. The thread that connects all members of Central Appalachian Spruce Restoration Initiative is the determination to restore the red spruce ecosystem and the diversity of plants and wildlife it supports. Central Appalachian Spruce Restoration Initiative partners developed this mission statement to sum up the purpose of the group:

Central Appalachian Spruce Restoration Initiative envisions a

functioning red spruce-northern hardwood forest ecosystem restored across portions of its former range on both public and private lands, with the scale, connectivity, maturity and other features that provide habitat to sustain and enhance the viability of the many species and natural communities dependent on this ecosystem.

In 2010, the CASRI partners developed a strategic action plan to guide restoration efforts over the next decade (CASRI Action Plan). This action plan lays out a series of goals, objectives, and key actions that are designed to work toward the CASRI vision. To complement the action plan, CASRI partners developed a technical

document that outlines restoration objectives and methods in various spruce-northern hardwood habitats (Restoration Approach).

2011 proved to be another successful year for the growing restoration initiative. CASRI partners helped raise an additional \$16,547.00 for on-the-ground projects in 2011, adding to the \$145,794.00 raised since 2006. CASRI partners planted 56,100 seedlings, received \$36,230.00 in in-kind services, and recruited over 2,175 volunteer hours. Acres planted totaled

165 acres for 2011, adding to the over 550 acres planted since 2006. Over 160 acres of red spruce were released from the understory by commercial and non-commercial cuttings. Over 1,400 acres of potential spruce habitat were protected through land protection projects and conservation easements.

The Central Appalachian Spruce Restoration Initiative has now done a report summarizing the restoration activities in which CASRI partners have engaged since the inception of the partnership six years ago. The activities are cross-referenced to the applicable goals, objectives, and key actions from the action plan. Only one year into the decade covered by the action plan, CASRI has made substantial progress toward achievement of several goals and objectives. However, much more work remains to make the CASRI vision a reality. View the entire report at www.restoreredspruce.org.

Central Appalachian Spruce Restoration Initiative partners would like to thank all of the hardworking volunteers that support our projects. This restoration effort would not exist without the countless hours volunteers dedicate! CASRI would also like to thank all of the generous organizations that have contributed funding to support on-the-ground efforts.



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.

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. Electronic copies arrive as e-mail attachments a few days before the paper copy would have arrived

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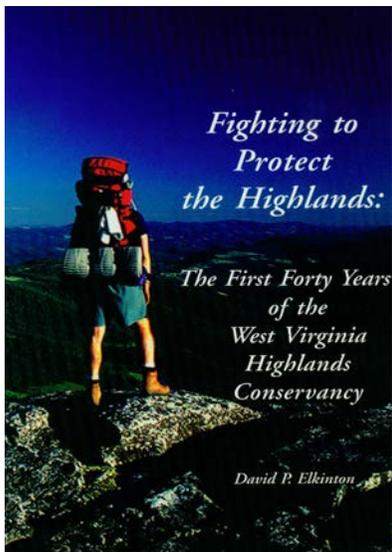
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Mountaineer	\$500	\$ 750	\$ 1000

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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, 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.

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.



LEGISLATIVE UPDATE: SESSION WINDING DOWN

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

As I write this, there are just nine days remaining in the 2012 Regular Session of the West Virginia Legislature. Monday was the last day for bills to pass out of the committee of origin, and Wednesday was the last day for bills to pass out of the house of origin.

So, many bills are dead – both the good and the bad.

The day before the session began I happened to have brief meetings with both the Speaker of the House and the Senate President.

The Speaker, Rick Thompson (D-Wayne) told me he did not think that the members wanted to revisit now the Marcellus shale regulatory bill passed in the December special session.

When asked the same question, the President, Jeff Kessler (D-Marshall) replied, “The ink’s barely dry on the bill.”

And that’s basically how it has played out.

Not one bill to improve the provisions of the Marcellus bill was introduced in the Senate.

And even though Del. Mike Manypenny (D-Taylor) sponsored more than twenty bills to improve the Marcellus bill, not one of them was taken up in committee.

However, HB 4086 sailed through both the House and Senate in the third week of the session, and was promptly signed by Governor Tomblin before he took off for Houston, Texas, to attempt to woo Shell Oil Company into building an ethane cracker plant in West Virginia.

The bill would allow cracker plants investments of \$2 billion or more to be assessed at their scrap value, or 5 percent of their actual value. The valuation would be in effect for 25 years, and should save plant owners more than \$25 million in property taxes in the first year alone.

West Virginia is in competition with Ohio and Pennsylvania for one or more of the plants, which would convert ethane - a byproduct from Marcellus Shale natural gas drilling - to ethylene, an organic compound integral to production of a variety of chemicals and plastics.

However, the West Virginia Center for Budget and Policy later released a study showing that the cracker tax break could cost the community where such a facility locates \$300 million in revenues for schools and other local government efforts.

Oh well. The government giveth, and the government taketh away.

Meanwhile, HB 4511, which would establish a WVU Shale Research, Education, Policy and Economic Development Center, is still alive and likely to pass this session.

The biggest problem with this bill is that all mention of state government funding for the center was removed. That means the center will have to rely on industry funding, which would certainly bias any work the center performs.

As for environmental issues this session, our efforts to ban the injection of coal slurry in underground mines and to require the electric utility industry to use “least cost” planning when considering future fuel purchases have both gone down to defeat.

There is one bright spot remaining for us, however.

A miracle occurred last week: a “Green Buildings Act” mysteriously arose from the ashes, passed the Senate and is now up for consideration in the House.

Now, the West Virginia Environmental Council has been pushing for five years for public buildings in the state to be built to

“green” building standards, with no success.

It all began in 2008 when Del. Barbara Fleischauer (D-Monongalia) introduced a bill that would have required all new or renovated state buildings over 5,000 square feet in size to meet the LEED silver standard, at a minimum.

LEED – the Leadership in Energy and Environmental Design Green Building Rating System – encourages and accelerates global adoption of sustainable green building and development practices through the creation and implementation of universally understood and accepted tools and performance criteria. Developed by the U.S. Green Building Council in 1998, the LEED system provides a suite of standards for environmentally sustainable construction.

The WV Department of Environmental Protection’s office building in Kanawha City, for example, is built to the LEED silver standard.

However, the LEED program is expensive, and we found over the next three years considerable opposition to mandating LEEDs – not from the State – but from industry groups such as the WV Forestry Association, the WV Homebuilders Association, and the WV Manufacturer’s Association.

There are other “green building” rating systems out there, however. So for the next three years or so we focused in the House on working with these other stakeholders to come up with a compromise – still with no success.

Meanwhile, over in the Senate, Sen. John Unger (D-Berkeley) quietly introduced his own version of a “green buildings act” several years ago. It was never taken up by committee.

So imagine our surprise last week when SB 76 appeared on the agenda of the Senate Government Organization Committee. The bill passed out of committee to Senate Finance, with little or no discussion.

Sen. Unger is the only sponsor of SB 76. The bill requires new facility projects of public agencies and projects receiving state funds, to be designed and constructed complying with the International Energy Conservation Code adopted by the State Fire Marshall and the ANSI/ASHRAE/IESNA Standard 90.1-2007 (green building standards codes).

So, while this is not LEEDs, it’s a great compromise. And it appears to allow the State Fire Marshall to update our building codes to the ICC 2009 Energy Code.

If this bill passes, we can count it as a long sought after victory.

Look for a complete rundown of the 2012 Legislative Session in the April issue of the *The Highlands Voice*.

Speakers Available !!!!!

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

COAL TAX INCREASE PASSES WV SENATE

By Cindy Rank

As the WV legislative session eases into its final days, there is positive movement to improve the woefully underfunded Special Reclamation Fund.

SENATE BILL 579

The WV Senate unanimously approved SB 579 which would increase the coal tax from 14.4 cents a ton to 27.9 cents a ton.... Currently 12.9 cents is paid to the Special Reclamation Fund (SRF) and 1.5 cents goes to a Special Reclamation Water Trust Fund (SRWTF) created by the Legislature in 2008 to directly fund water treatment costs involved in reclaiming forfeited sites.

SB 579 continues the 12.9 cents tax to be dedicated to the SRF and increases the amount dedicated to the Water Trust Fund to 15 cents a ton.

The Bill passed out of the Senate in time for consideration by the house before the end of the session. Unless some unexpected glitches arise (not at all unusual for those things to occur in these last hectic days of the 60 day session), there is little reason to doubt final passage.

Why you might ask, was the same action dead in the water before last year's legislative began and yet this year seems to be sailing through?

The court orders handed down in several legal challenges this past year may have in no small measure opened some eyes to the overwhelming long-term liabilities the state is legally responsible for. [See the lengthy September 2011 *Highlands Voice* article at www.wvhighlands.org for more detail.] But really when it comes down to it, passage is likely in large part due to the approval of the coal industry lobby, or at least industry's tacit acceptance of the increase in lieu of something possibly even more costly.

Recommendations to increase the tax were made by the Special Reclamation Fund Advisory Council in its January 31, 2012 annual report to the legislature.

Created in 2001 in response to legal challenges by WVHC and others, the Advisory Council is required to study and evaluate the solvency of the Special Reclamation Fund established by the state of West Virginia to supplement the mine bond program by providing a source of money for reclamation at mine sites abandoned/forfeited after the enactment of the 1977 federal Surface Mine Act where the mine operator went bankrupt or just up and left a mess relinquishing insufficient amount of bond monies. [Mine sites abandoned prior to

the 1977 passage of SMCRA are to be covered by the Abandoned Mine Land Fund.]

The Advisory Council's annual report cites projections from the 2011 Actuarial Valuation that show a dedicated revenue of 20.56 cents per ton of coal would result in solvency for the SRWTF [Water Fund alone] through the year 2046.

However the Actuarial Report goes on to "suggest an incremental approach toward the adequacy target be taken to allow the various estimates and assumptions to be tested" – hence the increase to 15 cents not 20.56 cents for the Water Fund.

The Advisory Council also suggested committing a portion of excess coal severance tax or other revenues to the Water Treatment Fund "so it can begin to build value and help offset the cost of future water reclamation and ongoing treatment. These suggestions were not adopted by the legislature".

IS IT OVER?

IS EVERYTHING TAKEN CARE OF?

Well, not really.

Ever so slowly a number of citizen lawsuits have brought the WVDEP to admit and accept its full responsibilities to clean up mine sites left in disrepair. Not that many years ago the agency finally included water treatment in its reclamation plans at forfeited mine sites. And only last year did the agency join in settlement agreements with WVHC, WV Rivers Coalition and the Sierra Club requiring WVDEP to issue itself NPDES water discharge permits for the sites the agency has inherited and to include effluent limits required by law in those permits.

Of course the story doesn't end there.

As always once legal efforts achieve some resolution for some specific problem, then the next shoe drops and the hairsplitting continues on the next level.

It's evident from court documents and implications in the Advisory Council's Annual Report that the debate now moves on to question just what effluent limits are required by what law? Are they to mirror the limits in the original permits and whatever is needed to maintain in-stream water quality? Or can they slide by with much more lenient post reclamation standards? Does the Surface Mine Act

(Continued on the next page)

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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.

West Virginia Mountain Odyssey



Outings, Education and Beyond 🇺🇸

April 21 & 22, Red Spruce Ecosystem Restoration, Canaan Valley National Wildlife Refuge. - VOLUNTEER OPPORTUNITY - Join us as we continue our efforts to restore the red spruce ecosystem in the West Virginia Highlands. This tree planting event will take place on the Canaan Valley National Wildlife Refuge. We will meet at the Refuge Headquarters at 10 AM on both days. Come dressed for the weather, wear sturdy shoes or boots and bring gloves. Lunch will be provided. For more information, visit www.restoreredspruce.org, or contact Dave Saville at daves@labyrinth.net, or 304 692-8118.

Open dates: Visit Kayford Mountain south of Charleston to see mountain top removal (MTR) up close and hear Larry Gibson's story about how he saved his mountain, now almost totally surrounded by MTR. Bring lunch for a picnic on Larry's mountain. Call in advance to schedule. Julian Martin (304) 342-8989; martinjul@aol.com or Daniel Chiotos, (304)886-3389 – cell, (304)205-0920 – office.

MORE ABOUT COAL TAX INCREASE (Continued from p. 8)

or the Clean Water Act rule? And what standards do each require?

These and other questions are alluded to in the various recommendations and ongoing studies undertaken on behalf of the Advisory Council and further studies are to be conducted about what and how to predict future costs and provide enough money to cover those costs.

Studies will be ongoing as to whether or not or how to predict the attenuation rate of pollutants from mined areas – be they deep or strip mined (i.e. the natural washing out of pyrite/AMD/etc.). Many may remember Al Meek setting up some 20 such test plots at the Island Creek (now ICG) 2,000 acre strip mine in Upshur County along Tenmile Creek of the Buckhannon River back in the early 1990's. Paul Ziemkiewicz of WVU and others are continuing and expanding on those theories and predictions.

Among other recommendations the Advisory Council suggests the Legislature examine the mine reclamation and bonding programs of other states, and to examine the separate and distinct authorities of the Clean Water Act in assessing the eligibility of future forfeitures for transfer of liabilities to the Special Reclamation Water Trust Fund.

Implications of recent court rulings [see Voice articles about Fola, Alpha, and Patriot settlements] and subsequent such settlements are to be evaluated as are voluntary efforts by citizen

led watershed groups to address historic mining-reclamation related liabilities.

And DEP is seeking the assistance of OSM to help identify persons or entities previously associated with companies that forfeited bonds who might still have liability for some or all of the Special Reclamation Fund's reclamation and water treatment costs from whom the DEP could pursue cost recovery.

And so on.... The list is long and the need for the Advisory Council continues.

A final note of interest comes from the Findings of a Legislative Audit of the Special Reclamation Funds & Fund July 1, 2009 – June 30, 2010. Presented to the Legislature early in January 2012 several of the twenty two 'findings' included in the audit give pause to consider the veracity of inventory, accounting and monitoring of the bond program that have been given to the Advisory Council and serves as the basis for its decisions and recommendations.

Of course WVDEP takes issue with many of the opinions expressed in the Audit and its defense of the program is included at the end of the Audit Report. But the whole discussion leads one to question just how accurate even the best actuarial estimates and predictions can be if the foundation itself is questionable.

MOUNTAINTOP REMOVAL AND FRACKING ACTIVISTS JOIN FORCES FOR MOUNTAIN JUSTICE SPRING BREAK

By Dave Cooper

While combating dirty fossil-fuel energy, we can sometimes find ourselves so intensely focused on one issue that we lose track of important developments in other related fossil fuel campaigns. Success often seems to come from focus - for example, the historic campaign against the Keystone XL tar sands pipeline has quickly vaulted this issue into the national spotlight by maintaining an impressive, laser-like focus on opposition to the pipeline.

But if we aren't careful, single-focus activists can find themselves wearing blinders, and inadvertently create problems in other campaigns.

Mountain Justice Spring Break (MJSB), March 21-28 in northern West Virginia (near Clarksburg) seeks to build bridges between the long-established anti-mountaintop removal (MTR) campaign in Appalachia and the newer, fast-growing anti-fracking campaign. College students and young people on their spring breaks from Ohio, Pennsylvania, Kentucky, West Virginia, Tennessee, Virginia, New York and other states will attend Mountain Justice Spring Break (MJSB) for a week of trainings, skill-sharings, workshops, documentary films, speakers from the mountains and the hollows – learning about Appalachian music and culture through bluegrass, folk and old-time music in the evenings. A special emphasis at MJSB is connecting activists in the anti-MTR campaign with the “Fracktivists” in the anti-fracking campaign.

Mountain Justice Spring Break will offer site tours to see mountaintop removal on Kayford Mountain with Julian Martin of the West Virginia Highlands Conservancy and Larry Gibson with Keepers of the Mountains, and fracking sites in Wetzel County, West Virginia with Ed Wade of the Wetzel County Action Group; plus tours of a coal slurry impoundment and a strip mine near Morgantown, West Virginia.

Mountain Justice Spring Break participants will also hear from citizens who live close to coal-burning power plants, including Elisa Young of Meigs County, Ohio who has to deal with air pollution and ground water contamination from multiple large power plants with large coal ash impoundments in her county.

Other MJSB workshops will focus on anti-oppression, community grassroots and campus organizing, listening projects, coal slurry impoundments, non-violent direct action, tree-sits, media skills with Viv Stockman of the Ohio Valley Environmental Coalition (OVEC), fundraising, citizen air monitoring, and coal ash.

The MJSB camp location in northern West Virginia is surrounded by drilling sites for oil and natural gas, and large fracking equipment and tanker trucks constantly thunder up and down the main highway.

Moving Beyond Coal

The dual focus of MJSB 2012 is significant, because while natural gas drilling is booming in places like northern West Virginia, coal continues to decline as a source for America's electricity: According to the US government's Energy Information Authority (EIA), from 2007 to 2011 coal declined from 49% to 43% as a share of the nation's electricity supply. The EIA projects that coal will continue to decline over the next 25 years to 39%.

Yet the Sierra Club's Bruce Nilles, Senior Director of the club's Beyond Coal campaign, calls these numbers conservative

and predicts that the percentage of electricity supplied by coal will fall even farther. “For many years the EIA has exaggerated coal's prospects for the future, and every year has had to downgrade its projections,” said Nilles. “We know coal's future is even darker than EIA is predicting.” For example, in 2010 the EIA predicted it would take 25 years for coal to drop to 44% of the electricity supply - it actually took only two years.

The EIA attributes this decline in coal to “slow growth in electricity demand, continued competition from natural gas and renewable plants, and the need to comply with new environmental regulations.”

While the Sierra Club's Beyond Coal campaign has been very successful in opposing new coal plants and helping shut down dirty, older power plants, the club formerly referred to natural gas as a “bridge fuel” – a transitional source of energy until more renewable sources of energy come on line.

A February 2 story in Time magazine's Eccentric blog points out that the club had in the past accepted donations from the natural gas industry and notes that “mainstream environmental groups have struggled to find the right line on shale natural gas and the hydraulic fracturing or fracking process.” Since 2010, the Sierra Club has refused any further donations from the natural gas industry, even turning down a promised \$30 million donation, but the issue has caused concern among club members in states where fracking is underway. The Sierra Club no longer uses the term “bridge fuel,” and in 2010 launched a Natural Gas Reform priority campaign.

Environmental groups combating fossil fuels are facing titanic energy industries and a congress that is deeply indebted to them for big campaign contributions. There are many difficult choices and difficult decisions. No one has all the answers, but building stronger bridges between the campaigns against coal and fracking – as Mountain Justice Spring Break seeks to do - seems like a good start.

For more information about Mountain Justice Spring Break, go to www.mjsb.org



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

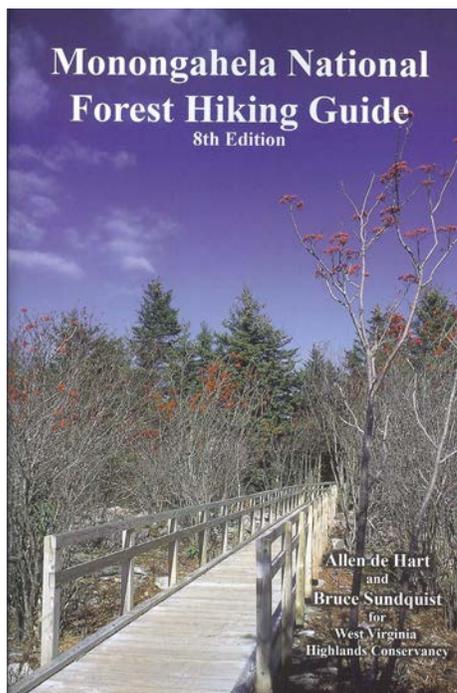
New 8TH Edition Now Available on CD

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.



SOMETHING ELSE TO DO

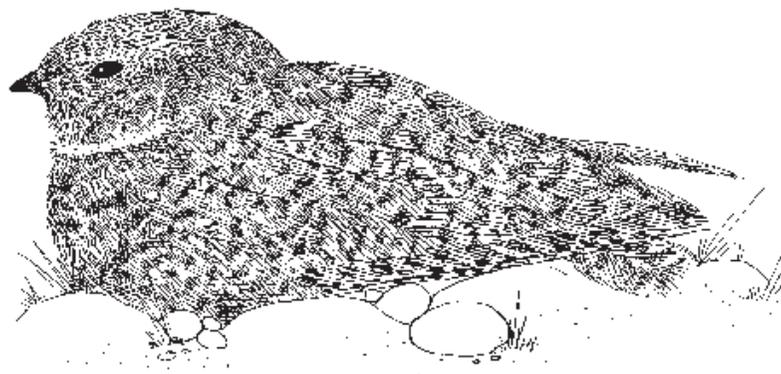
If Mountain Justice Spring Break (previous page) is not sufficient to enrich your summer, try The Whippoorwill Festival.

The Whippoorwill Festival, located in the beautiful foothills of Appalachia in Central Kentucky, teaches earth-friendly and sustainable living skills in a joyful, healthy, family-friendly atmosphere.

The Whippoorwill Festival celebrates our Appalachian heritage and traditions while helping prepare our minds and bodies for a future world of climate change and a decreased supply of fossil fuels.

For more info, go to www.whippoorwillfest.com. Even if you don't decide to go, you should visit the website just to read the list of workshops. They wander through (among some 40+ offerings) tree identification, waste veggie oil diesel auto conversion, cob construction, composting toilets, old time ballad singing, salamanders and backyard chickens while managing to stop off at quantum physics.

Thursday - Sunday July 12-15, 2012.



Black History Month Celebration Event Features a Preview of

Hawks Nest: Blood Beneath Our Feet

Film makers honor the past while preserving the future by planting trees to reduce the film's carbon footprint.

By Dave Saville

On February 19 at the West Virginia Culture Center, in celebration of Black History Month, filmmaker Mari-Lynn Evans unveiled the preview trailer for a new documentary film she is making about the Hawks Nest Tunnel Disaster. Commissioner of Culture and History, Randall Reid-Smith, welcomed the large crowd and several people spoke about the significance of the event and the film. I spoke about the connection between social and environmental justice and about how the Highlands Conservancy is helping the film makers reduce the carbon footprint from the film's production by planting trees.

Mari-Lynn Evans, Producer of the films *The Appalachians* and *Coal Country*, is producing a new film *Hawks Nest: Blood Beneath Our Feet*. This new project will tell the story of the tragedy of African-American workers who moved to Fayette County, WV in the early 1930s to dig a 3-mile tunnel through Gauley Mountain. "No one else is going to tell our stories for us," she said.

The tunnel was part of a hydroelectric project by Union Carbide to generate power for its nearby metallurgical plant. Its excavation cost as many as 2,000 men their lives. Silicosis, caused by breathing rock dust, was the direct culprit, but many blame the company for irresponsible safety measures.

"We are here to teach, to tell and hope that inspires you to toil in the direction of a struggle that continues even today," said the Rev. Ron English, retired pastor of First Baptist Church in Charleston. The Rev. Matthew Watts, Senior Pastor of Grace Bible Church in Charleston, recalled the words of his father, who died of black lung and silicosis. "Kill a mule, buy another one. Kill a man, hire another one." Watts, originally of Mount Hope, is personally close to the history portrayed in the film. His grandfather also died of silicosis.

West Virginia AFL-CIO President Kenneth Perdue asked, "Why is it that it takes so long to get a story like this out and get it told to our younger generations? The only way we can fix this is to tell this story louder than we've ever told it before." Dr. Wilburn Hayden, a professor of social work at York University and a scholar of Blacks in Appalachia, spoke of omissions and exclusions from history. "The telling of Hawks Nest is a reminder of our black history and our history as a state of many colors. It's a state made of many identities; a state in which many share in its successes and short comings; black history is West Virginia History."

I was asked by the makers of this film to help them develop a program to offset carbon dioxide (CO2) generated in the making of the film. We are considering the establishment of a Hawks Nest Memorial Forest where 2000 trees would be planted to represent,

and reflect upon, the lives lost in the Hawks Nest Tunnel disaster.

As part of that program we distributed 500 West Virginia red spruce trees to those who attended the event and asked that they take a tree home and plant it in an appropriate place in their neighborhood. The cheapest, easiest and most effective way for individuals to help offset the CO2 that they generate is to plant a tree. While all living plant matter absorbs CO2 as part of photosynthesis, trees, the kings of the plant world, are considered nature's most efficient "carbon sinks."

Trees remove carbon from the air and store it in their trunk, branches, leaves and roots, all the while releasing oxygen back into the air. This storage of carbon prevents it from escaping into the atmosphere and contributing to global climate change. A single

mature red spruce tree can absorb as much as 48 lbs/year of carbon dioxide and release enough oxygen back into the atmosphere to support 2 human beings. If every American family planted just one tree, the amount of CO2 in the atmosphere would be reduced by one billion lbs annually. Trees also shade our homes and office buildings reducing air conditioning costs.

These red spruce trees were grown from seeds collected by West Virginia Highlands Conservancy volunteers as part of a coordinated effort called the Central Appalachian Spruce Restoration Initiative (CASRI). CASRI is a partnership of diverse interests with a common goal of restoring the historic red spruce ecosystem across the high elevation

landscapes of Central Appalachia. It is comprised of private, state, federal, and non-governmental organizations which recognize the importance of this ecosystem for its ecological, aesthetic, recreational, economic, and cultural values.

Red spruce forests once dominated the higher elevations of West Virginia, covering more than 500,000 acres. Extensive logging in the late 1800s and early 1900s reduced much of the mature forest in the Appalachians, including the red spruce-dominated stands. Today only about 29,600 acres of high elevation red spruce forests remain in the State.

Visit www.hawksnestfilm.com to see the trailer, and to learn more about the film.

Visit www.restoreredspruce.org to learn more about CASRI



NOT FAR FROM WHERE I LIVE

By Donna Weems

Not far from where I live
A stream streaks down a cliff
Staining it red from the
Broken bowels of the mountain.
A wound that never stops bleeding.
A reminder of the cost of
Digging coal.

Not far from where I live
There is a lake.
A bass breaks the surface:
A quick flash grabs a bug.
It is raining mercury:
A neurotoxin so strong
A child trips at school:
His learning is haywire.
Confusion.
A fallout of
Burning coal.

Not far from where I live
Is a family, united,
With the only survivor
Of an underground mine explosion.
Brought up from a concussion
Of black dust and darkness.
Every day his family
Reaches for him
Searching, searching,
The darkness
Of mining coal.

Not far from where I live
An art gallery is filled
With a profusion of life;
Mussels, fish, frogs,
Insects, salamanders.
Reflections.
Ninety species that
Could not leave the creek.
Alive only on the walls.
Consol Coal
And fracking
Cast a moratorium on the life
At Dunkard Creek.

Not far from where I live
The sunrise is red:
The treetops still.
Milkweed seeds drift lazily by.
A child wheezes and chokes.
She inhales:
Her air passages
Close down.
Her body rejects
her own breath.
Today is a school day.
Heat, inversion, fog:
A smokestack trap.
The power plants are
Burning coal.

Not far from where I live
Are polar bears, krill, salmon,
Whales, albatross, penguins,
Bamboo, cranes, tigers,
Rhododendron, elk, buffalo:
The most beautiful paradise
The world has ever known.
We are all on a coal fired
Runaway train,
Three degrees from
Being out of control.
What of tomorrow?

Not far from where I live
Cars carry a bumper sticker-
"Friends of Coal."

SPRINGS

By Donna Isaac

George Washington bathed here,
splashed around in this narrow hollow
of Berkeley Springs' rock,
took off his crabbed boots
and dipped his ingrown toenail
into the healing waters,
likely laid his impossible teeth
on the moss ledge beside him,
humming, contented:
Mmmmmmmmmmmmartha.

Peonied body relaxed,
he thought about the bleeding feet
of his men at Valley Forge,
white cake at Mount Vernon:
Mmmmmmmmmmmmartha.

Then it was time to go.
it was always time to go.
Time to don the tri-cornered hat,
adjust the Masonic apron,
gallop by Cacapon,
battlefields yet unknown.

OUR READERS WRITE

A Way to Save Birds and Bats

Highlands Voice

We've been hearing about wind turbines killing birds and bats for some time. I think I have a solution for this.

Attach a noisemaker to each turbine, if they're far enough away from residential housing. Which noise to use is determined by scientific testing to do the job. Get the one that works.

It wouldn't hurt to also find an alternative sound, if the occasion arises where you need to switch.

William Montgomery
Reading, OH

WEST VIRGINIA'S CONGRESSIONAL DELEGATION - THEY GET BY WITH A LITTLE HELP FROM THEIR FRIENDS

.....their coal and oil friends

By Jim Sconyers

Ringo Starr said it so sweetly: "I get by with a little help from my friends." Yes, we all get by with a little help from our friends. And our West Virginia Congresspersons and United States Senators do too.

And who are their friends? Some of the friends who give more than a little help are the coal and oil industries. In politics help translates as money. Here is an accounting of how much dirty energy money coal and oil have recently given to West Virginia's Congressional delegation. All dollar figures are amounts given since 1999.

<u>Representative Shelley Moore Capito</u>	<u>\$839,731</u>
Dirty energy money by industry:	Coal 53% Oil 45%

<u>Representative David McKinley</u>	<u>\$341,029</u>
Dirty energy money by industry:	Coal 81% Oil 19%
(Note – Mr. McKinley has only been in Congress for 1 year)	

<u>Representative Nick Joe Rahall</u>	<u>\$251,700</u>
Dirty energy money by industry:	Coal 68% Oil 32%

<u>Senator Joe Manchin</u>	<u>\$727,048</u>
Dirty energy money by industry:	Coal 80% Oil 19%
(Note – Mr. Manchin has only been in the Senate for 1 year)	

<u>Senator Jay Rockefeller</u>	<u>\$411,350</u>
Dirty energy money by industry:	Coal 74% Oil 26%

Who gave all of this money? The list of donors reads like a rogue's gallery. It includes many of the worst polluters and destroyers of the environment in West Virginia. A few examples:

- ◆ Alpha Natural Resources, the new owner of Massey Energy and Upper Big Branch, whose executives have refused to testify about UBB under oath.
- ◆ First Energy, owner operator of antiquated Truman era coal-fired power plants in West Virginia that lack modern pollution control.
- ◆ Arch, Patriot, and Consol, leading Mountaintop Removal and surface coal operators and valley-filling stream obliterators.
- ◆ Chesapeake Energy, responsible for numerous Marcellus gas violations.

We can ask ourselves: When our "leaders" in Congress take this kind of money from these kinds of friends, is it any surprise that we get what we get - or don't get - from Congress?

- Is it any surprise that Mountaintop Removal continues to devastate southern West Virginia?
- Is it any surprise that Marcellus gas blossoms into a major and unregulated air polluter in West Virginia?
- Is it any surprise that Congress actively works against protecting us from toxic coal ash?
- Is it any surprise how difficult it is to move the nation in the direction of the clean energy future that could save us from the worst consequences of global climate change?

Cynics can probably think of a few appropriate clichés to toss in here. "You get what you pay for." "Money talks." "If you want to dance you have to pay the [piper]." "Follow the money."

Of course, when asked our politicians routinely look aghast at any such implication: "Surely, sir, you don't mean to suggest that they expected anything from me in return for the money! Surely not!"

Thanks to Oil Change International for the data used above. For their full report go to <http://dirtyenergymoney.org/view.php?searchvalue=26201&search=1&type=search>

GROUPS ASK FOR MORE REVIEW OF MARCELLUS DRILLING IN THE MONONGAHELA NATIONAL FOREST

By John McFerrin

The West Virginia Highlands Conservancy and the West Virginia chapter of The Sierra Club have written a letter to the United States Forest Service questioning how carefully it is prepared to scrutinize any proposal to drill for gas in the Marcellus Shale on the Monongahela National Forest.

As *The Highlands Voice* has reported (September, 2011), there are some indications that drilling for gas in the Marcellus Shale may be coming to the Monongahela National Forest. Although there have been no formal announcements of proposals to drill, the indications are that such a proposal may well be on the way. The question is how carefully the Forest Service is prepared to scrutinize such proposals.

Management of the Monongahela National Forest is currently guided by the management plan which the Forest Service adopted in 2006. In 2006, drilling for Marcellus shale gas was unknown. While the Forest Service considered more conventional gas drilling in developing the Plan, Marcellus drilling was not part of its considerations.

Because of this, and in response to inquiries on the subject, the Forest Service considered whether it should reopen the 2006 Plan because of the new information and the new drilling techniques involved in Marcellus shale wells.

In March, 2011, Forest Supervisor Clyde Thompson signed a Review of New Information concerning Marcellus shale gas drilling in the Mon. To read the whole thing, go to http://www.fs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb5288559.pdf. The summary says: "Based on this review, the MNF Forest Supervisor has determined that new information related to gas exploration and development in the Marcellus shale does not require correction, supplementation or revision of the Environmental Impact Statement prepared for the 2006 Forest Plan or the environmental analysis of any ongoing project."

In the letter, the two groups disagreed with that assessment. They also urged amendment of the Environmental Impact Statement prepared for the 2006 Forest Plan and the 2006 Forest Plan to address the impacts of shale gas drilling which uses high volume slickwater hydraulic fracturing or "fracking" in the Monongahela National Forest.

The letter questioned the authorities relied upon. The Forest Service cited no scientific studies. Instead, in determining that no further study of the environmental impact of fracking was necessary, the Forest Service relied upon the West Virginia Geological and Economic Survey and the West Department of Environmental Protection. While the West Virginia Geological and Economic Survey may have geological information, it is not a reliable source on environmental impacts.

Because the technology is new, the West Virginia Department of Environmental Protection does not yet have much, if any, information or expertise on its impacts. It is not appropriate to base a decision on likely impacts upon the opinion of an agency that is only now developing its expertise.

The groups also challenged the Review's assumption that the Marcellus drilling and fracking would be similar to the drilling of vertical wells that was done in the past. While there are some similarities, the differences are striking. Marcellus drilling includes

both vertical and horizontal drilling. Marcellus drilling requires more of everything—more land, more equipment, more water, more pipe, more trucks, more supplies (drill bits, sand, chemicals, fuel). It turns the Forest into an industrial zone. While the drilling of a conventional vertical well would have this effect as well, with Marcellus drilling the effects are greater and they last longer.

The pipeline rights of way made necessary by Marcellus drilling would also be larger than the 2006 Forest Plan anticipated. The Plan assumed gas line rights of way would be 15 to 40 feet. Those associated with Marcellus wells are often 100 feet wide.

Of particular concern is water use. There are no big rivers on the Monongahela National Forest. On the contrary, most of its streams are headwater streams. Marcellus drilling requires an enormous amount of water. There is no effective system in place for controlling or monitoring water withdrawals. Neither does the 2006 Plan anticipate the sediment that would come from something as substantial as a Marcellus drilling operation.

The letter also pointed out the problems with water disposal. Water which has been used for fracking and water produced during drilling contains mineral salts, heavy metals and radioactive materials, as well as the drilling waste itself. The 2006 planning document did not anticipate the issues arising out of such disposal, particularly disposal of the volumes of fluids produced by a Marcellus well.

The groups also questioned the Forest Service's assumptions that air quality impacts would be minimal. A Marcellus drilling operation requires increased truck traffic and increased equipment activity on the wellpad, as well as compressor stations and flaring and venting. In deciding, in the Review of New Information, that the new activity would not require an additional study, the Forest Service ignored just how extensive the new activity and its impact upon air quality would be.

In arguing that the new activity of Marcellus drilling should require additional environmental impact study and revision of the 2006 management Plan, the groups pointed to the assumptions about gas drilling made in the 2006 Plan. The section of the Plan dedicated to mineral extraction repeatedly refers to "current conditions." It assumes that those conditions would continue and that the Forest should be managed with those conditions in mind.

The drilling in the Marcellus shale is a new condition, unknown in 2006. The "current conditions" which the 2006 Plan addressed no longer exist.

The change in conditions is really another way of summarizing the groups' entire argument. The 2006 Plan (and the environmental impact studies that preceded it) was a response to the conditions that existed in 2006. The Plan is designed to manage the Forest in light of those conditions.

Those conditions did not include Marcellus shale drilling. The conditions that exist today require new planning and a revision of the Plan to account for this new technology and new impacts in the Forest.

CYNTHIA D FINISHES UP (Continued from p. 2)

roundups are among human causes for their population decline.

The cutest “ugly” may be the Allegheny Wood rat. According to one source, “Large eyes, large ears, silky fur, and a blunt nose ... characterize the Allegheny Wood rat. Their preferred homes are rocky ledges, in areas far from humans. With pack-rat like behaviors, these clean and docile creatures pile up “middens” which sometimes include snail shells, gun cartridges, feathers, and bones.

Freshwater mussels---mollusks---might be at the other end of the appealing spectrum. Like the coal miner’s canary though, these organisms can serve as early warning devices. They need to be healthy so we can be healthy. Recently two West Virginia species were placed on the endangered list; one was the rayed bean mussel of the Elk River. The other was the snuffbox mussel; formerly found in 219 waterways, but now only in 79. One Pennsylvania state agency has voiced concerns for these species in connection with Marcellus Shale drilling.

Cheat Mountain Salamander can only be found here. Five mountain counties are the home to this rare, breathes-through-its-skin forest floor dweller. In a “nest” under a rock or log, the female’s egg cluster hangs from a small stalk. Their population numbers and locations are difficult to define; status is “threatened.” In a related study, one scientist said, “Diversity enables discovery. All of these animals have secrets; you just don’t know what they are. We care about all of them because one of them might have that one secret that we are going to miss if the animal goes extinct. We desperately want to conserve them and their habitats because they all have these wonderful things we can learn.”

One secret Wolf Spiders have is that their eyes glow in the dark. Moonlight or a flashlight will reflect many little diamond-like “eyeshine” glitters in the dark. Newly hatched Wolf spider babies clamber up on to the mother’s back, opossum-style. Their prey includes insects we categorize as harmful. But an entomologist has a warning. “If all mankind were to disappear, the world would regenerate back to the rich state of equilibrium that existed ten thousand years ago. If insects were to vanish, the environment would collapse into chaos.” ~Edward O. Wilson

These next two are not declining, but are watchable due to territorial changes.

Coyotes also are devoted caretakers of their young. Their populations have shifted in response to human actions. Nowadays they help curb surplus numbers of Canada Geese [goose poop problems], White-tailed Deer [over browsing of vegetation], and feral cats [songbird depredation].

The Black Vulture “happily eats our trash and road kills. Only rarely takes live prey, “notes the Crossley ID Guide. A smaller bird than the Turkey Vulture, with wings held straighter, this efficient scavenger has sometimes provoked overreaction too. A few years ago discussion on them prompted strong defense from state biologists and other field experts. Alternative strategies for concerned farmers were noted, as was their overall usefulness. Juvenile Turkey Vultures resemble Blacks, so identification can be tricky.

Well, maybe we don’t need fanfare for every bit of good news. Maybe we don’t always need emblematic creatures. Maybe we just need people like us to trying to keep it whole--- “ugly” and all--- because we know every part fits.



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