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The Highlands Voice

The Monthly Publication of the West Virginia Highlands Conservancy

Volume 45

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SPRUCE NO 1 VETO VACATED PIGEONROOST HOLLOW THREATENED ANEW

By Cindy Rank

For Julius Caesar the Ides of March was a terribly unlucky day... For us here in West Virginia the 15th of March 2012 slipped by with nary a peep... But just one week later the news was far less than encouraging.

On March 23, 2012, a federal court in the District of Columbia overturned the U.S. Environmental Protection Agency's veto of one of the worst mountaintop removal mines permits ever issued in U.S. history, the Spruce No. 1 Mine in Logan County, West Virginia.

In response to litigation filed by Mingo Logan Coal Company a Federal District Court judge in the District of Columbia ruled that the Environmental Protection Agency (EPA) exceeded its legal authority in blocking the huge Spruce #1 mine in Blair, West Virginia.

Supported by a 34 page opinion the order in brief states:

ORDERED that the "Final Determination of the U.S. Environmental Protection Agency Pursuant to §

404(c) of the Clean Water Act concerning the Spruce No. 1 Mine, Logan County, West Virginia" dated January 13, 2011 (Final Determination) is vacated in its entirety;

ORDERED that Mingo Logan's permit issued by the U.S. Army

Corps of Engineers pursuant to section 404 of the Clean Water Act, DA Permit No. 199800436-3 remains valid and in full force.

Judgment is entered in favor of Mingo Logan Coal Company Inc. and against the United States Environmental Protection Agency. This is a final appealable Order.

The history of this mine permit, the litigation and studies and administrative reviews surrounding the proposal and the involvement of the WV Highlands Conservancy are well documented in numerous issues of *the Highlands Voice* over the past fifteen years.

In this most recent action when Mingo



Pigeonroost Hollow

(Photo courtesy of the Ohio Valley Environmental Coalition)

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Ramblin' the Ridges

By Cynthia D. Ellis

~UNLESS~

Forty-one years ago, Theodore Geisel ["Dr. Seuss"] wrote the acclaimed children's book *The Lorax*. It featured quirky cartoon drawings and a cadenced text and his fantasy story of environmental abuse ended on a hopeful note. There was a "Once-ler" who cut down all the "Truffula Trees" to make "Thneeds"---that is, those versatile Things that everyone "Needs"--- and who was scolded by the "Lorax"; he eventually repented and looked to a child to lead in restoration._

This spring a new movie based on the book has brought controversy. This debate does not center on the form or content of the movie itself. Reviews have been mixed, but somewhat positive. The animated flick has been a hit at the box office. And it should be noted that some business-related critics had spoken out against the book from the time of its publication. The National Wood Flooring Manufacturers' Association was unhappy with the book's depiction of clear cutting. They offered their own alternate but similar book, "Truax." Libraries and schools in timber-centered areas banned the Seuss book.

In negative movie reviews, phrases have surfaced such as "too green" and "propaganda." One site defends the simplicity of animated films, and puts its own spin, with, "...no one should expect this one to represent nuances such as how government regulations actually require the lumber industry to exponentially plant more trees than it cuts down..." [Huh?] And another site says, "...concern...is easily dispelled with the parental guidance of sharing how our country takes care to ensure that the USA will never become the wasteland seen outside Thneed-Ville." [!?!]

However, for this most recent film version, more comment has been generated on an issue closer to the hearts of some of our general members and board members. That is, should children be targeted as receivers of certain messages, and, in this case, even targeted as potential consumers. For Board member Julian Martin's take on it, see page 14 of this issue of *The Highlands Voice*.

About 70 products and retailers have official "tie-in" items with the movie. These "Lorax-friendly" offerings include I-Hop pancakes and Comcast Xfinity TV. Criticism has been especially vocal on the pairing of the movie and Mazda's CX-5 SUV. While the early work experience of author Geisel/Dr. Seuss included jobs in advertising--he sketched bugs for the Standard Oil pesticide "FLIT"--- most fans of the book do not think the doctor would approve of Mazda representatives personally urging groups of school kids to coax their parents to hurry down for a test drive, because this is "the kind of car we think the Lorax would drive."

Reactions have been both harsh and satirical. Comedian Stephen Colbert waxed Seussian with his own rhyme. It said, in part,

"I'm demanding more branding of Loraxian stuff!
With what you can buy, boy, the sky is the limit---
A Filet-O-Fish meal with real hummingfish in it!
Filmmakers, get cracking! The market is lacking
A splendiferous Lorax-themed drill made for Fracking!

A cartoon by Joe Mohr had the "Book Lorax" scolding the

(Cynthia D. finishes up on p. 9)

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VETO OF SPRUCE MINE OVERTURNED

(Continued from p. 1)

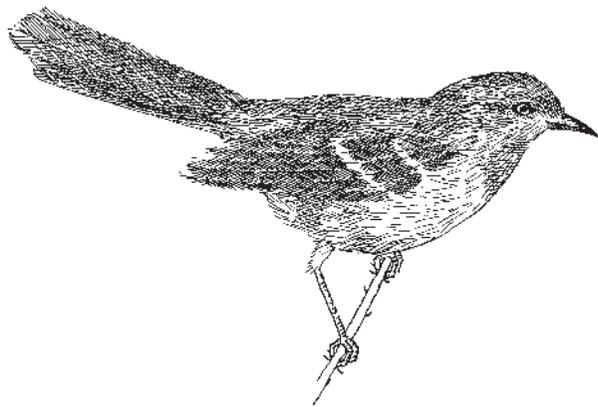
Logan sued EPA over its veto of the fill permit for Spruce No 1, the WV Highlands Conservancy, along with Ohio Valley Environmental Coalition, Coal River Mountain Watch and Sierra Club were represented by attorneys at Earthjustice and Appalachian Mountain Advocates in a friend of the court brief.

We believed then and we continue to believe that the EPA was right to veto the permit, because if the proposed 2,278 acres are mined the operation will destroy over six more miles of the ecologically rich Pigeonroost and Oldhouse Branches of Spruce River of the Little Coal River and will bring further harm to the people living near the mine, many of whom have already suffered overwhelming impacts of nearby mountaintop removal already under operation.

40 years ago Congress passed the Clean Water Act to protect Americans from the very harms that mountaintop removal and other large scale coal mining are now imposing on families and communities throughout Appalachia. Then and now the Clean Water Act makes it clear that EPA has broad legal authority to protect our waters and the communities that use and enjoy them — and it is essential for EPA to do so before our waterways are gone for good.

We were inspired and hopeful when more than 50,000 people across the country submitted comments backing EPA's 2011 veto of the Spruce permit and hope the powers that be don't back down now.

We believe the EPA has a very strong case and we will do what we can to encourage the agency to appeal the federal court's ruling and to support it in that action.



BOARD MEETING PLUS SCHEDULED FOR APRIL 21-22

The West Virginia Highlands Conservancy Board of Directors has scheduled its spring board meeting for Sunday, April 22, at 9:30 a.m. at Blackwater Falls State Park. As has been our tradition, all members are welcome to attend Board meetings and participate in the discussion. The only limit on their participation is that they may neither make motions nor vote.

In addition to the Sunday Board meeting there will be activities. For Saturday evening there will be a forum of interest. On both Saturday and Sunday there will be a Red Spruce planting.

Those participating in the Red Spruce planting will be meeting at the Refuge Headquarters at 10 am on both Saturday 4/21 and Sunday 4/22. Lunch will be provided. We have a brief educational program to tell the volunteers about the spruce restoration program, go over logistics for the day and then car pool to the planting site. This year we will be working along the Blackwater River in a cooperative project between the USF&WS and the Timberline Homeowners Association. We will be working to finish up one of the final links in the corridor we are creating along the Blackwater River and some of its major tributaries. We have students from numerous colleges coming as well as some Boy Scouts and a few local Lion's Club chapters, and other random volunteers.

Responsibility for room reservations is up to individuals.



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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.

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.

2012 LEGISLATIVE SESSION WRAP UP: THE GOOD, THE BAD, AND THE UGLY . . .

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

The 2012 Session of the West Virginia Legislature ended on March 10.

During each session the WVEC Lobby Team tracks many bills. This year 1,351 bills were introduced in the House, and 678 bills were introduced in the Senate. Only 214 of those bills were passed by both the House and Senate, and some of those bills will be vetoed by the Governor. That's about average for recent sessions. Below is a brief rundown and disposition of some of the bills we were tracking.

SB 76 – The Green Buildings Act: Hooray! Chalk this one up as a victory. In a very strange bit of parliamentary procedure, a weakening amendment adopted by a committee in the House was simply ignored, and the bill passed both chambers in its original form. 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). The bill now awaits the Governor's signature.

SB 579 – Increasing the Special Reclamation Tax on Coal: Another victory! The bill increases the tax from 14.4 cents per ton to 27.9 cents per ton, with the entire 13.5 cents per ton earmarked for future water pollution treatment. Monies in the Special Reclamation Fund are used for cleaning up coal mines abandoned since passage of the 1978 federal strip-mining law. The bill passed both houses and now awaits the Governor's signature.

HB 2740 and HB 2741 – Our Solar Energy Bills: Yet another victory! HB 2740, which makes homeowner association restrictions against solar panel installation unenforceable, saw final passage on the last night of the Session. It now awaits the Governor's signature. Unfortunately, HB 2741, which would have reduced the property tax assessment on solar panel installation, died in House Finance Committee.

HB 4530 – AEP Debt Relief Bonds: This was a bad bill in way you look at it. As originally proposed, the bill would have granted the Public Service Commission the authority to allow all electric utilities to issue bonds to finance unrecovered fuel cost operating expenses (debt). The motivation for the bill was Appalachian Power's approximately \$350 million unrecovered fuel costs balance that remains, despite the PSC's efforts to retire the debt through significant rate increases over the past four years. The bonds will be secured by the money collected from future ratepayers. We were granted a public hearing on the bill, and argued at the hearing that while the bond plan might make financial sense in Appalachian's current situation, the bill should not allow PSC carte blanche authority in allowing electric utilities to apply for such bonds in the future. Fortunately, the Legislature agreed with us, and the final version of the bill passed by both houses limited the measure only to paying down Appalachian's current fuel debt. Count this as a minor

victory for us – and for ratepayers. The bill has been signed by the Governor.

SB 162 – “Least-Cost” Planning: This bill, and its counterpart in the House, **HB 4646**, would have required power companies to submit long-term plans to the Public Service Commission showing how they could meet future electricity demand at the lowest cost to their customers. Despite our relentless lobbying efforts, the bills failed to make it onto any committee's agenda.

HB 4086 – The “Cracker” Tax Credit Bill: This bill sailed through the Legislature in the third week of the session, and was promptly signed by the Governor before he took off for Houston, Texas,

to attempt to woo Shell Oil Company into building an ethane cracker plant in West Virginia. A cracker plant 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. The bill would allow cracker plant 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 would save plant owners more than \$25 million in property taxes in the first year alone. However, the West Virginia Center for Budget and Policy has released a study showing that the cracker tax break could cost the community where such a facility locates \$300 million in



Don Garvin prepares to take on the Legislature

revenues for schools and other local projects. And Shell has just announced it has chosen a site in Pennsylvania for its facility. Will we get a cracker in WV? Who knows?

SB 615 – Conforming WV Water Pollution Control Act with Federal Clean Water Act: This was a terrible bill drafted by the WV Coal Association with the sole aim of limiting citizen lawsuits when it pollutes. The bill removes a provision in state water pollution discharge permits that requires compliance with all water quality standards. The bill inserts new language into the Water Pollution Control Act stating, essentially, that compliance with effluent limits in the permit is compliance with the law. Current law states that coal mine operators also can't violate any other water quality standard. Well, now they can! The Legislature passed the bill, and it now awaits the Governor's signature.

SB 562 – Defining Narrative Water Quality Standards: This bill is DEP's next salvo in its battle with the EPA over the biologic component of the state's narrative water quality standards used for granting coal mine permits. The bill requires DEP to propose rules measuring compliance with the biologic component that require “evaluation of the holistic health of the aquatic ecosystem.” It also requires a determination that a stream supports a balanced aquatic community, contains appropriate levels of fish and has enough of the right streambed bugs to support the appropriate fish. Fortunately,

(More on p. 5)

GROUPS SUE TWO MORE MINING COMPANIES FOR BIOLOGICALLY IMPAIRING WV STREAMS

The West Virginia Highlands Conservancy, the Sierra Club and the Ohio Valley Environmental Council are suing two mining companies for discharging pollutants that have biologically impaired headwater streams in West Virginia.

The lawsuit, filed in federal court in Charleston, alleges that mine runoff from five mines operated by Elk Run Coal Company and Alex Energy has contaminated the water in the Laurel Creek and Twentymile Creek watersheds with sulfate and other dissolved solids that make them toxic to aquatic life.

The federal Clean Water Act prohibits any discharge into the waters of the United States of any pollutant unless the person or company doing the discharging has a permit for the discharge. The permits which are issued require that the water discharged to the streams have less than certain concentrations of various pollutants. The discharges must also meet any other requirements of the law designed to protect water and the use of that water.

West Virginia has both what are called “numeric” water quality standards and “narrative” water quality standards. Numeric water quality standards require that pollutants exist in the discharge water only at certain levels. For example, a numeric standard might authorize a discharge of water with three milligrams per liter of iron, two milligrams per liter of manganese, etc.

“Narrative” water quality standards are not numbers or specific concentrations of pollutants but descriptions. West Virginia’s narrative water quality standards prohibit discharges of “[m]aterials in concentrations which are harmful, hazardous or toxic to man, animal or aquatic life” or that cause “significant adverse impacts to the chemical, physical, hydrologic, or biological components of aquatic ecosystems.”

In this case, the groups contend that the mining has violated the narrative water quality standards by discharging pollutants harmful to aquatic life, including total dissolved solids, and sulfate. The discharges have caused an increase in conductivity, a general measure of the pollutants dissolved in the water.

The suit is based on the same legal theory that the two groups used to obtain a recent settlement against Fola Coal Company, requiring it to cleanup another biologically-impaired tributary in the Twentymile Creek watershed. (*The Highlands Voice*, December, 2011). In both cases, the groups contend that the mining companies have violated West Virginia’s “narrative” water quality standards, which set general criteria for water quality, rather than “numeric” water quality standards, which set limits on the concentration of specific pollutants in water.

Compliance with narrative standards is typically determined by taking field measurements of the abundance and diversity of aquatic life in the stream, rather than by only measuring the amount of chemicals in the discharged water. Some tributaries of the Laurel and Twentymile Creeks show significant damage to aquatic life compared to that in unpolluted reference streams. A large portion of the land area in these two watersheds has been disturbed by mining and valley fills.

The U.S. Environmental Protection Agency has estimated that nine out of 10 streams downstream from valley fills associated with coal mines are biologically impaired. But neither the state of West Virginia nor the EPA has taken action to require compliance and cleanup of the impaired streams.

The principal tool for enforcing the Clean Water Act is an enforcement action by the Environmental Protection Agency. The Clean Water Act has a procedure—called the citizen suit—which allows citizens to inform the Environmental Protection Agency of an ongoing violation of the Act. If the Environmental Protection Agency fails act, Congress authorized citizen suits under the Clean Water Act to enforce the law directly against permit violators such as Elk Run and Alex Energy.

In this case, the plaintiffs had previously informed both the Environmental Protection Agency and Elk Run and Alex Energy of the violations but the EPA took no action.

Counsel in the case are Jim Hecker at Public Justice in Washington, DC and Joe Lovett and Derek Teaney of Appalachian Mountain Advocates in Lewisburg, WV.

MORE ABOUT THE LEGISLATURE (Continued from p. 4)

the final version of the bill includes language that the rules DEP proposes may not “establish standards less protective” than current requirements. The Legislature passed the bill, and it now awaits the Governor’s signature.

HB 4511 – WVU Shale Research, Education, Policy and Economic Development Center:

This bill would have created a Shale research center at WVU to “foster scientific research and encourage partnerships between and among West Virginia University, government, and industry in an effort to develop best practices in relation to shale resources in West Virginia.” The biggest problem with the bill was that the center would have to rely on industry funding, which could certainly bias any work the center performed. Fortunately, the bill died on the final night of the Session, when the House failed to appoint conferees

to a conference committee to reconcile the differences in the two versions of the bill.

So What About Banning Coal Slurry Injection? Our efforts this year, along with those of the Sludge Safety Project, were met with broken promises. Senate President Jeff Kessler (D-Marshall) promised us a new bill that would remove the tax incentives. Senate Judiciary chair Corey Palumbo (D-Kanawha) promised us a committee meeting to discuss the current studies. Neither of those things happened. All we can do is keep trying.

CORRIDOR H: STILL GRUBBING

By Hugh Rogers

Grubbing for Corridor H along Route 93 in Tucker County has come within a mile of Davis. You can't say, There goes the neighborhood. As George Beetham showed (*Voice*, September 2010), that neighborhood was mostly gone. Strip mines from six decades in various stages of reclamation, the swath for the TrAIL power line, Mettiki Coal Company's mine and processing plant at Gatzmer, and the looming Mt. Storm power plant had transformed the former "wilderness of forests and bogs."

Still, there was hope for regrowth. Canaan Valley Institute could be taken as a symbol of that hope. Now the trees at the entrance are gone and CVI's maintenance shed looks naked. Driving Route 93, you may think you're hallucinating a scene from Dr. Seuss's *The Lorax*.

For now, the destruction has been interrupted by destruction. Directly across from the Mettiki mine, in the corridor's path, a new strip job has dug deep and piled high. One last grab for the coal.

Ben Hark, environmental section head at the Division of Highways, told me they have reached an agreement on price and acquired the right of way. Construction on this section could begin "soon." Construction is underway now from Knobley Road, in Grant County, up the Allegheny Front to the Grant/Tucker County line just west of the power plant, where the Davis section begins. It proceeds in fits and starts.

Much depends on money. On March 14, the United States Senate passed a transportation bill that would change the federal-state match for remaining Appalachian Development Highway System corridors. Corridor H has by far the most miles yet to be built. Senator Jay Rockefeller proposed the amendment to change the match. Previously, the federal government paid 80 percent and the states paid 20 percent. The Senate's bill would have the feds pay 95 percent.

On two remaining sections, Kerens to Parsons and Parsons to Davis, nothing has been done. To complete them will cost roughly half a billion dollars. In recent years, the stream of money that Senator Robert C. Byrd used to direct to West Virginia's highways has slowed to a trickle. Will the House of Representatives, under tight-fisted Republican control, re-open the faucet? Unlikely. 95 percent of a trickle is still a trickle.

But those who have followed this issue know that is not the only obstacle to completion, whether by 2035, as the Division of Highways web site predicts, or by 2020, as the self-designated Corridor H Authority wishes. The grubbing stops seven-tenths of a mile short of Davis because that is the eastern terminus of the most controversial section.

How will they get from Davis to Parsons? So far, they have insisted on following the original alignment across Blackwater Canyon, through the Blackwater Industrial Complex Historic District. And we have insisted that's the wrong way to go. The Supplemental Draft Environmental Impact Statement, completed after settlement of our first lawsuit, found several other routes that would be more appropriate and less damaging.

The highway division's Corridor H website reports the current status of Parsons-to-Davis: "A reevaluation of the Supplemental Final Environmental Impact Statement is underway, and the AROD is expected in 2012." AROD stands for Amended Record of Decision—the final order before construction can begin. Signing the AROD would start the clock on a lawsuit to block construction.

Notwithstanding any expectation that would happen some time this year, the highway division did not anticipate completing final design before 2025. Construction was "tentatively" scheduled to begin in 2031.

According to Ben Hark, the Federal Highway Administration wasn't hurrying to approve a Record of Decision. Because of the dispute? I asked. "That's probably *why* they're not in a hurry to approve," he said.

BUMPER STICKERS

To get free ***I ♥ Mountains*** bumper sticker(s), send a SASE to Julian Martin, 1525 Hampton Road, Charleston, WV 25314. Slip a dollar donation (or more) in with the SASE and get 2 bumper stickers. Businesses or organizations wishing to provide bumper stickers to their customers/members may have them free. (Of course if they can afford a donation that will be gratefully accepted.)

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



Join Now !!!

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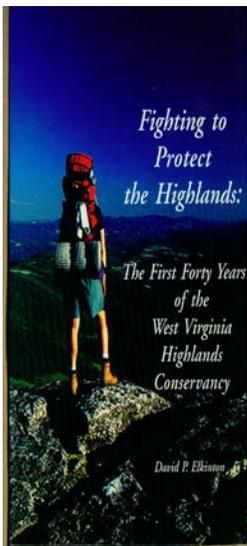
Membership categories (circle one)

	Individual	Family	Org
Senior	\$ 15		
Student	\$ 15		
Introductory			
Other	\$ 15		
Regular	\$ 25	\$ 35	\$ 50
Associate	\$ 50	\$ 75	\$ 100
Sustaining	\$100	\$ 150	\$ 200
Patron	\$ 250	\$ 500	\$ 500
Mountaineer	\$500	\$ 750	\$ 1000

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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.

BABY TREES ALL SOLD OUT

For the last couple of issues, *The Highlands Voice* has been offering for sale Red Spruce and Balsam Fir Seedlings. The demand has been such that the entire supply has either been sold or promised to other customers. Sorry for any inconvenience.



ABIES balsamea

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.

May 19, Spruce Knob Drive Meet at Spruce Knob Lake parking lot at the dam at 11:00. We will have a little talk about the lake and fishing and ice cover. We will go to a trout stream where we will rig a fly rod and try to catch a native trout. We will go the knob, orient, take a short hike. Finally, a drive to a little virgin forest--departing at 4:00, then to the Potomac with its Seneca Rocks Visitors' Center, or to the Greenbrier South. Or along Gandy Creek to the west. Leader: Don Gasper. (304)472-3704

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.

EDITORIAL FAUX PAS

The March, 2012, issue of *The Highlands Voice* contained a picture of what was supposed to be Irene McKinney. Due to an editorial oversight, the picture was not Irene McKinney but someone else. I am sorry for the mistake.

Here is what she really looks like.



Phoebe, Phoebe, Phoebe

By Irene McKinney

Oh you sweet birds. I heard your voices trilling
and I figured the day wasn't lost at all,
although you don't even know me. That you're here,
you've arrived, is amazing, and coming from *reptiles*?
If that's so, then I don't know how I've lived this long
in such darkness. Come on out, then, and make
that sound you make, that series of sounds,
so incomprehensible and so straight, full
of solids and liquids and your knowledge
of the depths of the sea, which you've translated
into tides of air. That's another world up there,
currents flowing, great storms, huge landscapes,
airscares, invisible forever to me. The way it
is to live there I can hear through you, jays,
sparrows, phoebes, chickadees, who passed back
and forth all winter long like a parallel
universe, though you sweet birds know nothing
of me and my strange heart. It makes me
want to listen, and keep the lines of our
worlds in tandem. I try to fly here
in these odd ways, while you are warbling
that liquid from the other sea.

WHITHER (OR IS IT WITHER?) OUR DEMOCRACY?

By Leslee McCarty, West Virginia Environmental Council Lobbyist
Don't get me wrong, I love Jimmy Carter. I always wear my sweater and turn down the thermostat in winter, as he taught us to do. But I was disappointed in him as President, because I felt he was naïve. He had what I called, for lack of a better term, an "eighth grade civics" concept of our system. Oh, would that eighth graders even studied civics nowadays!

So here for those of you who are still laboring under the delusion that our state is a democracy, let me share that in addition to being a client state of extractive industries, we are an oligarchy or a plutocracy, or both! "Oligarchy" is when the government is controlled by a small group; "plutocracy" is when the government is controlled by the wealthy. Darn, looks like we have a double whammy here, but for purposes of this article, let's stick to the oligarchs.

The reason we got no Marcellus bills even heard in committee this session was a "command decision" by "leadership" that they weren't going to take up Marcellus bills. After all, they reasoned, they had "fixed" the problem and everyone was tired of hearing about it. Besides, in an election year, no one wants controversy. At least no one trying to get re-elected.

So how did they quash our bills (the twenty or so introduced by our Sir Galahad, Del. Mike Manypenny of Taylor county, meant to repair the gaping holes in the legislation passed in special session)? They did it through sending a message to committee chairs that those bills would not be heard this session. Those committee chairpersons (oligarchs for purposes of this discussion) in House and Senate owe their jobs, and their bigger offices, to the Senate President and House Speaker, so nothing short of a revolt by those chairs, would have allowed our bills to be heard. So they weren't.

We are working through the system to try and get some action on looking at the Marcellus waste stream studied during interims, especially the issue of drill cuttings going into our landfills. But until next session, we probably won't see much on Marcellus, and only then if we keep up the pressure on the oligarchs!

Of course, as noted, there is an election going on and there will be many opportunities for you to speak to candidates and let them know your thoughts. Just tell them that Marcellus drilling regulations are not complete and we need further action now to protect our water, land and communities. Get them to promise in public that they will do something. That might help. The ballot box might just be the last hope of democracy. Oh gee, there I go, being all Jimmy Carter....

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

"Movie Lorax," saying,

"I, the Book Lorax, speak for the trees,
You, Movie Lorax, you sell SUV's!
Made by a great man, I defend and inspire,
You are a sellout. A Lorax for hire."

Others hit hard on the message signaled by the mere fact of product endorsements. Several essayists commented that the endorsements themselves were the opposite of the theme of *The Lorax* and, as *Time* magazine's Bryan Walsh said, "Consumption can't be the answer to environmental problems because consumption ultimately is the problem...The only sustainable solution to our energy-and-climate problems is to consume less---less travel, less power, less stuff."



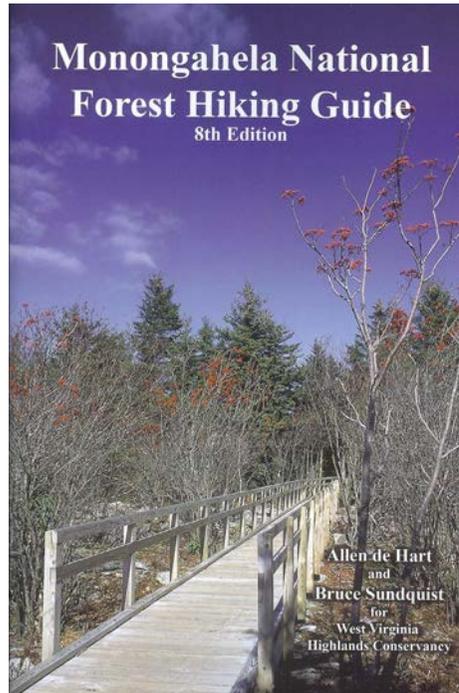
Petitions against the ties with products have been launched, particularly by The Campaign for a Commercial-Free Childhood.

These kinds of media flurries are often short-lived. But we, who speak for the mountains, and are likely to have affinity for the themes in *The Lorax*, are challenged to be vigilant on behalf of children. It is difficult to find a perfect path. But we can "bigger" our watchfulness. My own time with schoolchildren makes me think that they may be both more resilient and more vulnerable than we suppose.

Unless...well, read *The Lorax*. Let someone, a kid perhaps, read it to you. See what you think.

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.



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.

Wings of Hens

By E.R.

A mountain is a living thing
I turn to
These ancient rounded peaks
When bruised in body or spirit
And lift my eyes
When thirsting for inspiration
I lift my eyes
Or wanting remembrance of blessings
I lift my eyes again to you
Strong beyond measure
Beautiful beyond words
You set me right

Where then shall we turn when you are stripped and torn
Our Jerusalem shaped by God and time
Beneath the watchful eyes of Sun and stars

Oh, Appalachia,
Would that I could wrap you safe
Gratitude soft as wings of hens
Love, as warm.

A short note to the gas, oil & coal companies...

By Victoria Pendragon

You had a mother who gave you birth;
We all have a mother we call the earth;
You take her and rape her and cast her aside,
You maim her, deface her and then go and hide
In your mansions and palaces bought with your bile
and your ill gotten gains and the power you wield,
Ignoring the lives and the homes you destroy,
Seducing and lying to those you employ.
You call yourselves Christians?
Don't make me laugh.
You've dishonored creation;
You've broken his staff.
And with a hubris unsurpassed you defile the creations of your
God.

Fat Possums: extinct or just in hiding?**FINAL NIGHT AT THE LEGISLATURE – HO, HUM . . .**

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

On March 10, the final night of the 2012 Session of the West Virginia Legislature, I was surprised to see that the gold velvet ropes used to cordon off a path from the Senate chamber to the House chamber were not there.

In previous years the ropes were used to make a clear path for “runners” from each chamber to take messages on last minute actions from one house to the other. This year there were not even enough onlookers to block a “runner.”

I understand they did away with the ropes last year, but I wasn't there to notice it.

In the past, final nights always excited me. There were usually throngs of citizens, lobbyists, agency personnel, television camera crews, and legislators' family members crowded into the hallways and around “the well.”

And there was almost always important “cliff hanging” legislation whose fate had not yet been decided. The drama kept your adrenaline flowing. When Governor Earl Ray Tomblin was Senate President, he seemed to delight in the drama of bringing down the gavel on the final night.

But all of that is gone.

Charleston Gazette reporter and columnist Phil Kabler put it this way: “The days of runners dashing between chambers to deliver bills before deadline, legislators frantically screaming for their bills to be taken up in the waning moments, and large (and well-lubricated) crowds of spectators treating the night as a social event are gone forever, and probably for the best.”

Kabler attributes this to technology. He says, “It's awfully hard for the proverbial fat possums to move late at night, when the members can read the text of the bill, and any pending amendments,

on their iPads or other computer gizmos in real time.”

Well, I disagree.

Everything about this session was for the most part scripted from day one. It was scripted by the Governor's staff. It was scripted by House and Senate leadership. It was scripted in party caucuses and committee caucuses.

And it's not just because this is an election year. It's the way these legislators like to do business.

In one of our meetings with Senate Judiciary Committee chairman Corey Palumbo (D-Kanawha) about SB 162, the “least-cost” planning bill for electric utilities, I asked him to just run the bill and let the result fall where it may. His response was, “Come on, Don, you know that's not how we work.”

And he's right. It's all orchestrated to avoid public controversy, and, I would add, public scrutiny and accountability.

It's a system where almost everything is decided beforehand. Except for the rare occasion, there are no amendments offered and little debate on the floor. The same is true in

committees, where almost all decisions are made by voice votes.

I don't have the answer for all this. And you can't take the politics out of politics. But the bottom line is that surely West Virginia citizens deserve better than this. WVEC lobbyist Leslee McCarty has her own thoughts along the same lines, which you can also read in this issue of the *VOICE*.

Finally, the West Virginia Environmental Council Lobby Team thanks the West Virginia Highlands Conservancy for its continued strong support.



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.

The I (heart) Mountains The colors are stone, black and red.. The front of the cap has I ♥ 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

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.



THE GARLIC MUSTARD CHALLENGE

Are you looking for an opportunity to get the family outside for a day of fun? Then look no further than the *2012 Garlic Mustard Challenge*! The Garlic Mustard Challenge is a series of events that seeks to provide your family with a day of free, outdoor fun while working to protect the pristine and beautiful West Virginian forests that we all love. The Garlic Mustard Challenge is brought to you by the Monongahela National Forest, Appalachian Forest Heritage Area, and the Potomac Highlands Cooperative Weed and Pest Management Area.

During Garlic Mustard Challenge events, participants will engage in hands-on learning activities teaching about invasive species before competing in our annual garlic mustard pull. Fabulous PRIZES will be given to our top pullers of the day. And, the group to pull the most pounds of garlic mustard wins the highly coveted Garlic Mustard Challenge Trophy! This year, we have a goal of removing a staggering amount of garlic mustard - at least 35,000 pounds from our forests. Come out and help keep the wild in West Virginia!

Garlic Mustard is a particularly nasty, non-native invasive species. It rapidly spreads, often using waterways, into disturbed wooded habitats, and is making its way throughout the beautiful and diverse forest ecosystem of West Virginia. Garlic mustard can quickly take over an area pushing out our native plants. Many wildlife species, including species of wild game, depend on spring native plants for their pollen, nectar, fruits, seeds, and roots. Garlic mustard deprives wildlife of these important food sources when it becomes established.

Only an army of volunteers can help get rid of this invasive species! Please join us for the *2012 Garlic Mustard Challenge*. Together we can stop the spread of one of the most invasive species found in our state! The dates and locations are:

- Seneca Rocks Discovery Center- April 14th
- Sugar Grove Naval Base – April 20th
- Greenbrier State Forest- April 21st
- Cascades Day Use Area, Pembroke, VA – April 28th
- Big Bend Campground- May 5-6th*
- Blue Bend Campground- May 12st- 13th*
- Pocahontas 4-H Camp- May 19th

Garlic Mustard Challenge events begin at 10:00 a.m., except the event at Seneca Rocks which begins at 9:00 a.m. Please check our website at: <http://www.phcwpma.org/GarlicMustard.cfm> to learn the latest information about the pulls. If you organize your own pull, you can also report the amount you pulled on this website. The GMC is an enjoyable and memorable experience for all who participate, and we will have lots of great prizes thanks to our generous partners and sponsors: Appalachian Forest Heritage Area, Applebee's, All Creatures Great and Small, American Mountain Theater, Brewstel: Microbrewery and Hostel, Cooper & Preston, PLLC, Elkins Wal-Mart, Elkins YMCA, Good Energy Foods, Judy's Drug, Kroger's, Mainline Books, MeeMee's Café and Cakes, Monongahela National Forest, Peebles, Performance Chevrolet – Parsons, Rite Aid – Parsons, Seneca Caverns, Sheetz – Parsons, Southside Depot, Tractor Supply Company, Theatre West Virginia, and The Wellness Center - Parsons.

Together we can keep West Virginia wild! Join us for this important event!

How to Help!

There are many ways that you can become involved in the battle against invasive species year round:

- o Become active in the development of the Potomac Highlands CWPMA.
- o Spread the word about the threats of invasive plants in West Virginia.
- o Volunteer for invasive species pulls like the "2012 Garlic Mustard Challenge!"
- o Never plant invasive species on your property. Be Wild and Go Native!
- o Encourage nurseries to avoid invasive non-native plants and to stock alternative native or non-invasive plant species.
- o Remove dirt and seeds from your equipment and shoes before entering public lands to avoid introducing new invasive species.



The Quarry



**The Troops
(or some of them)**

PATRIOT COAL SETTLEMENT APPROVED

As reported in the February, 2012, issue of *The Highlands Voice*, the West Virginia Highlands Conservancy, the Sierra Club, and the Ohio Valley Environmental Coalition reached a settlement with Patriot Coal of litigation over discharges of selenium from mines operated by its subsidiaries in Boone, Logan, Lincoln, and Kanawha counties. That settlement has now been approved by the United States District Court.

The case involves ten permits issued to three Patriot Coal Corporation ("Patriot") subsidiaries--Apogee Coal Company, Catenary Coal Company, and Hobet Mining. The Plaintiffs had alleged that the companies had violated selenium limitations a total of 9,335 times.

The settlement that the parties agreed to would require that the Defendants pay \$750,000.00 to the United States Treasury as a civil penalty for violations of the selenium limitations. In addition to the civil penalty, the agreement will require the defendants to pay \$6,750,000.00 to the West Virginia Land Trust in order to fund a Supplemental Environmental Project ("SEP"). The funds will be provided to the West Virginia Land Trust and will be used to restore riparian areas and preserve land within the Kanawha and Guyandotte watersheds, areas which are directly affected by the mining permits that are at issue in this litigation.

The settlement creates a systematic process of technology selection and implementation which is intended to bring all of the covered outfalls into compliance on an aggressive timetable. In addition, Patriot agrees to forego the construction of four valley fills that had been permitted for construction at its Jupiter Callisto Surface Mine.

The settlement provides for stipulated penalties for noncompliance during the implementation of the consent decree, the amounts of which are significant and accelerated for continued noncompliance.

The remainder of the settlement provides for a process of appointing a special master to oversee the compliance requirements and for the Court to retain limited jurisdiction during the implementation of the decree.

In short, the proposed decree requires the defendants to come into compliance with their obligations under federal law, requires the payment of \$750,000.00 to the federal government, and requires the payment of \$6,750,000.00 which will be used to preserve and protect the watersheds directly affected by Defendants' mining operations.

The parties chose to make this agreement instead of going to court, presenting evidence, etc. and allowing the Court to make the decision. Because the Environmental Protection Agency was not a party to the litigation, federal law requires that any settlement be delayed for 45 days while the EPA has an opportunity to review it and, if appropriate, object.

The forty five days has now passed and the Environmental Protection Agency has indicated that it has no objection. The United States District Court has reviewed the settlement and found that it is "fair, adequate, and reasonable." This is the last step in the District Court and the settlement may now be implemented.

REGULATING TOXIC POLLUTANTS FROM POWER PLANTS UNDER THE CLEAN AIR ACT

Twenty years ago, the Clean Air Act Amendments of 1990 required the Environmental Protection Agency (EPA) to protect the public's health by setting limits on toxic air pollutants such as mercury, lead, arsenic, acid gases, and dioxins.

While the EPA took steps to reduce mercury emissions, they had never set any national limits on the amount of these hazardous pollutants that come from power plants, until now.

Even in small amounts, these pollutants are linked to health problems such as cancer, heart disease, neurological damage, birth defects, asthma attacks, and even premature death.

EPA Releases Final Mercury and Air Toxics Rule

On December 21, 2011, the EPA released a long-overdue final Mercury and Air Toxics rule that would control hazardous air pollution from coal- and oil-fired power plants. Utilities will have at least three years to fully comply with the requirements.

Already, many of our nation's cleanest and best performing power plants are meeting these new standards. The dirtiest power plants will now have to clean up their toxic pollution to the same levels.

This approach is not only reasonable, but it also ensures that power plants with good pollution controls are not put at an economic disadvantage compared with dirtier facilities.

Reducing Toxic Power Plant Emissions Will Save Lives, Improve Health, Save Money

According to the EPA, reducing toxic power plant emissions will prevent as many as 11,000 premature deaths and 4,700 heart attacks each year. The final standards would also avert more than 5,700 emergency room visits and hospital admissions and 540,000 fewer days of work missed due to illness.

The EPA estimates the value of these health benefits alone will total between \$37 billion and \$90 billion each year, delivering \$3-\$9 in health benefits for every dollar spent to reduce pollution.

The Dangers of Mercury Emissions

Power plants are the largest source for several toxic air pollutants. In particular, they are by far the largest source of mercury in the United States, with coal-fired power plants making up the vast majority of that.

Mercury is a potent neurotoxin that poses a threat to fetal and infant brain development, ultimately affecting a child's ability to walk, talk, and learn.

Mercury emitted from these plants and other sources settles into water bodies where it subsequently accumulates in fish. When pregnant and nursing women (or women who may become pregnant) consume these fish, the mercury pollution ultimately affects their children.

According to the EPA's data, more than 300,000 babies are born each year are at risk of mercury poisoning, while at least one in 12, and as many as one in six, American women have enough mercury in their bodies to put a baby at risk.

Note: This article is a slightly abbreviated version of one that appeared in the Spring, 2012, newsletter of the Union of Concerned Scientists. Thanks to Don Gasper for calling this to our attention.

THE MYTHS OF THE EPA VETO

As reported on page 1 of this issue, a federal judge has ruled that the United States Environmental Protection Agency exceeded its authority in its veto of the permit for the Spruce No. 1 mine in Logan County. This has given those who support the permit (and mountaintop removal in general) another opportunity to again trot out the myths about how arbitrary and fickle the EPA has been, granting a permit, snatching it back, etc.

In February, 2011, Cindy Rank wrote the following discussion of these myths. Even though it has been in *The Highlands Voice* before, it deserves to be read again.

Myth #1 – EPA granted then revoked the Spruce #1 permit.

[Or, as John McFerrin would describe it, the “EPA offered a cookie and then jerked it back”]

FALSE – The Army Corps of Engineers approved the Clean Water Act (CWA) Section 404 (fill) permit for the Spruce #1 coal mine – not EPA.

However, the Clean Water Act designates EPA as lead agency overseeing ALL Clean Water Act permits and has given the agency final veto authority over CWA permits – whoever approved them. In the case of the Spruce #1 permit, EPA determined the environmental impacts of the planned mine to be unacceptable and that a veto was warranted by science and the law.

BACKGROUND – The confusion arises from a somewhat unique set of shared authorities established when the Clean Water Act became law in the early 1970's.

i.e. When writing the Clean Water Act Congress incorporated the Army Corps' historic role and authority established under Section 10 of the Rivers and Harbors Act of 1899 (and amended several times after that). Section 404 of the Clean Water Act specifically designates the Corps to be responsible for approving dredge and fill activities in waters of the U.S. and outlines considerations that need to be made when reviewing applications for Section 404 permits.

To assure the basic tenets of the Clean Water Act are enforced properly the Environmental Protection Agency (EPA) was given the authority to oversee ALL activities – including those taken by the Corps under Section 404 of the Act. To accomplish this, the EPA was given the authority to have input to and comment on 404 permit applications, and in the event approval of permits by the Corps were determined to contradict the

fundamental protection measures of the CWA, the EPA is authorized to VETO those actions. EPA has exercised its Section 404(c) authority only 13 times in its forty year history. See... <http://www.epa.gov/region03/mtntop/spruce1qa.html>

Myth #2 – EPA did nothing for three years after the Corps granted the permit. This decision was totally unexpected – It came out of the blue.

FALSE – during the decade long discussion, debate and study of the Spruce#1 application EPA consistently voiced its concerns about the permit, worked with the company and Corps to resolve those concerns, and continued to gather documentation about the damage already being done in the area proposed to be mined. The US Fish and Wildlife Service also continued to voice concerns, but in the end the Corps basically thumbed its nose at those concerns and approved the permit.

BACKGROUND: For the three years following Corps approval of the permit EPA continued to gather the information about the growing body of knowledge about the impacts of mining in the watershed area and how the Spruce permit would contribute to further degradation. The agency carefully followed procedures in Section 404 about preparing documentation and allowing ample time for company and Corps response and public input to the proposed determination to veto the permit, all the while working with the Corps and the company to resolve long standing objections. The painstaking and mind-numbing detail of EPA's efforts documented in the 226 page final determination document, especially in the first 25 pages of history, are more than proof that this decision could not possibly have come as a surprise to anyone involved with state and federal agencies or politics these past twelve years.

http://water.epa.gov/lawsregs/guidance/cwa/dredgdis/upload/Spruce_No-1_Mine_Final_Determination_011311_signed.pdf

Myth #3 – OPTIONS – EPA was never serious about considering alternatives that would allow mining to proceed.

FALSE – EPA hired a well known and respected engineering group to suggest alternative mining methods that would

reduce the stream impacts of the permit without overly restricting the amount of coal produced from the site. There is no indication that Arch Coal had or has any intention of proposing to use one of the suggestions detailed in the September 2010 Morgan Worldwide report. Nor is the company proposing a different option of its own despite EPA's efforts to work with the company. As originally proposed the mine was to encompass 3,300 acres [nearly 5 square miles]. The original area was reduced to 2,278 acres as a result of an earlier Environmental Impact Statement and input from the same engineering firm but did not reduce the environmental impacts enough to warrant approval – hence the ongoing attempts to consider further changes to the mine plan and EPA's contracting with Morgan Worldwide to suggested alternatives to further reduce the impact area. Whether the company is unwilling to absorb the additional cost involved with the proposed alternatives, or even if EPA would be willing to accept any of those alternatives as sufficient to justify the permit remains to be seen. [... From my reading of the proposed alternative mine plans, I personally can't imagine any of them could sufficiently reduce the cumulative impacts EPA cited as reasons for veto.]

MYTH#4–EPA had no valid reasons to VETO.

FALSE – One need only to read the over 200 hundred pages of the final determination document and Appendices to see how ridiculous this claim is. [<http://water.epa.gov/lawsregs/guidance/cwa/dredgdis/spruce.cfm>] And if someone thinks EPA hasn't taken seriously the challenges from industry and government officials one need not look any further than the 309 pages of detailed responses to comments and questions submitted during the public comment period for the proposed determination to veto the 404 fill permit for the Spruce #1 mine. [http://water.epa.gov/lawsregs/guidance/cwa/dredgdis/upload/Appendix_6_Response_to_Comments_011311.pdf]

BACKGROUND – In addition to the environmental impacts to stream quality and aquatic life cited by EPA as support for its veto and partially listed in John's summary article in this issue of the Voice, the irreversible negative impacts experienced

(More on p. 15)

THE NEW WEST VIRGINIA CIVICS - A FABLE

Cynicism by Jim Sconyers

As the legislative season winds down, it's time for a primer for citizens of our fair state. It's The New Civics - same as the old civics?

Think back to your school days, when you learned all about how democracy works in America - which is purportedly the same model in use in the states. We have three branches of government, remember? They're called the Executive, the Legislative, and the Judicial. Let's review how they function.

The **Executive Branch** is made up of the Governor and the Lobbyists. Lobbyists are the uber-Cabinet who advise and guide the Governor. When important matters must be decided, the Lobbyists call the Governor into the Inner Sanctum, a secure location far from the meddling eyes and ears of the citizens and the media. The Governor asks how to respond to the issue at hand, and the Lobbyists tell him what they will allow.

The **Judicial Branch** is our court system. Matters of the utmost importance work their way up the food chain to the highest arbiters of all, the Supreme Court of Appeals, fondly known as The Supremes. Wealthy individuals and corporations vie with one another to buy one or more of the seats on this bench. The Supremes are "the court of last resort," unless of course the U. S. Supreme Court finds it necessary to reprimand them for becoming too obvious in their service to their buyers.

And finally we have the **Legislative Branch**, which meets officially every winter in the gold-domed edifice overlooking the coal barges on the Kanawha River. The Legislative Branch, or more simply the Legislature, is made up in turn of two "houses," which we call a bicameral arrangement. These are the House of King Coal and the House of Big Gas. We will now follow two recent bills to see how the democratic process that is the cornerstone of our way of life works.

The **Mine Safety Bill** - Following one tragedy after another in our coal mines, culminating in Upper Big Branch, the worst mine disaster in forty years, our leaders vowed "Never again!" This is the required mantra in all such situations. Some brave soul wrote a bill that would do much to save lives in the mines. The leaders of the two Houses (remember them?) then took the bill to the Governor. The Governor convened the Lobbyists in the famous Inner Sanctum, where they handed him a new bill. The new bill was a nicer bill, because like a dog that might otherwise bite, it had had dental surgery and was rendered toothless. "Take this bill to your Houses and pass it," they said. And the Houses made it so.

The **Forever Fund** - Our new century has brought new wealth, seeming to pop right out of the ground. It's as if Jed Clampett was out shooting some food, and up from the ground came - not Texas tea - but gas - lots of gas. All of a sudden we had a new vocabulary and arithmetic. No longer were millions big enough, instead now we have to wrap our heads around billions and even trillions. Somebody is going to make a lot - a LOT - of money here. Time for someone with vision to enter. Here's an idea: How about we capture some of that bonanza in a Future Fund, to benefit all the people and the state, far into the future, paying off even after the gas is gone? Is this a radical idea? Hardly - other states and most foreign countries use this model. Do we need it? Think roads, bridges, schools, hospitals, and more. Talk about forward-looking! And the outcome? "What - are you crazy? Get that cockamamie bill outahere!" And the Houses made it so.

Class? Are you still with me? Any questions? No? OK then - quiz on Monday. Class dissed - sorry, I meant dismissed.

MORE ABOUT MYTHOLOGY (Continued from p. 14)

by people depending on those streams and local wildlife, were clear in comments from, meetings with, and testimony by residents of Blair and other nearby communities to EPA during the programmatic Mountaintop/Valley Fill EIS (1998-2005) and to the WV state Governors Task Force on Mountain Top removal and to legislative and Congressional hearings this past decade. ... Twelve years later EPA has that much more documentation of stream degradation from these mining operations and negative impacts to fish and other wildlife. ... Twelve years later there is an explosion of individual communities and directly impacted citizens speaking out and relating similar experiences.

The negative impact of these big mines is disproportionately high in the mostly lower income mountain communities

of Appalachia. This is true in Blair, and Lindytown and Twilight and Mud and Sharples and Kayford and Whitesville and Edwight and Sylvester and Prenter and so many other small communities throughout southern West Virginia, eastern Kentucky southwest Virginia and parts of Tennessee, one can only hope concern for these environmental justice issues will not end with this one permit.

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.

THIS IS EDUCATION?

Commentary by Julian Martin

Throughout America there is an intrusion of industry into environmental education in public schools. Corporations spend millions of dollars on attractively presented lesson plans, videos, coloring books and other materials to offer their version of clear cutting, gas and oil production, mining, farming and the glory of plastic bags. West Virginia classrooms are no exception.

Coal lobbyists are not satisfied controlling West Virginia politicians. Weakening mine safety legislation in the wake of twenty-nine miners killed in an unsafe mine gives them no rest. Despite knowing they have the governor and legislature under control, they leave nothing to chance. Coal public relations hacks intrude into classrooms to grab the innocent minds of children to guarantee another generation of coal control.

West Virginia coal companies have an "education" program called CEDAR. CEDAR's goal is to "facilitate" in K through 12 classrooms, the "...understanding of the many benefits the coal industry provides in daily lives..."

Learning outcomes for West Virginia Schools do not include promoting the benefits of any industry. CEDAR's promoting only coal industry benefits in the classroom qualifies as one-sided propaganda, not education.

When Priscilla Haden was state school board president she said about CEDAR that, "I want to make sure there are two sides to the story. I'm asking that we look at it and make sure that the other side is told and that this is truly a fair thing." So far the state school board has not followed through on making sure the other side is told.

Now we have another coal industry intruder into environmental education. The West Virginia Department of Education posted on a

listserv for science teachers an "opportunity" to learn how to teach environmental issues. Virginia Tech and the Eastern Coal Council announced it with this bold-type blurb: "**PROJECT COAL TO ELECTRICITY: TEACHING - ENVIRONMENTAL ISSUES. Coal + Power Plants + Technologies = Clean, Dependable Electricity.**" That announcement declares: "Coal is clearly the right energy for this country's future. The Eastern Coal Council serves as a 'chamber of commerce' for the energy industries."

It appears Virginia Tech and the Eastern Coal Council have already decided about the environmental issues when they claim ahead of time that coal produces clean electricity. With the energy industry's "chamber of commerce" and seven coal companies as co-sponsors of the conference, it is obvious what "**TEACHING ENVIRONMENTAL ISSUES**" will mean.

How can clean electricity be squared with the West Virginia Department of Environmental Protection's research showing selenium from mountain top removal causes fish deformities or the WVU study that as county coal production increases, rates of killer diseases increase and birth defects are higher near mountain top removal? And the list of coal's other well known negative impacts is far longer and more damaging than the list of "many benefits."

The electricity that comes from plugging in a light to read by seems clean but the process of getting it to the light is dirty and destructive. There is no such thing as clean coal and no such thing as clean electricity made from coal.

Virginia Tech and their coal bosses have resisted repeating the coal industry billboard idiocy that coal is carbon neutral. Someone in the chemistry department at Virginia Tech must have enlightened them.



Mary Wimmer and Dave Saville enjoy the fruits of their labor, visiting the Roaring Plains West Wilderness Area. The 6,820 acres known as "Roaring Plains West" is one of 3 parts of the larger Flat Rock/Roaring Plains area of 15,138 acres proposed for wilderness protection. The Wild Monongahela Act, which was made law on 30 March 2009, did not include the "North" and "East" portions. A pipeline and a Forest Service road divide the three areas. Sometimes called "Dolly Sods South," this red spruce covered area is considered the highest plateau in the eastern United States.