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# *The Highlands Voice*

The Monthly Publication of the West Virginia Highlands Conservancy

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## Groups Challenge Raven Crest Mine

# SHOULD CORPS OF ENGINEERS CONSIDER HEALTH EFFECTS OF MINING? GROUPS SAY “YES!”

By Cindy Rank

Our most recent litigation vs. the Army Corps of Engineers challenges that agency's authorization of a Clean Water Act Section 404 fill permit for the Raven Crest Boone North No. 5 Mine in Boone County, WV. The complaint was filed October 17, 2012.

The 725 acre mine would impact nearly 3 miles of streams in Roundbottom Creek and Mill Branch watersheds of the Coal River near the community of Peytona.

Plaintiffs in the case (West Virginia Highlands Conservancy, Ohio Valley Environmental Coalition, Coal River Mountain Watch, and the Sierra Club, West Virginia Chapter) continue to address the individual and cumulative water quality and aquatic life concerns (conductivity, selenium, etc.) that we've been seeking to resolve through so many of our legal actions these past several years.

Of particular interest in this case is our assertion that the Corps has a legal responsibility to include in its permit review consideration of potential human health impacts.

Another troublesome aspect of this mine plan (and other mine plans being advanced recently) is the proposal to “mine-through” streams.

### HEALTH STUDIES

Over the past few years more and more health studies have begun to confirm the existence of health problems that

disproportionally affect people living near large surface mines. More specifically, this growing body of research and studies relate an increased occurrence of serious health impacts in communities near mountain top removal coal mining to the mining itself.

Of the peer reviewed research and studies that continue to be done about the health impacts of coal and coal mining in general, at least six indicate mountaintop removal and large scale surface mining to be particularly troublesome. References to some of these health effects and the studies themselves can be found at the end of this article.

Our legal team sought to have these concerns considered as part of our earlier Highland Reylas mine challenge. However, the court ruled against us saying that the studies were not known at the time the Corps approved the 404 permit for the Reylas operation. In the case of the Raven Crest permit, there is no doubt that these studies are now known and had been readily available at the time the Corps approved the Raven Crest permit in August 2012, so we shall see what develops this time around.

As I wrote in an article in the October issue of the Highlands Voice, adherence to Federal and State laws intended to protect

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## Ramblin' the Ridges

By Cynthia D. Ellis

### AH...YOUTH!

There were plenty of young people at the memorial service for mining activist Larry Gibson. It was fun to see kids in blue spiked hair, leather pants, and multiple piercings alongside those with button-down shirts and garden-party dresses. Some garb rivaled the loudest trappings from earlier times; say the sixties or seventies. Others were scrubbed and classic. It was a mix. There were babies too, calmly tucked onto momma's hip and quietly surveying the scene, or snuggled up in a stroller. A few primary school-age kids bounced around, briefly passing programs, or rocketing across the foyer spilling drinks. But the twenty-ish celebrants brought the real energy to the day. Their eulogies were polished or stumbling, but all riveting. Their music was alternately poignant and stirring. Larry would have loved it.

Ken Hechler, attending in a wheelchair, is not chronologically young at age 98. But his words were crisp and his eyes luminescent. And everyone who was there in between the infants and Ken came to pay tribute and to look to the future. The day was largely joyous.

So thinking of those young people makes for special joy. And optimism.

We sometimes think there may be no one to carry on...to keep going with environmental causes. Then we attend a gathering such as this and have hope renewed.

This is not to overlook the tireless and substantial contributions of middle-aged and older folks to the work and issues that concern us. They were there at the memorial and they sustain the effort every day. Personally I get a little fidgety when we only always hear that our groups "must attract the youth." Don't forget, I think, and sometimes say. Don't forget about people who have established careers and now have time to look around to do more. Don't forget about retirees, physically sprightly or not, who have plenty of time or expertise to contribute.

However, at that memorial, it seemed that the future was most evident in the young people. And they were heard. Midway through the service, Kate Long sang her own moving song about our land and traditions--- one of Larry Gibson's favorites--- "Who'll Watch the Home Place." I think I may know who will do that.

But also, later at the candlelight vigil, some of the younger activists led us in singing, "Well I went down to the Coal Operator, and I took back what they stole from me. I took back my dignity. I took back my humanity. Now they're under my feet. "We repeated the last line three times and we stamped our feet. Hard.

Recently I helped take college students to see the mountaintop removal destruction surrounding Larry Gibson's home place. One beautiful young woman, originally from Bosnia, looked down at the bleak scene and asked, "Don't the people get mad?!"

Sometimes they do. And sometimes, at any age, they band together and act.

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# HIGHLANDS CONSERVANCY ADOPTS NEW POLICY ON INDUSTRIAL WIND TURBINES

By Peter Shoenfeld

The siting of industrial wind turbine facilities in our beautiful high mountains has long been a subject of controversy for the Highlands Conservancy Board. This reflects the larger environmental community, where both admiring and objecting viewpoints coexist.

The road to our present position has been long and winding. The West Virginia Highlands Conservancy Board addressed wind projects on October 20, 2002. It discussed proposed projects on the Allegheny Front (Nedpower) and near Snowy Point (Dominion) and passed a resolution which included:

1. *WVHC does not support permitting for wind power projects that would degrade scenic vistas from Canaan Valley, Dolly Sods, Seneca Rocks, Spruce Knob and other special places in West Virginia.*

2. *WVHC insists that no permits be issued for wind power projects until siting criteria are in place including viewshed analysis and full environmental impact analysis as required by NEPA.*

3. *The Wind Power Committee and the Executive Committee were authorized to intervene in both the Ned Power and Dominion cases ...*

The Dominion project was abandoned when a significant population of endangered flying squirrels was found at the site. The Nedpower project split the organization into a group totally opposing the project and one more accepting of wind power and willing to negotiate with developers. A reduced version of the Nedpower project was permitted, constructed and is highly evident today.

In the years 2003-2007, the Conservancy Board produced no further resolutions that express blanket opposition to industrial wind projects in the Highlands. The Wind Power Committee participated in the development of a new state regulatory mechanism. The old Public Service Commission "certificates of convenience and necessity" were replaced by "siting certificates" for industrial wind facilities. The regulations governing these are more a guide to developer's

applications than restrictions on what might be developed. They say what should be included in the application and what the Public Service Commission should consider. They do not provide much guidance on what the Public Service Commission should do with the information provided or require a full environmental impact analysis as required by NEPA.

During this period the Conservancy and Wind Power Committee moved to a posture of general environmental concern rather than the specific concern with the impact on special places.

A major shift occurred in 2008. Instead of focusing only on a proposed project's impact upon the natural environment, the policy was broadened to include consideration of the role of industrial wind energy in overall energy policy. This shift appears in the policy adopted at the April 20, 2008, Board meeting

*The West Virginia Highlands Conservancy opposes all large, utility scale wind energy projects in West Virginia unless it is demonstrated that the power to be produced by the project would replace power which otherwise would be generated through the burning of coal.*

This resolution reflected the main popularly assumed environmental benefit of Wind Power. It was assumed that, unlike the combustion of coal and other fossil fuels, its use for power production caused no emission of noxious substances into the atmosphere. This applied in particular to carbon dioxide, heavily produced by coal burning and thought to be a large contributor to global warming.

The flaw in this assumption, however, is that the wind doesn't blow all the time or at a constant speed. Because of this, the energy it produces must be frequently replaced by something more reliable, usually coal in West Virginia. If coal will be frequently called upon to replace the production of irregular wind, fossil fuels must be kept

**(More on p. 4)**



**Wind turbines on Laurel Mountain**

*Photo by John Terry*

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

The West Virginia Highlands Conservancy is a non-profit corporation which has been recognized as a tax exempt organization by the Internal Revenue Service. Its bylaws describe its purpose:

The purposes of the Conservancy shall be to promote, encourage, and work for the conservation—including both preservation and wise use—and appreciation of the natural resources of West Virginia and the Nation, and especially of the Highlands Region of West Virginia, for the cultural, social, educational, physical, health, spiritual, and economic benefit of present and future generations of West Virginians and Americans.

## MORE ABOUT THE WIND (Continued from p. 3)

burning all the time. This constant burning of coal, even when wind energy is being produced, may result in no real saving. In addition, the thermal efficiency of coal burning is reduced by frequent adjustments and on-off cycling. Hence the 2008 Conservancy requirement.

Thus the intermittent nature of wind generation reduces its ability to replace coal as an energy source. It is even conceivable that it reduces the ability to replace coal to zero. The extent to which this is true remains a matter of considerable dispute.

However, the wind energy committee of the West Virginia Highlands Conservancy so far has been unable to confirm to what degree the suggestions made in the preceding paragraph represent the actual functioning of coal fired electricity generating facilities in the face of intermittent wind power generation. -

Environmental politics also played an increasing role in influencing Conservancy positions on wind. Some environmentalists hoped that the exploitation of wind for generating power would replace that of coal and that land potentially available for mountain top removal coal mining would instead be used for the development of industrial wind facilities.

In July, 2008 the Board passed a resolution:

*The West Virginia Highlands Conservancy applauds efforts to site wind facilities on land that would be sacrificed to mountaintop removal coal mining. To that end, we strongly support the effort to evaluate the development of a wind facility on Coal River Mountain in Raleigh County,, West Virginia.*

The reluctance of the West Virginia Highlands Conservancy to assert unqualified opposition to littering our West Virginia Highlands with industrial-scale wind turbines has always been a source of frustration to a number of members. At the same time, some of our members remained supporters of wind power.

To help resolve this controversy, the Board solicited the views of the membership. The May, 2012, issue of *The Highlands Voice* announced that the Board and the Wind Power Committee intended to review our policy on wind power and invited members to submit their thoughts.

The solicitation produced a flurry of responses. See the June, the July-August, and the September, 2012, issues of *The Highlands Voice*. Of the letters and articles received, one supported off shore wind development. Both that writer and the others who wrote opposed wind turbines on the West Virginia Highlands.

This is not to say that opinions on wind power are unanimous. See, for example, the letters expressing a contrary opinion in the February, March, and April, 2008, issues of *The Highlands Voice*.

Before, during, and after the solicitation of views of the membership, the Wind Power Committee repeatedly considered and revised a proposed wind power policy for the West Virginia Highlands Conservancy. After much consideration, on October 21, 2012, it presented to the Board a resolution which the Board adopted as a resolution of the Board. The Board resolved as follows:

*The West Virginia Highlands Conservancy is concerned about the cumulative impact of industrial scale wind energy development on the environment and acknowledges that continued development of industrial wind facilities, in and of itself, is harmful to the West Virginia Highlands, which it is our mission to protect.*

For instance, the West Virginia Highlands are an essential

migratory pathway for globally significant song birds and a wintering ground for the golden eagle. High density placement of wind turbines has a high potential of disturbing this ecology. Fracturing the forests of highland ridge tops, an activity associated with commercial wind turbine installations, is also harmful to the environment.

This does not, of course, end the matter. With as contentious an issue as wind power has been over the years nothing ever could. New data may become available; something else could change. For the present, however, the Board is happy with the process it went through to reach this result and pleased that we have a position which is consistent with our mission of conserving the highlands of West Virginia.

### VOICE ARCHIVES NOW ON LINE

All past issues of *The Highlands Voice* are now available on line. To see any past issue, just go to the website ([www.wvhighlands.org](http://www.wvhighlands.org)) and follow the link to the archives. There is a new index for them so that they are all neatly arranged by year and month, easy to find and open.

With all the scanning, creating pdf files, etc. there are probably some mistakes in there somewhere. Even with whatever mistakes there may be, it is still a tremendous resource. Dave Saville spearheaded this project. People who helped make this happen include John Cuthbert at the West Virginia Collection, Michael Mills from the Mills Group architectural firm, webmaster Jim Solley, Catlin Buckley and Glenn Waldron. Thanks to all who helped.

### CONSERVANCY RECOGNIZES EXCELLENCE

As part of its Fall Review at Canaan Valley, the West Virginia Highlands Conservancy recognized Jackie Burns, who had just retired from the Canaan Valley National Wildlife Refuge. She was a hard working, very dedicated United States Fish and Wildlife Service employee and a real ally to the West Virginia Highlands Conservancy. President Cynthia D. Ellis presented her with a Certificate of Appreciation:

*In recognition of her service to Canaan Valley, the West Virginia Highlands Conservancy presents to **Jackie Burns** this Certificate of Appreciation. Congratulations on your retirement and best wishes to you in all your future endeavors. The Highlands Conservancy is extremely grateful for all your efforts over these many years to protect the things and places we hold dear. Canaan Valley is a better place for you being here.*

# FIELD TRIP TO CANAAN VALLEY INSTITUTE

By Elizabeth Rodman

About 25 members of the WVHC were treated to a tour, lunch, and talk at the Canaan Valley Institute (CVI) on Saturday Oct 20<sup>th</sup> as part of this fall's Review Weekend. CVI's Executive Director, Jennifer Newland, was on hand to show us their incredible facility and answer all our questions. Evan Hansen from Downstream Strategies presented the findings of a study that looked at current and potential wind power development in the region.

Canaan Valley Institute is a non-profit organization that works to improve communities by helping them improve watersheds and water quality. Just a sampling of their projects throughout the central Appalachians includes restoring streambeds, design and installation of wastewater treatment systems, protecting drinking water supplies, acid mine drainage abatement, and creating better storm water drainage plans. With a strong focus on wastewater treatment and stream bank erosion, they are also very active in science education at the school age level, and running educational workshops for businesses and community leaders.

The Canaan Valley Institute building is a marvel of modern engineering and technology. The building is LEED Certified (LEED is the Leadership in Energy and Environmental Design Green Building Rating System – kind of a “super green” tag in the construction world) and a lot of thought went into the building materials and trying out new building techniques. There are handsome green, brown, and white recycled glass floor tiles, beautiful polished, easy to clean, concrete floors, low VOC carpeting and paint, and a computerized heating, ventilation, and light system. There are offices, conference facilities of various sizes, a computer lab, and 2 science labs – one for teaching and one for research. Architecturally, the building is designed to take advantage of natural light and cross ventilation. They don't have or need air conditioning.

The crown jewel is probably their state of the art wastewater treatment facility. All wastewater is treated in-house through a fairly simple, but hi-tech system that collect, treats and reuses the water. It includes a glassed-in garden full of tropical/subtropical plants that clean the gray water for recycling throughout the building. This greatly

reduces their municipal, treated water consumption. The wastewater treatment system also serves as a hand's-on educational tool.

CVI has downsized a bit recently, stabilizing to a staff of around 15 people, and sold some of their property to the state for use as a wildlife management area. But they are still very active throughout the region. They have recently partnered with the National Youth Science Camp, who will be moving into some nearby property across the Blackwater River. They are working with local schools and teachers to help as new science education standards are coming into the curriculum. They are aiding communities up and down the Appalachians to solve

wastewater and watershed problems. There is a lot more information on their website at <http://www.canaanvi.org>.

We took advantage of their conference facility for both an excellent lunch, served on colorful Fiestaware - nice on a slightly gloomy day, and the presentation by Evan Hansen from Downstream Strategies.

Evan reported on a study that, completed last year, looked at several different aspects of industrial

scale wind development in the Appalachians. The main purpose of the study was to determine what barriers are affecting wind energy development in the region, especially in the context of the Department of Energy's (DoE's) program for 20% wind energy by 2030. Broadly, the talk presented some of the regionally specific pros and cons associated with large wind turbines and related them to geography, environmental impacts, public policy, and economics. Without coming out as either for or against wind development, they just looked at what is currently helping or keeping wind development from reaching the DoE's target.

Before we had to break it up to get back to the Canaan Valley Lodge for the afternoon sessions, the group got into a good discussion of what has changed in the last year since the study was completed. We talked about market forces such as abundant, cheap Marcellus Shale gas, the possible expiration of the Federal Production Tax Credit for wind at the end of this year, and more on birds and bats.



# A SWEET SOUL PASSES ON

## THE BASICS

Mary Moore Rieffenberger, age 93 years, a resident of Country Club Road, Elkins, passed away Friday morning, October 26, 2012 at her residence. She was born January 2, 1919 at Parkersburg, a daughter of the late Isaac Maxwell Adams and Beryl Moore Adams. She was married to Joseph C. Rieffenberger who survives. Also surviving is one brother, Edward M. Adams of Winston-Salem, NC, a sister, Mrs. Robert (Peggy) Goldenberg of Parkersburg, and nieces and nephews, David M. Goldenburg and Julia Timko, both of Parkersburg, Mrs. Robert (Holly) Roach of Yardley, PA, Dr. Melanie Adams of Winston Salem, NC and Max Adams of Owensboro, KY. Mrs. Rieffenberger was a graduate of Parkersburg High School, Marietta College and Margaret Morrison School of Library Science at Carnegie Tech. Mrs. Rieffenberger's request to be cremated was honored. A celebration of her life will be held at a later date. The family suggests that contributions be made to the charity of choice in memory of Mrs. Rieffenberger.



Mary Moore and her husband Joe

## A SMALL TRIBUTE

By John McFerrin

If Highlands Conservancy Board members were ever assigned nicknames, Mary Moore Rieffenberger's would have to be The Beloved Board Member. She is universally known as having a kind heart and a generosity of spirit that is second to none.

Her life has not been limited to classing up our Board meetings with her presence and influence, although she did do that. She has been an active environmentalist for as long as anyone can remember. As a long time friend put it, "wherever, whatever and whenever there was a conservation or environmental issue, most likely she was on the scene or in the fray to support or object according to the proposition."

Mary Moore's history with the Conservancy is intertwined with her history with the Brooks Bird Club with her history with the Brooks Bird Club. The Conservancy has both individual and organizational members. One of the very first organizational members was the Brooks Bird Club. Mary Moore has represented the Brooks Bird Club on the Conservancy Board for as long as anyone can remember. Even the Board Member who regularly sports a hat labeling him as "Older Than Dirt" cannot remember a time when Mary Moore was not on the Board representing the Brooks Bird Club.

If anybody took attendance at meetings to organize what would become the Highlands Conservancy, the attendance list is now long gone. Memory has it, however, that Mary Moore was there. While it is possible, memories being what they are, that she has not always been on the Board, she has either been on the Board since

## ANOTHER PIECE OF IT

By Cindy Ellis

Mary Moore Rieffenberger got me into this. She was part of those wonderful folks and mentors, thirty years older than I, who attended Brooks Bird Club functions when I first joined. Everyone called her by those first two names, in a somewhat Southerly way, and Mary Moore made an impression. She could have been a Garden Club lady. She looked a bit like that. But she also nearly always wore a comfortable denim jacket covered with the embroidered patches of outdoor places and nature groups. She drove a sturdy car plastered with stickers. And she always brought copies of West Virginia Highlands Conservancy's "The Voice" to BBC meetings. Her voice too, was often the only one addressing matters of conservation that were important to birders and to anyone who loved the mountains.

Another thing was her obvious love for her husband Joe. They shone in each other's presence and we were warmed. I was, and I remain, honored that she thought that I could in some way carry on with preservation issues and make a difference in the way that she did.

either at or close to the beginning of the organization.

Former Conservancy President Dave Elkinton (a pup when compared to Mary Moore; he didn't join until 1970) remembers Mary Moore as "an active, articulate board member, who welcomed new faces at WVHC meetings, and did not shun controversy. Over the years I developed a deep appreciation for their dedication, wisdom, and tenacity. One could calculate how many thousands of hours of meetings (both board and committees), thousands of miles and many dollars for gas for driving, she has contributed to making the Conservancy what it is today. Then multiply by several, since both she and Sayre were simultaneously as deeply involved in other organizations too. In fact one characteristic both share is not only unprecedented length of continuous board service, but most of that, serving a representatives of other organizations."

When Joe Rieffenberger was president of the Conservancy (mid-1970's), Mary Moore acted both as Board member and hostess. Joe would have meetings at the Rieffenberger home. Those who came a long way occasionally got to stay the night. She is patient (married to Joe for 34 years and counting. 'Nuff said.) and kind. A highly reliable source within the Rieffenberger household reports that she is an excellent cook, as do many others.

In addition to her work with the Conservancy, Mary Moore was (and still is) active in the Brooks Bird Club and the Friends of the

**(A little more on the next page)**

## Join Now !!!

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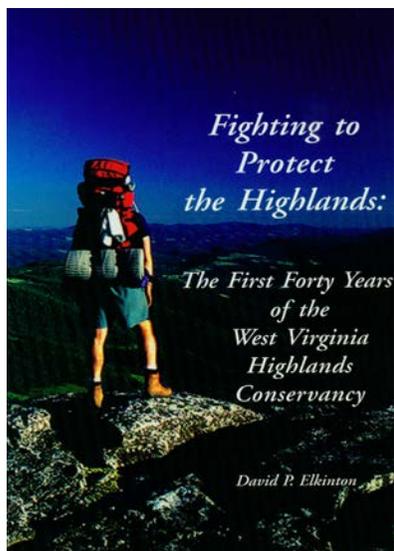
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Patron	\$ 250	\$ 500	\$ 500
Mountaineer	\$500	\$ 750	\$ 1000

Mail to West Virginia Highlands Conservancy PO Box 306 Charleston, WV 25321

**West Virginia Highlands Conservancy**  
**Working to Keep West Virginia Wild and Wonderful!**

### GREAT HISTORY BOOK NOW AVAILABLE



For the first time, a comprehensive history of West Virginia's most influential activist environmental organization. Author Dave Elkinton, the Conservancy's third president, and a twenty-year board member, not only traces the major issues that have occupied the Conservancy's energy, but profiles more than twenty of its volunteer leaders.

Learn about how the Conservancy stopped road building in Otter Creek, how a Corps of Engineers wetland permit denial saved Canaan Valley, and why Judge Haden restricted mountaintop removal mining. Also read Sayre

Rodman's account of the first running of the Gauley, how college students helped save the Cranberry Wilderness, and why the highlands are under threat as never before.

With a foreword by former congressman Ken Hechler, the book's chapters follow the battle for wilderness preservation, efforts to stop many proposed dams and protect free-flowing rivers, the 25-year struggle to save the Canaan Valley, how the Corridor H highway was successfully re-routed around key environmental landmarks, and concluding with the current controversy over wind farm development. One-third of the text tells the story of the Conservancy's never-ending fight to control the abuses of coal mining, especially mountaintop removal mining. The final chapter examines what makes this small, volunteer-driven organization so successful.

From the cover by photographer Jonathan Jessup to the 48-page index, this book will appeal both to Conservancy members and friends and to anyone interested in the story of how West Virginia's mountains have been protected against the forces of over-development, mismanagement by government, and even greed.

518 pages, 6x9, color cover, published by Pocahontas Press To order your copy for \$14.95, plus \$3.00 shipping, visit the Conservancy's website, 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.

### MORE ABOUT MARY MOORE

Library. She still goes to the public school to read stories to school children. She is known as a terrific hostess and has a very special flower garden.

Although retired from the Conservancy Board, Mary Moore remains in Elkins where she is continuing with her other activities and, at least for now, trying to stay warm.

**Note: In 2004 both Sayre Rodman and Mary Moore Riffenberger left the Board of the West Virginia Highlands Conservancy. The front page of the February, 2004, issue of *The Highlands Voice* was devoted to tributes to them. This is the story about Mary Moore that appeared in that issue.**

# GOLDEN EAGLES: WHERE DO THEY LIVE, WHERE DO THEY GO?

By John McFerrin

For the Friday night program at the Fall Review (October 19-21) we had a treat: Trish Miller came and made a presentation on her work tracking Golden Eagles. *The Highlands Voice* has had stories on the work before (July, 2010, and June, 2011). This time it was in person (Ms. Miller, no eagles) and with pictures.

Ms. Miller and her colleagues count Golden Eagles, using “camera traps.” To operate a camera trap, they put out one or more road kill deer along with a motion activated camera. Not very long after the researchers put out the trap, the Golden Eagles start showing up. From a camera trap they usually get pictures of one to fifteen Golden Eagles.

In addition to counting Golden Eagles, the researchers learned about the nesting and feeding habits of the eastern Golden Eagles. Unlike populations in the West, they do not use expansive open areas. They live and hunt in deep woods and small clearings. When startled in a clearing they will not fly up and away. Instead, they fly straight into the woods at low altitude. They live mostly on carrion.

They also have a habit that places them at risk. Instead of flying directly in to the carrion, they land a distance away and walk in. Walking along the ground puts them at risk of leg traps which have been set out to catch such animals as coyotes.

While the camera traps have enabled the researchers to gain some insight into populations of Golden Eagles (probably in the hundreds in West Virginia) the heart of the research is the telemetry program. Ms. Miller and her colleagues trap Golden Eagles and attach radio transmitters to them. By monitoring the transmitters, they can learn where the eagles spend the winter, where they migrate, and their breeding grounds.

While the most useful part of the presentation was the data collected and the maps presenting the data, the most exciting part was the way they trap the eagles so they can put on the transmitters.

It's not just a matter of walking up and putting salt on its tail. The researchers put out the dead deer bait and then hide and wait until an eagle is happily munching on venison. Then a gun goes off, shooting a net over the eagle. The researchers pop a hood over its head to calm it down and some leather booties on its feet to avoid being clawed. Then they weigh it, measure legs, talons, beak, etc. and install a transmitter. As long as they have it, they take a blood sample. They are doing some DNA analysis so as to compare eastern populations of Golden Eagles with the western populations.

Once fitted with a transmitter, the Golden Eagles become data points in the effort to study wintering and migration patterns. The researchers can turn this data into maps showing where they winter, the paths where they migrate, and where they breed.

The maps show that Golden Eagles breed in eastern Canada from the Gaspé Peninsula of Quebec to the northern reaches of

Newfoundland and Labrador. They winter in the mountains of West Virginia.

The telemetry can produce a three dimensional image, making it possible to know how high they are flying. The data shows that the eagles fly in a very predictable pattern, depending upon which type of winds they are using.

Under certain circumstances, there are updrafts that carry the eagles very high. When this happens, they can fly quickly and safely, above the reach of any wind turbine blades. In other situations, they use winds that strike the ridges and are forced upward. These winds would result in the eagles flying at lower elevation and would tend to funnel the eagles toward the windmill blades.

Knowing the path the eagles take and their flying patterns has a practical application. It makes it possible to site wind turbines in a way that is less dangerous to Golden Eagles. It would be possible to know which turbines can co-exist with Golden Eagles and which ones should not be sited at a particular location. The data would make it possible to make maps showing where turbines would be dangerous to eagles.

Eagles face several kinds of risks from wind turbines. The most obvious one is collisions with a turbine.

Less obvious (and less well documented) is avoidance. When an eagle encounters a wind turbine it will often try to avoid it. While this may look like a win-win result—allowing eagles to exist with little danger from wind turbines—it is expensive for the eagle and may be just as fatal in the long run. Avoiding a wind turbine requires the eagle to switch from the essentially free fuel of riding the wind to the expensive fuel of flapping to avoid the turbine. While Golden Eagles may be able to avoid windmills, having to do so depletes the energy they stored to complete the long migration.

The third turbine related threat is habitat fragmentation. The eastern Golden Eagles are forest birds. They require forest with some small clearings to live. Arrays of wind turbines break up that habitat.

The main product of the research we heard about is knowledge of migration patterns. It produces maps that show migration routes and migration elevations that can be tools for siting wind turbines.

Still to be studied are interactions between turbines and wintering Golden Eagles. Wintering eagles spend their time cruising, looking for food. The cruising would take place at lower altitudes, not the relatively safe altitudes found where some migration takes place.



# West Virginia Mountain Odyssey



## Outings, Education and Beyond 🇺🇸

**Open dates:** Visit **Kayford Mountain and/or Mud River Mountain** south of Charleston to see mountain top removal (MTR) up close. Bring lunch for a picnic on Kayford mountain. Hear the story on how the late Larry Gibson saved fifty acres from mountain top removal on Kayford Mountain. Call in advance to schedule. Julian Martin (304) 342-8989; martinjul@aol.com.

On **Saturday, Nov. 10, 2012**, West Virginia Highlands Conservancy will lead citizens and some decision makers on a hike up the South Prong of Red Creek. We hope to have some decision makers as well as anybody else who wants to come on this trip. We hope to discuss some preliminary consensus management plans for this access stream and watershed. There will be a little hiking. We will meet at the bridge over Red Creek by the Laneville cabin at 11 a.m. and be back at 4 p.m. Just show up; dress for the weather. For more information contact trip leader Don Gasper at (304) 472-3704.

### BIG FUN MAKING HOLIDAY WREATHS

**November 25, 2012 10th Annual Wreath Making Workshop.** White Grass Ski Touring Center and Café in Canaan Valley and the West Virginia Highlands Conservancy invite you to join them for the 10th annual Evergreen Wreathmaking Workshop. Its an afternoon of fun in a beautiful place with friendly people and it's now officially a tradition! Learn how to make your own evergreen wreath. Bring a hand-pruner and any decorations such as pine cones, berries, ornaments or bows, that you would like to adorn your wreath with. We will have all the materials you'll need including a variety of fresh-cut firs. We'll get started around 1 pm and be around all afternoon. Please RSVP [daves@labyrinth.net](mailto:daves@labyrinth.net)

White Grass is a long-time partner with the Highlands Conservancy's and Canaan Valley National Wildlife Refuge's spruce restoration efforts. They have helped organize volunteers, build fence, collect cones, plant trees and feed the volunteers. 2012 marks the 10th year of this holiday season tradition.



# WIND POWER, THE GRID, AND THE LAW

By Hugh Rogers

Speaking of power, do you know what brought Lyndon Baines Johnson to Washington? His ambition, of course—but his issue was rural electrification. In *The Path to Power*, the first of Robert Caro's four-volume (so far) biography of LBJ, there is a vivid description of the daily life of a housewife in Texas' hill country before the coming of the wires. Johnson had seen his mother's mind-numbing labor and vowed to do something about it.

Federal regulation of electrical power distribution had begun in 1930. Five years later it was transformed into a New Deal project. Stitching many sprawling regions into one wholly powered economy required a big government agency. It's currently known as FERC, the Federal Energy Regulatory Commission.

Seen from Texas, its attention has turned a hundred and eighty degrees. It once had a mission to send electric power into the hill country and high plains; now it wants to bring power from those areas' wind "farms".

West Virginia has long been a net generator of electricity. The sources have changed according to strict dollar calculations, but through every cycle our mountains have been sacrificed. Coal continues to be mined in outrageous ways even as less of it is used to produce power here and more of it is shipped overseas. Now wind is favored in Washington. Energy's footprint falls on previously unaffected highlands.

At the Fall Review, Brad Stephens, a lawyer based in Morgantown who is the Executive Director of Allegheny Highlands Alliance, explained the broad legal framework for wind power's new prominence on the grid. Here are a few highlights.

During the Carter administration, halfway between the New Deal amendments and now, Congress began to encourage appropriate technology and alternative energy. The Public Utility Regulatory Policies Act (better known as PURPA) offered special exemptions for Qualifying Facilities, including cogenerators and small power producers that employed solar, wind, biomass, waste, geothermal, or hydroelectric power.

Then Reagan removed the solar panels from the White House. PURPA was more or less buried. Fourteen years later, Congress exhumed it, this time calling the preferred producers Exempt Wholesale Generators. Electric utilities were required to buy power from the EWG's and give them access to transmission lines. The Production Tax Credit for wind energy producers first appeared in that 1992 legislation. Wind power became hugely profitable. According to the Energy Information Agency, in 2007 wind power received federal subsidies totaling \$23.37 per megawatt-hour. (Compare nuclear power, \$1.59, and coal and gas, both less than a dollar. The wind industry complained that those figures did not take into account the cumulative effect of earlier subsidies to the other sources.)

FERC got serious about the alternative-energy campaign. "Functional unbundling" of generation and transmission; market transparency; easier interconnection; and other regulatory changes enabled a new wind industry to take advantage of the enthusiasm for greener energy. In 2011, FERC directed public utility transmission providers to consider "public policy requirements" in addition to economics and security in their planning processes. Chief among those public policies were various states' Renewable Portfolio Standards that set what percent of their electricity consumption must come from non-fossil fuel sources.

Other public policies were ignored. In the rush to deal with climate change, Congress and FERC focused on what goes up (into

the atmosphere), at the expense of what grows and goes along (our highest ridges). The environmental impacts of this new form of mountain-stripping were not taken into account. They have become even more important in a warming climate. Policies that might suit West Texas aren't appropriate for West Virginia.

We can't blame it all on the feds. Siting decisions were left to the states. That could have been a good thing—local knowledge and sensitivities could affect where, and where not, to place the giant turbines. But as we know from long experience with other industries, effective regulation is not our state's strong suit.

The siting rules that the Highlands Conservancy's wind committee worked to establish have been treated as mere information: if an applicant fails to describe the possible impacts on water, wildlife, viewshed, natural areas and historic sites, the application will be rejected as incomplete (thus, the Public Service Commission's denial of the Jack Mountain proposal); but if the applicant fills in all the blanks, it really doesn't matter how bad the impacts might be. By state law, the PSC is required to balance the interests of the public, the economy, and the applicant. Somehow the balance always tips toward approval.

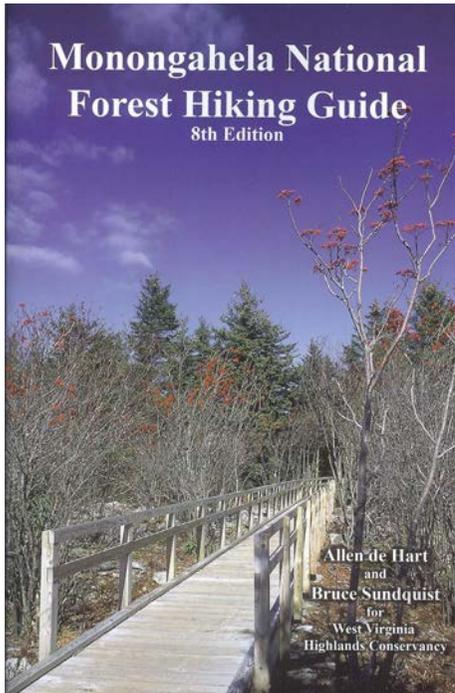
In 2005, the federal government did assert jurisdiction over a site-selection issue, not for turbines but for transmission-line towers. Congress authorized the Secretary of Energy to designate National Interest Electric Transmission Corridors in any region experiencing transmission constraints. Further, it bestowed with that authority the power of eminent domain. Government takings always raise resistance, so you can look forward to news about that.

Brad Stephens had much more to tell us about the grid and our regional transmission organization, PJM (which began as Pennsylvania-Jersey-Maryland but now covers parts of thirteen states and serves 60 million people). Here, though, I'll proceed straight to his conclusion. Because of their inefficiencies and the middling nature of the wind on our ridges, wind facilities in West Virginia will never produce more than a trivial amount of electricity—barely one percent of the total generated here. Dependent on baseload coal and nuclear plants, and balanced by the more flexible gas-powered plants, they are parasitic upon the system. But they could ruin many more ridges before we're all built out.

**Editor's Note: For a more detailed account of Mr. Stephen's views on electricity being produced by industrial wind in West Virginia and a comparison to other sources of electricity, see the September, 2012, issue of *The Highlands Voice*. It's full of charts and numbers and may look as if it is boring or hard to understand. At the same time, it is the kind of information that we need to know if we are to get a handle on wind energy policy. And it's not boring.**

## The Monongahela National Forest Hiking Guide

By Allen de Hart and Bruce Sundquist



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

Send \$14.95 plus \$3.00 shipping to:  
West Virginia Highlands Conservancy  
P.O. Box 306  
Charleston, WV 25321  
OR  
Order from our website at  
[www.wvhighlands.org](http://www.wvhighlands.org)

### New 8TH Edition Now Available on CD

WV Highlands Conservancy proudly offers an Electronic (CD) version of its famous Monongahela National Forest Hiking Guide (8th Edition), with many added features.

This new CD edition includes the text pages as they appear in the printed version by Allen deHart and Bruce Sundquist in an interactive pdf format. It also includes the following mapping features, developed by WVHC volunteer Jim Solley, and not available anywhere else:

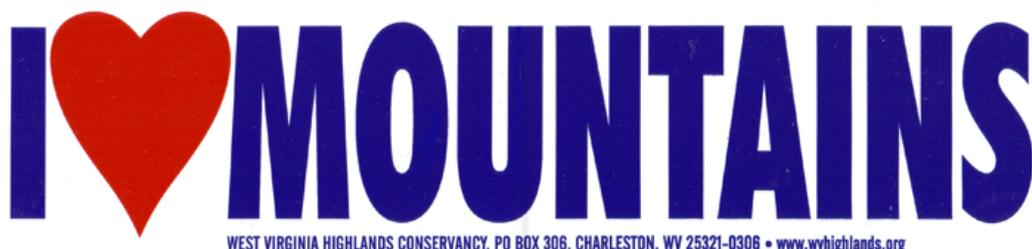
- All pages and maps in the new Interactive CD version of the Mon hiking guide can easily be printed and carried along with you on your hike
- All new, full color topographic maps have been created and are included on this CD. They include all points referenced in the text.
- Special Features not found in the printed version of the Hiking Guide: Interactive pdf format allows you to click on a map reference in the text, and that map centered on that reference comes up.
- Trail mileages between waypoints have been added to the maps.
- ALL NEW Printable, full color, 24K scale topographic maps of many of the popular hiking areas, including Cranberry, Dolly Sods, Otter Creek and many more

Price: \$20.00 from the same address.

### 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.



# BOARD HIGHLIGHTS

By John McFerrin

The West Virginia Highlands Conservancy held its quarterly Board meeting. It was at the end of a successful Fall Review so we (particularly Cindy Ellis, Cindy Rank, and Marilyn Shoenfeld, who did most of the work) were feeling pretty pleased with ourselves.

Unfortunately, organizations can't run on good feelings alone so we had to get down to business. We had a treasurer's report (balanced budget overall) and a report on membership (electronic Voice subscriptions are booming).

We talked some about upcoming events, including the possibility of a Spring Review at Tygart Lake and inviting Charleston area members to the January board meeting in Charleston.

Webmaster Jim Solley reported that we are selling a lot of stuff on the web. We now have polo shirts and baby shirts which are moving right along. He has had some health problems in the last few months. He plans to continue being the webmaster so long as his health holds out but there is no guarantee of how long that will be.

There was much discussion of opening up our blog for discussion. Right now all the Voice stories go on the web site both as the complete Voice and as individual stories in blog form. Currently, no one can respond to the blog stories. In past discussions, the prevailing sentiment had been that our web site is for presentation of our point of view, not a forum for others to present their points of view. After much discussion, we decided to open up the blog to comments. The opportunity to comment on blog entries (which are for the most part stories from *The Highlands Voice*) will be limited to paid up members, those who gave to the most recent fund appeal, and life members.

Then we had reports of various committees. In highways, mining, power lines, and gas well drilling, the reports were similar to reports that had been in this or previous issues of *The Highlands Voice*.

We also approved on a split vote the use of fish toxicants for the purpose of reclaiming waters which had previously been brook trout only waters to their previous status as brook trout only waters. The idea is that native brook trout streams have been affected in the past by human activity, particularly logging. One way of returning these streams to their prior status as brook trout only is to use toxicants to eliminate other species in those segments, giving the brook trout a leg up, or whatever the fish equivalent of a leg up would be.

Cindy Ellis reported on our outreach activities:

- a. Archives. All the back issues of *The Highlands Voice* are now available on line, thanks in large part to the efforts of Dave Saville.
- b. There is a rock band going around the country publicizing us and many other groups. Its device is having its equipment powered by stationary bicycles on stage. As long as audience members are willing to get on the bikes and keep pedaling,

the band has power to operate its instruments. If not, the show stops.

- c. There is an "I Love Mountains" group in Gainesville, Florida, which has been in touch with us and supports our efforts.
- d. We are now selling polo shirts and onesies on the website. They are doing well.
- e. She is maintaining our presence on Facebook. We have 600 likes. If we count those who have "liked" us plus their friends and friends of their friends we have a potential exposure to 328,278 people.

Our most momentous action was adopting a new position on industrial wind power. Peter Shoenfeld reported on the extensive deliberations of the Wind Committee and the resolution which the Committee recommended. After much discussion, we adopted this resolution:

The West Virginia Highlands Conservancy is concerned about the cumulative impact of industrial scale wind energy development on the environment and acknowledges that continued development of industrial wind facilities, in and of itself, is harmful to the West Virginia Highlands, which it is our mission to protect.

For a more complete report of the issue, including the process we followed to reach this point, see the story on page 3 of this issue of *The Highlands Voice*.

On a lighter note, President Cynthia Ellis had a drawing for a copy of *Imagonna*, the new book by

Julian Martin. (See a review in the October, 2012, issue of *The Highlands Voice*). She also simultaneously celebrated the work of James Solley and recognized that we will be seeing him infrequently by kissing him on the cheek. He blushed.



**James Solley, Peter Shoenfeld, Marilyn Shoenfeld, and Don Gasper**

## WVHC ANNUAL MEETING

The annual meeting of the West Virginia Highlands Conservancy was held October 21, 2012. There was no business to conduct other than electing officers and members of the Board.

Many of the officers remain the same. Cynthia D. Ellis, Marilyn Shoenfeld, John McFerrin, and Bob Marshall retained their positions as President, Vice President for Federal Affairs, Secretary, and Treasurer, respectively. Frank Young was elected Vice President for State Affairs; Larry Thomas was elected Senior Vice President.

Of the Board members, Don Gasper, George Beetham, Bill McNeel, and Peter Shoenfeld were each re-elected to another two year term. The Board also added new member Jackie Burns.

## MORE ON THE RAVENCREST MINE (Continued from p. 1)

water quality and aquatic life and forest ecosystems could have - and should have - stopped this insanity before people were so directly impacted.

### MINE-THROUGH

Mentioned in early articles this “mine-through” practice has inexplicably begun to receive approval even from the Environmental Protection Agency (EPA).

If you think this terminology is another way of saying the company plans to merely drive mine equipment across/through stream bed, think again.

Filling valleys, the practice of dumping excess rock and dirt during mining into nearby valleys and thereby burying streams, has proven to be devastating to streams, aquatic life in those streams.

U.S. District Judge Charles H Haden II said it clearly in his 1999 court order in the Bragg litigation:

*“When valley fills are permitted in intermittent and perennial streams, they destroy those stream segments. The normal flow and gradient of the stream is now buried under millions of cubic yards of excess spoil waste material, an extremely adverse effect.*

*“If there were fish, they cannot migrate. If there is any life form that cannot acclimate to life deep in a rubble pile, it is eliminated. No effect on related environmental values is more adverse than obliteration*

*“Under a valley fill, the water quantity of the stream becomes zero. Because there is no stream, there is no water quality.”*

Attempts to re-create fully functioning streams in or on these valley fills have been unsuccessful. How this ‘mine-through’ process can be considered less destructive than valley fills or a more effective base for re-creating streams is beyond me.

Instead of dumping rock and rubble into a cradle of natural mountainsides that forms a valley, mining through the stream is just that. The company blasts apart the entire mountainside down to the base of the stream bed, then takes and forms the rubble into a new shape reminiscent of a valley with indentations that supposedly create a viable stream channel.

How these totally man-made hills and valleys can be any more effective in providing groundwater support or re-creating the form and function of real streams than the practice of filling natural valleys with rubble is puzzling to say the least.

### CLEAN WATER ACT, NATIONAL ENVIRONMENTAL POLICY ACT, AND THE ADMINISTRATIVE PROCEDURES ACT

The Raven Crest complaint explains in detail violations of various sections of the Clean Water Act (CWA), National Environmental Policy Act (NEPA), and the Administrative Procedures Act (APA) which allows review of agency actions if those actions are arbitrary and capricious, comprise an abuse of discretion, or are otherwise not in accordance with the law.

## HEALTH EFFECTS OF MOUNTAINTOP REMOVAL MINING: THE STUDIES

The key health effects and studies that relate most directly to persons living near mountaintop removal mining operations are as follows and listed on the Ohio Valley Environmental Coalition website: [http://www.ohvec.org/issues/mountaintop\\_removal/articles/health/index.html](http://www.ohvec.org/issues/mountaintop_removal/articles/health/index.html)

1. **Babies born to mothers who smoke during pregnancy HAVE AN 18% HIGHER RISK OF BIRTH DEFECTS; however, babies born to mothers who live in areas with mountain top removal mining HAVE A 26 % HIGHER RATE OF BIRTH DEFECTS. Additionally, it was found that this risk is 42% HIGHER OVER THE COURSE OF THE STUDY PERIOD FROM YEARS 2000-2003 and 181% higher during more recent years, specifically for a heart or lung defect.\*** (Ahern, MM, et al, Environ. Res., (2011), DOI: 10.1016/j.envres.2011.05.19)
2. **Babies born to mothers who live in areas with high levels of coal mining HAVE A 16% HIGHER CHANCE OF BEING BORN UNDER WEIGHT.\*** (Ahern, et al, Maternal and Child Health J, DOI: 10.1007/s10995-009-0555-1)
3. **People who live in areas with mountain top removal mining HAVE HIGHER DEATH RATES compared to people who do not live near MTR mining.\*** (Hendryx, Journal of Health Disparities Research and Practice Volume 4, Number 3, Spring 2011, pp. 44-53)
4. **People who live in areas where there is mountain top removal mining HAVE HIGHER RATES OF DEATH FROM CARDIOVASCULAR DISEASE, (HEART DISEASE).\*** (Esch & Hendryx; The Journal of Rural Health; 00; 2011; 1-8)
5. **People who live in areas with high rates of coal production HAVE HIGHER RATES OF DEATH FROM CERTAIN CANCERS, (BREAST, LUNG, DIGESTIVE, URINARY).\*** (Hendryx & Hitt; Ecohealth; 2011, DOI: 10.1007/s10393-101-0297-y)
6. **People who live in counties with mountain top removal mining report significantly MORE DAYS OF POOR PHYSICAL AND MENTAL HEALTH AND LIMITATIONS OF THEIR ACTIVITY.\*** (Am J Public Health. 2011;101:848–853. DOI: 10. 2105/AJPH.2010.300073)

\*These risks increase when accounting for race, gender, poverty, smoking and other risk factors.

Thanks also to Coal River Mountain Watch for their compilation and summaries of these health studies on that organization’s website:

<http://www.crmw.net/resources/health-impacts.php>

## RELATED ACTIONS

The Raven Crest complaint was filed against the US Army Corps of Engineers in the US District Court for the Southern District of West Virginia. West Virginia Highlands Conservancy, Ohio Valley Environmental Coalition, Sierra Club, and Coal River Mountain Watch are represented in the matter by Joe Lovett, Amy Vernon-Jones and Mike Becher of Appalachian Mountain Advocates.

A similar suit was filed at the same time in Kentucky concerning the Leeco Mine in Perry and Knott County Kentucky. The Leeco, Inc. complaint was filed against the US Army Corps of Engineers in the US District Court for the Western District of Kentucky. Sierra Club and Kentuckians For The Commonwealth are represented in this matter by Joe Lovett, Amy Vernon-Jones and Mike Becher of Appalachian Mountain Advocates, by Mary Cromer of the Appalachian Citizens’ Law Center and by Emma Cheuse, Jennifer Chaves and Neil Gormley of Earthjustice.

What Passes for a Regulatory Program

## LEGISLATIVE AUDITOR'S REPORT BLASTS OFFICE OF OIL AND GAS

By Don Garvin

The highlight of September Interim Committee meetings was the presentation of a scathing report blasting the West Virginia Department of Environmental Protection Office of Oil and Gas for not requiring operators to plug abandoned wells or prove that there is a bona fide use for such wells, as required by law.

The report was the result of a performance evaluation of the Office of Oil and Gas as part of an agency review of the West Virginia Department of Environmental Protection authorized pursuant to West Virginia Code §4-10-8. It was presented to the Joint Committee on Government Operations and the Joint Committee on Government Organization, and was prepared by the West Virginia Legislative Auditor's Division of Performance Evaluation & Research.

According to the report, "The Office of Oil and Gas is not enforcing statutory requirements as they concern abandoned oil and gas wells which is causing the number of abandoned wells to increase."

The report stated: "Currently there are approximately 13,000 abandoned oil and gas wells in West Virginia; 36.1 percent are listed as having no known operator, 44.4 percent are currently registered to known operators that do not have an abandoned well initiative compliance agreement, and 19.2 percent are registered to known operators that are in the 10-year 'Abandoned Well Initiative' program. The remaining 0.3 percent, 34 wells, are in the 'Bona Fide Future Use' program."

The audit concluded that the Office of Oil and Gas "is not requiring operators to plug abandoned wells or prove that there is

bona fide use for such wells as stated in Code. Data provided by OOG indicates that the number of abandoned wells is increasing, and some wells remain abandoned for 10 or more years."

In addition the audit found that "due to the large number of abandoned wells and the difficult-to-get locations, inspections are typically not conducted. Unless an operator applies for a wellwork permit that would require an inspection, or a citizen files a complaint, the well site will go uninspected for potential hazards to the public and the environment."

In performing the audit, the Legislative Auditor conducted a random sample of the Office of Oil and Gas "ERIS" database. The report said that their analysis "revealed that a large number of wells had missing or inconsistent information."

Perhaps just as damning as the information on abandoned wells, the audit found that the Office of Oil and Gas has only one performance measure used to gauge the effectiveness of its regulatory program, and that is how fast the agency processes permit applications! According to the report, "The OOG listed one performance measure in the 2011 Operating Detail . . . Between fiscal years 2007 and 2009 the OOG processed well-work permit applications within five days of the applicable process end date 100 percent of the time."

The report included a number of recommendations for improvement of the Office of Oil and Gas regulatory program.

*Perhaps just as damning as the information on abandoned wells, the audit found that the Office of Oil and Gas has only one performance measure used to gauge the effectiveness of its regulatory program, and that is how fast the agency processes permit applications!*

### THANKS JULIAN!

I wish to thank Julian Martin for his years of service on the board of the West Virginia Highlands Conservancy. He will be missed. His passion, blunt outspokenness, courage, and tenacity helped us through many a long discussion and decision. There is no one Mister or Miz Highlands Conservancy, but Julian, in his classic WVHC shirt and cap, may be as close as we come to someone like that. He has fostered an interest in saving the mountains of West Virginia over and over again, to hundreds of people. And he will continue to do so, as will any of us who have been energized and inspired by him. We all are grateful!--Cindy Ellis



# HIGHLANDS CONSERVANCY BOUTIQUE

## NEW STUFF



**Future Activist pegs the Cute-o-Meter in new baby outfit.**



**Supermodels James Solley and Cynthia D. Ellis show off the new polo shirts.**

► Our newest online store items are here just in time for holiday shopping. The baby shirts are certified organic cotton and are offered in one infant and several toddler sizes and an infant onesie. Slogan is "I ♥ Mountains Save One for Me!" Onesie [18 mo.]---\$17, Infant tee [18 mo.]---\$15, Toddler tee, 2T,3T,4T, 5/6---\$18

► Soft pima cotton adult polo shirts are a handsome earthtone light brown and feature the spruce tree logo. Sizes S-XXL [Shirts run large for stated size.] \$18.50

► Order now from the website!

Or, by mail [WV residents add 6 % sales tax] make check payable to West Virginia Highlands Conservancy and send to James Solley, PO Box 306, Charleston, WV 25321-0306

## SAME STUFF

### 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.



### 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 (heart) Mountains on the back. It is soft twill, unstructured, low profile, sewn eyelets, cloth strap with tri-glide buckle closure.

The I ♥ 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

# HIKING THE LAUREL HIGHLANDS TRAIL-NORTH

By Michael Juskelis

We met at the northern terminus around 10:30. We left two vehicles there and made the 45 minute drive to the southern end of our hike using Rt 711 and U.S. 30. We got underway by noon.

It would be a long day putting in 12 miles by the time we reached camp. I set the hike up such that we would get most of the hard work done on the first day with two nice climbs right off of the bat.

The forest was beautiful but I have to say here that although we did see some Mountain Laurel the majority of the understory is ferns .. lush ferns ... all types of ferns. The majority of the carpet was sweet smelling Hay Scented Fern but we also saw our fair share of Bracken, Ebony Spleenwort, Christmas and giant Ostrich Fern. I'm sure these are just a few of the species growing up there.

After those initial climbs we settled into a nice ridge walk across what I would call rolling terrain. The ridge walk continued for a while, then, as we approached the camp spur, without any apparent rhyme or reason, the trail made an abrupt right hand turn off of the ridge and began a quick descent. That quickly, before us was an amazing maze of rocks. The photos Ted took don't do the scene justice. We had moss covered walls on both sides of us and giant stone steps taking us down to the different levels. It was almost like walking the halls of an old castle.

At the end you could step up onto the last rock formation and look back at the others that we had just walked through. We were all pretty much in awe of the scene. We made the mandatory climb back to the ridge only to descend again for about a mile to our shelter area for the night.

These sites are pretty extravagant as hiking campsites go. There were numerous shelters with fireplaces in front of them. By design none of the shelter openings faced another. The privies were well built with nearly odorless vaults, TP, stainless steel fixtures, multiple commodes and urinals and hand sanitizer.

After breakfast the next day, we clambered up the hill from whence we came the previous day and proceeded to take on a much easier day with about ten miles of distance and less than 1000 feet of elevation gain. The scenery was much the same as the day before. Besides ferns there was also tons of Chicken of the Woods mushrooms growing on stumps and logs. It's glowing orange color really stands out. We also saw some Orange Spindle coral, Wine Cap Stropharia (light purple caps) and assorted Entalomas.

The recent rains had brought out the fungi. By noon the rain was back on us and so was a one mile walk on a gravel road. There was supposed to be a view to the left of it but I got the impression that it was looking down a gas line right of way. Besides, it was probably soaked in. Initially this section was a negative for me but then I started to count all of the different wildflowers that were growing along it. I retired early as I always do and listened to the soft mumbblings of conversation, then the Katydid (I think they were more subdued tonight because of the rain) and finally a chorus of Barred Owls (Who cooks for you. Who cooks for youuuu.) Apparently there was more

than one as they exchanged hoots throughout the night.

We all got up early for some reason. Last night the descent to camp was shorter than the previous night but a lot steeper and rockier and after the climb back up this morning there was still a couple of hundred feet more of elevation gain before getting back to the ridge. We got an early start so we could get it all behind us.

We rendezvoused at the next mile marker where we continued with the game plan we came up on the first day. I knew that I was going to be several minutes behind the group and a couple in the group would be ahead of the pack. I'm a big believer in not getting a group too separated in case of an emergency. There are those out there who would leave slow hikers to their own devices or not care if those out in front make a wrong turn but I can't do that. Since the trail was

marked with numbered concrete posts every mile we decided that we would regroup every two miles, take a break, make sure everyone was ok and then proceed to the next stop.

The 6 mile day went quickly. At around mile 4 the sounds of traffic on Rt 56 and the steady hum of diesel locomotives reminded us that we were returning to civilization. Somewhere around mile 2 the trail briefly touches a badly eroded forest road but turns sharply to the right to avoid it.

After saying goodbye to Andre, we jumped into Jack's truck, picked up my truck and in 3.6 miles on U.S. 30 found ourselves at one

of the hiker friendliest restaurants where I've yet to dine, Our Coal Miners Cafe. From the outside (and inside) it looked to be really upscale but it was full of down home hospitality and prices.

**Note: Although some production difficulties with *The Highlands Voice* delayed the publication of this account, this hike took place in early August. The wildflowers blooming, etc. would be what one would expect then, not in the fall when the story appears.**



## 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.

# TORRY RIDGE-MILLS CREEK OVERNIGHT BACKPACK

By Michael Juskelis

We made the four hour drive from Columbia, MD to the trailhead on the Blue Ridge.

We proceeded down the Slacks Tr as a shower fell. By the time we reached the Torry Ridge Tr it had let up but the views would remain socked in for the duration of the first day. The trails were nearly pristine due to the vigilant efforts of volunteer trail groups and the mountain bikers of central VA.

We by-passed the Blue Loop Tr that usually offers a tremendous view of Lake Sherando and the ridges to the east. These views can be seen on the White Rock Gap/Torry Ridge Loop hike found on my site.

We came upon the signed junction with the Mills Creek Tr in another 500 yards. We descended gradually to an old road and a crossing of a dry feeder stream which we followed to a crossing of Orebank Creek, an open grassy area and another road that leads to Coal Mine Rd. The trail was mostly smooth running up the center of the old woods road with thickets of wild flowers on both sides. We passed some Knapweed and some brilliant orange Yellow Fringed Orchid. (I don't know where the botanists got yellow in the name.)

No one could tell me if there were any campsites along the trail. Looking at the topo map I guessed that if there was to be one it would be at the first ford of Mills Creek. Those who had come before us had left a bit of a mess but we soon had it looking good. Mills Creek was low but flowing. We were all happy to see that it was in good health as it supported a healthy population of darters, crawfish and those surface walking water bugs.

I stayed up until 8:00 and retired to my tent for the night. Almost immediately it began to rain and I heard the rest of the crew scampering around, hanging the bear bags and donning their rain gear. Some stayed up until they realized that the rain was not going to relent. After the rain stopped we were entertained by the musical chorus of Whippoorwills and the deafening drone of the Katydid. At some point in the night all noise except for an occasional croak of a frog ceased and I eased into sleep.

We were back on the trail by 9:30. The trail continued, for the most part, as a wide woods road through a pretty forest with hardly a bend in it. I lost count but I believe we rock hopped the creek about 5 times.

As we turned away from the creek near its head waters we took a prolonged break. Ahead of us was a 1200 foot climb over the next 1.2 miles. The others didn't know it but this was going to be a game breaker for me. I knew I was going to be slower than the rest (I always am and it usually doesn't bother me.) But recently I've been struggling with severe fatigue and dehydration while hiking. If this mountain was to beat me I would have to severely alter – maybe even cancel – the rest of my scheduled hikes for 2012 until I could figure out and fix the problem.

I let the others go first and then I followed, hiking first in 60 and then 100 step increments. I won't say I didn't get tired. That's what is supposed to happen to a 62 year old retiree. But I never got that debilitating feeling of fatigue. As we climbed the sun began to beat on us as there was little canopy over the trail. The switchbacks stopped.

Ahead of me was one last steep and straight surge to the top. I made it in relatively good condition, about 10 minutes slower than the hiker in front of me. (To me that was quite a personal accomplishment.) I had enough gas in my tank to take a photo of Torry Ridge that we hiked yesterday and then laid down with my head on my pack and my bandana over my face, a treat I had promised myself if I successfully made it to the top without help from my peers.

After another prolonged break we continued uphill a short distance to the southern terminus of the Torry Ridge Tr. We followed it for a mile back to the Slacks Tr. The tread alternated between a smooth pine needle carpet and very rocky as we crossed the top of several talus slopes. The views were awesome. We took another break at the trail junction before retracing our initial steps of the trip back to the trailhead. This last mile was a pleasant stroll with a cool breeze in our face.

After stuffing ourselves at the Devils Backbone Brewery we said our goodbyes and continued on an uneventful drive back to MD.



## Send us a post card, drop us a line, stating point of view

Please email any poems, letters, commentaries to the VOICE editor at [johnmcferrin@aol.com](mailto:johnmcferrin@aol.com) or real, honest to goodness, mentioned in the United States Constitution mail to WV Highlands Conservancy, PO Box 306, Charleston, WV 25321.

## Voice Available Electronically

*The Highlands Voice* is now available for electronic delivery. You may, of course, continue to receive the paper copy. Unless you request otherwise, you will continue to receive it in paper form. If, however, you would prefer to receive it electronically instead of the paper copy please contact Beth Little at [blittle@citynet.net](mailto:blittle@citynet.net). Electronic copies arrive as e-mail attachments a few days before the paper copy would have arrived.

# STANDING ON BLAIR MOUNTAIN

By John McFerrin

The United States District Court for the District Of Columbia has dismissed an action by the Sierra Club, Ohio Valley Environmental Coalition, Friends of Blair Mountain, Inc., West Virginia Labor History Association, National Trust for Historic Preservation in the United States, and the West Virginia Highlands Conservancy which sought to keep the site of the Battle of Blair Mountain on the National Register of Historic Places. The Court dismissed the action because, in the judge's view, the plaintiffs lacked "standing."

## What is this all about?

Like almost everything else in southern West Virginia, this is about coal. Blair Mountain has coal. Several companies have expressed an interest in mining that coal and permits to mine have been issued on some of the Mountain.

The Plaintiffs in this case think mining is a bad idea. Blair Mountain was the site of the 1921 Battle of Blair Mountain that ended an unsuccessful three-year struggle to unionize the coal miners of Logan, Mingo, McDowell, and Mercer counties.

In August of 1921, 7000 striking miners led by Bill Blizzard met at Marmet for a march on Logan to organize the southern coalfields for the UMWA. Reaching Blair Mt. on August 31, they were repelled by deputies and mine guards, under Sheriff Don Chafin, waiting in fortified positions. The five-day battle ended with the arrival of U. S. Army and Air Corps. UMWA organizing efforts in southern WV were halted until 1933. The confrontation between union and non-union forces was the largest organized armed uprising in American labor history, ending only when federal troops intervened.

Whether or not it is on the National Register of Historic Places would carry great weight in determining whether or not

it is mined. Being on the Register is not an absolute ban to the mining. Under the Surface Mining Control and Reclamation Act of 1977, listing in the National Register "require[s] consideration of a property's historic values in the determination on issuance of a surface coal mining permit." The Act prohibits surface coal mining operations "which will adversely affect any publicly owned park or places included in the National Register of Historic Sites unless approved jointly by the regulatory authority and the Federal, State, or local agency with jurisdiction over the park or the historic site."

In the case of Blair Mountain, mining would be allowed only if (a) it didn't adversely affect Blair Mountain (something it's hard to say with a straight face, much less determine it to be true); (b) it is approved by the "regulatory authority" (no problem since West Virginia's "regulatory authority" is the Department of Environmental Protection which never met a mine it didn't like); and (c) it is approved by the Keeper of the National Register of Historic Places whose duty it is to preserve and protect those places. Were Blair Mountain placed on the National Register, it would only be mined if the mining were approved by the person whose duty is to protect it.

## What happened in this case?

Under the federal National Historic Preservation Act, the United States Department of the Interior maintains "a National Register of Historic Places composed of districts, sites, buildings, structures, and objects significant in American history, architecture, archeology, engineering, and

culture." Here, state officials nominated the site of the Battle of Blair Mountain for inclusion on that Register. Believing that the site met the qualifications of the Act, the Department of the Interior began the process of placing it on the register.

One of the requirements is to notice of the possible listing to landowners. If



a majority of the landowners object, the property may not be placed on the Register of Historic Places.

The officials gave notice and received some objections, including objections from Natural Resource Partners, LP, Arch Coal, Inc., and Massey Energy Company, each of which had an interest in the coal or the surface in the area.

Even with these objections, it did not appear that a majority of the landowners had objected. There was some confusion about whether or not the number of landowners and the number of objections had been correctly counted but, on March 30, 2009, the West Virginia Preservation Office indicated that fewer than a majority of the surface owners had objected and Blair Mountain was listed.

On April 6, 2009, however, the West Virginia Preservation Office sent a letter saying that it had overlooked some objections. As a result, the Keeper (the official who maintains the Register of Historic Places) kicked Blair Mountain off the list in January, 2010. The Plaintiffs, including the West Virginia Highlands Conservancy, sued, claiming that the actions of the Keeper were arbitrary.

Their case was dismissed because

**(More on the next page)**



Part of Chafin's army resting during a lull in the fighting at Blair Mountain. Charleston Gazette, 10 September 1921.

Part of Chafin's army resting during a lull in the fighting at Blair Mountain. Charleston Gazette, September 10, 1921.

## **MORE ABOUT BLAIR MOUNTAIN (Continued from previous page)**

the Court said they lacked standing.

### **What is standing?**

“Standing” is law talk for having a dog in that fight. It is based upon the assumption that controversies are best decided when the litigation is between people who stand to gain or lose something as a result of the litigation. If there is no possible gain or loss as a result of the litigation, then the parties don’t have a dog in the fight. In legal terms, they lack standing.

The law of standing evolved from the requirement in the United States Constitution that federal Courts only act to resolve “controversies.” If the parties can’t expect to gain or lose something depending upon how the case comes out, then there is no real controversy and the Court may not act. From this humble beginning the law of “standing” has evolved into a complex set of rules that make it possible for defendants (or even courts) to avoid reaching the merits of a case.

### **Why didn’t the Plaintiffs have standing?**

The Court thought the Plaintiffs lacked standing because, first, the harm they (or their members) expected to suffer was not “imminent.” The mining permits have been in existence for several years and the areas have not been mined. The Court thought that there was no evidence that the mining was imminent.

The Court also said that whether or not Blair Mountain was mined depended upon decisions of the mining companies, decisions that the Plaintiffs could not know at this time. The Court would not take action based upon actions that a third party, not before the Court, might or might not take in the future.

Finally, the Court said the Plaintiffs lacked standing because a decision in the Plaintiffs’ favor might not help the Plaintiffs anyway. Even if Blair Mountain were listed on the Registry, it might still be mined under certain conditions. A determination on whether or not the property might meet some condition that would allow mining in spite of Blair Mountain being on the Registry was not before the Court. Since the Court could not grant relief that would give the Plaintiffs the relief they sought, it concluded that the Plaintiffs lacked standing.

Because the Court dismissed the case on standing grounds, there was never any determination of whether or not a majority of landowners had objected to placing Blair Mountain on the National Registry. The Court assumed that it was of sufficient historical value but the question of whether a majority of landowners objected remains unresolved.

## **Heritage**

I shall not leave these prisoning hills  
 Though they topple their barren heads to level earth  
 And the forests slide uprooted out of the sky.  
 Though the waters of Troublesome, of Trace Fork,  
 Of Sand Lick rise in a single body to glean the valleys,  
 To drown lush pennyroyal, to unravel rail fences;  
 Though the sun-ball breaks the ridges into dust  
 And burns its strength into the blistered rock  
 I cannot leave. I cannot go away.

Being of these hills, being one with the fox  
 Stealing into the shadows, one with the new-born foal,  
 The lumbering ox drawing green beech logs to mill,  
 One with the destined feet of man climbing and descending,  
 And one with death rising to bloom again, I cannot go.  
 Being of these hills I cannot pass beyond.

*By James Still*

## **A TOOL TO TRACK BENEFITS OF THE CLEAN AIR ACT**

Last year, the Union of Concerned Scientists UCS launched a new feature that tracks the estimated net benefits of the Clean Air Act from when it became law in 1970. The “ticker” is based on Environmental Protection Agency (EPA) estimates of the law’s net health and economic benefits. Right now the ticker is showing a financial benefit of the Act of over \$52 trillion. The ticker is constantly moving. To watch it tote up the benefits, go to [http://www.ucsusa.org/global\\_warming/solutions/big\\_picture\\_solutions/methodology-for-ucs-clean-air-act-ticker.html](http://www.ucsusa.org/global_warming/solutions/big_picture_solutions/methodology-for-ucs-clean-air-act-ticker.html)

By preventing premature deaths and reducing the harmful effects of air pollution, the Clean Air Act has proven to be a smart investment. In 2010 alone, the law generated environmental and health benefits estimated at \$1.3 trillion (in 2006 dollars), according to the EPA. The estimated cost of compliance that year was \$53 billion (in 2006 dollars), making the law’s estimated net benefit \$1.247 trillion and its benefit-cost ratio approximately 25 to 1.

The EPA estimates that the law’s benefit-cost ratio will be 30 to 1 by 2020, when, according to the federal agency’s projections, the law would prevent as many as 230,000 premature deaths in that year alone.

The ticker starts with an estimate of the cumulative net benefit of the law from its inception in 1970 through today, which amounts to more than \$48 trillion (in 2010 dollars). It will continue to count net benefits every second and reach \$65 trillion in 2020, based on EPA estimates.

The web feature also includes an explanation of the methodology and sources UCS used for the ticker’s calculations.

Thanks to Don Gasper for pointing out this feature.

## ENDANGERED BATS AT BEECH RIDGE WIND FACILITY

In 2009, Beech Ridge Energy, a subsidiary of North America's largest wind energy company, Invenergy LLC, was required to develop a Habitat Conservation Plan and seek an Incidental Take Permit before further developing its wind project in Greenbrier County, West Virginia. These are required by the federal Endangered Species Act whenever an endangered species is present. The Incidental Take Permit allows a limited number of an endangered species to be killed if it is incidental to an operation. It may be issued only after completion of a Habitat Conservation Plan.

Under terms of a federal court ruling, the 67 turbines already constructed or under construction were allowed to operate only during the hibernation period of the endangered Indiana bat, and only during daylight hours other times of the year. These terms were later relaxed, allowing Beech Ridge to operate its existing turbines year round and at night, but only during high-wind-speed conditions at night during the active season for hibernating bats. For more information, see the February, 2010, issue of *The Highlands Voice*.

Beech Ridge has now developed a draft Habitat Conservation Plan and applied for an Incidental Take Permit from the U.S. Fish and Wildlife Service (FWS), which is responsible for implementation of the Endangered Species Act and other environmental laws that apply to wind energy projects. The Incidental Take Permit would apply to the existing 67 turbines and 33 additional turbines.

The Fish and Wildlife Service has prepared a draft Environmental Impact Statement (EIS) under requirements of the National Environmental Policy Act (NEPA) and sought public comment. This is the first central Appalachian wind energy project subject to comprehensive NEPA review, and a precedent will be set. Unfortunately, the draft Habitat Conservation Plan and the draft EIS are insufficient in terms of environmental impact analysis and compliance with NEPA and Endangered Species Act requirements.

Among the deficiencies noted were:

1. It fails to evaluate the benefits of the project. The draft Environmental Impact Statement lists as a benefit a reduction in carbon dioxide but does not critically examine the assumption that the project will, in fact, result in substantial reduction in carbon dioxide emissions.
2. It fails to account for the effects of White Nose Syndrome. The draft Environmental Impact Statement assumes that White Nose Syndrome is a future problem which it will deal with when it becomes more dire. White Nose Syndrome is a problem now and should be dealt with now.
3. The methods used to estimate bat mortality and population impacts are unsound.
4. The draft Environmental Impact Statement needs to pay more attention to cumulative impact, both of multiple wind energy sites and of the multiple stressors upon bat populations, including White Nose Syndrome.

## PROTECTING BIRDS AND BATS AT CRITERION WIND POWER

The West Virginia Highlands Conservancy has joined with Save Western Maryland, American Bird Conservancy, Friends of Blackwater, Allegheny Highlands Alliance, Friends of Beautiful Pendleton County, Laurel Mountain Preservation Association, and the Allegheny Front Alliance, in calling upon the United States Fish and Wildlife Service for changes in one of the most deadly wind power developments.

The development at issue is the 28-turbine Criterion Wind Project, located near Oakland, Maryland, about 175 miles northwest of Washington, D.C. The facility is the most deadly, or one of the most deadly, facilities for birds in the country. (Investigators never recover all the dead birds or bats. Instead, they use the number of birds or bats recovered to estimate the total number killed. Because the final numbers used are estimates, it is impossible to say with certainty which is the most deadly facility. From the data, it is clear that the Criterion facility is a strong contender.)

The turbines are located along the ridge of Backbone Mountain, extending northeast approximately nine miles from Allegheny Heights to just south of Wild Turkey Rock in an area commonly referred to locally as Eagle Rock. The ridgeline maintains an elevation of approximately 3,200 feet above sea level. There are at least eight operating or proposed wind power projects within 40 miles of the Criterion project, which has been in operation since December 2010.

The request comes in response to a Fish and Wildlife call for comment on three documents concerning the project, published in the Federal Register: a draft Environmental Assessment, which assesses the existing and potential environmental impact of the project; an application for an Incidental Take Permit, which is required under the Endangered Species Act when activities will likely result in the killing or disturbance of a threatened or endangered species – in this case the endangered Indiana bat; and a proposed Habitat Conservation Plan, which must be completed before a take permit is issued.

The primary concerns identified by the groups are in relation to the violation of four federal environmental statutes, the Endangered Species Act, National Environmental Policy Act, Migratory Bird Treaty Act, and the Bald and Golden Eagle Protection Act.

In response to a lawsuit brought by Save Western Maryland and other interested parties, Criterion agreed to seek an Incidental Take Permit for Indiana bats to comply with the Endangered Species Act. During its first full year of operation (2011), Criterion conducted daily monitoring for bat and bird mortality between April 5 and November 15. Although no Indiana bat deaths were confirmed, Criterion estimates that the project killed approximately 1,093 other bats (39.03 bats per turbine) and 448 birds (16.01 birds per turbine). This rate is described in the draft Environmental Assessment as the highest per-turbine bird mortality ever estimated at a studied wind project in the United States, and as the highest per-turbine bird mortality ever documented in North America.

Based on the 2011 data, Criterion estimates that if the project did not take steps to reduce the number of bats killed, it would result in between 13,238 and 26,477 bat deaths and approximately 8,960 bird fatalities during the expected 20-year operational life of the project. Each bird death is a distinct violation of the Migratory Bird Treaty Act, a strict liability statute that prohibits the killing of birds even when the killing is unintentional.

In addition to migratory birds in general, Bald and Golden Eagles have been routinely seen on and in the vicinity of the project, and according to FWS, "it is expected that Bald and Golden Eagles would pass by as they use the ridgeline for migration."