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 Charleston, WV



The Highlands Voice

The Monthly Publication of the West Virginia Highlands Conservancy

Volume 49 No. 1 January 2016

Arboretum Threatened !

By John McFerrin

The Morgantown Monongahela Metropolitan Organization is considering a proposal that would include building a bridge over the Monongahela River. The proposed bridge would go over or through the West Virginia University Core Arboretum.

Traffic in Morgantown is difficult during the best of times and insane on days when there is a game. There are also several places around town where the roads need to be repaired or updated. To address these problems, the Morgantown Monongahela Metropolitan Organization commissioned a study of transportation needs and possible solutions.

The study proposed several options for addressing different parts of the transportation problems over the next twenty eight years. It divides proposed projects into four tiers. The first tier is made up of projects that are of high priority and could be funded with existing revenues. Tiers two through four are projects that the study says would be valuable but cannot be funded. The bridge that threatens the Arboretum is a tier

one project. To see the whole study go to <http://i79accessstudywv.com>.

One of the principle ideas of the study is that to improve traffic in Morgantown we have to provide another way for traffic to get across the river and out to I-79. To do this, the study proposes three possible bridges and connecting roads. One of the possible bridges would go over or through the Arboretum.

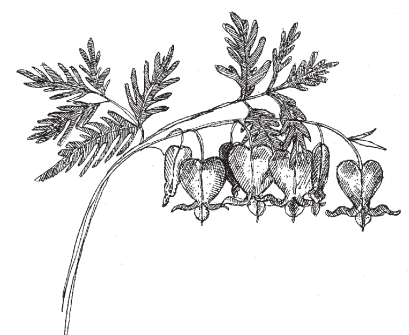


West Virginia may be Almost Heaven but the Arboretum is Almost Heaven But Even Closer. The Metropolitan Planning Organization and its consultants may assume that the Arboretum is just a bunch of trees, indistinguishable from any other bunch of trees that might be found in lots of places around Morgantown and West Virginia. This is not true. The Arboretum is a rare example of an old growth forests. It has never been timbered. It is no ordinary forest but a rare jewel that should be cherished and protected. Building

(More on p. 7)

What's inside:

Thoughts from President Cindy	2	Legislative priorities	9
Programatic EIS for pipeline–NOT	3	Gas information meeting	10
Budget deal	4	Get a Hiking Guide	11
How to join	5	Winter thoughts	12
FERC does scoping	5	Book news	13
Alpha bankruptcy	6	Mining—the saga continues	14
Future of bond pool	7	Checking on trees	15
Roster of officers	8	WVHC Mercantile	16
		Another informational meeting	16



Ramblin' the Ridges

By Cynthia D. Ellis

Speak Up! Be Quiet!

You joined with us, perhaps in part, or wholly because you see that there are mountains in West Virginia and elements of our communities that need to be saved and made better. And this time of year we remember that we joined with other like-minded groups within a larger body with much the same ideals.

Each January, as the West Virginia Legislature convenes [this year on the 13th], some of the most important work of that larger body, the West Virginia Environmental Council, commences. Like our own organization, this one has mission goals of education and conservation. The E-Council tries to channel that through work at the Capitol.

Nearly 50 groups partner in this effort. These range from tiny and local, to large and statewide, and includes chapters of national federations. Small differences stand aside for common purposes. The West Virginia Environmental Council has been making the effort, leading and/or assisting, for 27 years. They are, in part, our presence and voice at the legislature.

However, though the efforts of the folks of the legislative lobby team of the WVEC are unstinting, their tasks are gargantuan and their numbers---three this year--- are few. Despite this, they, with our support, have made a difference. The WVEC website, under "About," shows a long list of accomplishments. That list could appeal to any of us, with the words "solar," "non-game," "sludge," "forests," and "groundwater" among those that catch the eye.

One example is that in the years 2005 to 2007, WVEC helped stop "Anti-Wilderness" Resolutions.

And in the category "Some of the Bad Projects We Have Helped Defeat" one sees 4 mega landfills and 4 waste incinerators---2 for medical waste, 1 for chemical waste, and 1 for hazardous waste.

WVEC helped defeat the PATH transmission line and helped promote Net Metering.

The West Virginia Highlands Conservancy contributes to the maintenance of the West Virginia Environmental Council. But we members could do more. Modern communication helps. We can visit the E-council website often and study E-council updates. We can see our own group and others with displays in the halls of the capitol at the annual E-Day event [January 26]. We can communicate with our own local elected representatives and continue conversations with them on issues that are vital to us. We can telephone and send emails. We can travel to Charleston to lobby lawmakers in person. [Yikes! Writing this column is temporarily suspended as a young Cooper's Hawk settled on the porch railing about 5 feet from my window. Then it lifted over to the bird bath. It was lobbying for a Mourning Dove brunch and a quick bath, but moved on without either, this time.]

So, the lobby team and all who work with and volunteer for the WVEC are grateful for our present backing, and



will be especially glad for any increased participation. Check out our hardworking partner group at <http://wvecouncil.org/> and the West Virginia legislature at <http://www.legis.state.wv.us/House/roster.cfm>.

And you could let us know how your own attempts fared. Write us a few lines about exchanges and encounters you have with delegates and representatives. We can't all travel to up, down, or over to Charleston, but we can let legislators hear from the real people represented by our lobby team.

Now, a change of thought. Sometimes it works well to stay silent and to be quiet. Someone who recognized this was West Virginia Highlands Board director-at-large Dave Fouts. After several terms of service, Dave needed to step off the board due to the health of a family member. We will miss him and sincerely valued his time with us. Dave was not outspoken. He attended meetings, in every sense--listening carefully, weighing options, making his vote count. We relied on his quiet presence and occasional explanation of a vote. He came. He helped. He was a contributor, indeed. Dave's petite wife Ann often accompanied him, and we'll miss her support too. These dutiful and dedicated folks from Hardy County have been a great asset to our group.

So...whether your intentions in the New Year start with a bang or with quiet resolve, best wishes to us all for contributions toward sustaining the mountains in the months to come.



Halls of the West Virginia State Capitol

FERC Says No to Comprehensive Environmental Impact Study

By John McFerrin

The Federal Energy Regulatory Commission (FERC) has rejected the multiple requests that it conduct a comprehensive Environmental Impact Study before approving any of the multiple pipelines that have been proposed for West Virginia and Virginia.

There are currently at three pipelines well along in the planning or development stage: the 301 mile Mountain Valley Pipeline, the 564 mile Atlantic Coast Pipeline, and the WB Xpress Pipeline. A fourth, the Appalachian Connector Pipeline, is being planned although it is not as far along.

Many groups (including the West Virginia Highlands Conservancy), individuals, and local public officials as well as several members of Congress have requested that the Federal Energy Regulatory Commission conduct a comprehensive study of all proposed pipelines before making a decision on which, if any, to approve.

Although the requests differ greatly in detail, they all make a single point: we may or may not need any big, new interstate pipelines; we certainly do not need four. The way to sort out what we do need, where we should put it, etc. is through a comprehensive study.

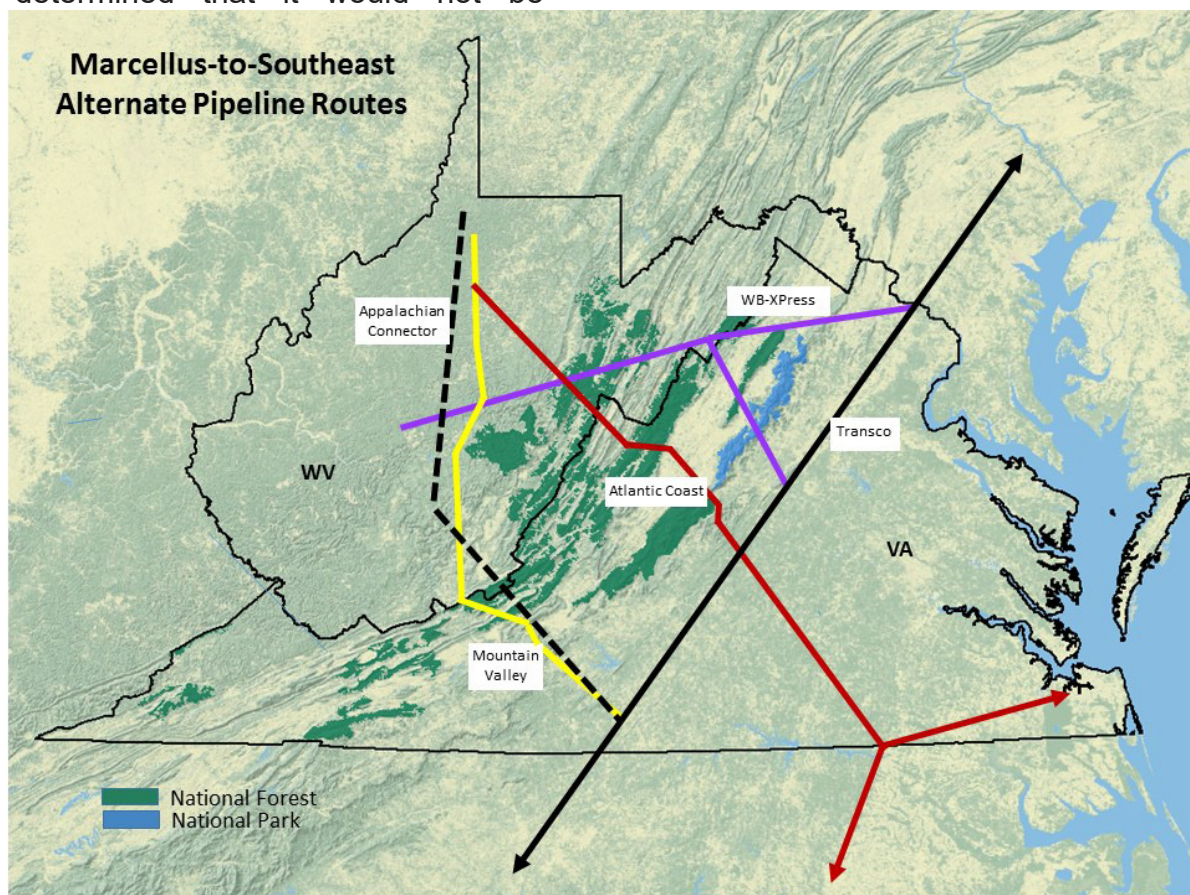
The National Environmental Policy Act provides a mechanism for doing this. Its purpose is to prevent us from doing something foolish out of ignorance. It requires studies of the environmental impact of major federal actions (such as approving a big pipeline). Some (although not all) of the requesters have argued that

the Act requires that FERC study all the proposed pipelines together. At a minimum the Act allows it.

FERC has not made a reply to all of the requests. It has, however, given an indication of its thinking in a reply to a request from Congressman Bob Goodlatte (R-Va). In that reply, it said that, "Because the Commission does not direct the development of the gas industry's infrastructure, either on a broad regional basis or in the design of specific projects, and does not engage in regional planning that would result in the selection of one project over another, the Commission has determined that it would not be

appropriate to prepare a programmatic environmental impact statement (EIS)."

In a later comment, a FERC spokesperson said that FERC "does not engage in regional planning exercises that result in the selection of one project over another." Instead, it is apparently FERC's practice to approve or disapprove (almost always approve) each proposal separately and let the companies slug it out in the marketplace. If that results in more capacity (complete with the environmental damage that building that capacity caused) than we need, that's just the way the free market cookie crumbles.



The Highlands Voice is published monthly by the West Virginia Highlands Conservancy, P. O. Box 306, Charleston, WV 25321. Articles, letters to the editor, graphics, photos, poetry, or other information for publication should be sent to the editor via the internet or by the U.S. Mail by the last Friday of each month. You may submit material for publication either to the address listed above or to the address listed for Highlands Voice Editor elsewhere in this issue. Submissions by internet or on a floppy disk are preferred.

The Highlands Voice is always printed on recycled paper. Our printer uses 100% post consumer recycled paper when available.

The West Virginia Highlands Conservancy web page is www.wvhighlands.org.

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

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

Congressional Budget Negotiations: What Happened?

By John McFerrin

In December we had another installment the long running drama over whether Congress will pass the necessary legislation to fund the government for another week, month, year, whatever. The air was thick with bluffs, counterbluffs, offers, counter offers, etc. Since everybody knows that sooner or later the legislation has to pass, everybody and his cat tries to attach language to achieve policy goals to the legislation. Much of the negotiation is about what items get to hang onto the funding legislation and become law and which ones get kicked off, leaving their proponents to seek another route to their policy goals.

Among the dozens of items attached to the funding legislation, some touched on issues that the West Virginia Highlands Conservancy has addressed in the past:

Clean Power Plan

Some versions of the bill had sought to eliminate the Clean Power Plan. The deal that finally passed does not have anything that restricts the Plan.

Waters of the United States definition

The federal Clean Water Act only protects the "waters of the United States" from pollution. While it has always been clear that this term included major rivers and streams, court cases in the last few years had created some uncertainty over exactly how far the law reached. To clear up the confusion, the United States Environmental Protection Agency issued rules clarifying the term. Those dissatisfied with the results of the rulemaking process sought to reverse it as part of the just completed deal.

The new rule included the small, headwater streams that are so common in West Virginia within the definition of "waters of the United States." The budget deal leaves this new rule alone. The West Virginia Highlands Conservancy had joined in a letter urging Congress to leave the rule intact.

Advocates for a less broad definition realize that Congress is not the only game in town. There are challenges to the new rules in several courts around the country.

Wind energy tax credit

For several years now the wind industry has received a tax credit of several

cents for each kilowatt hour of electricity produced. Always in the past the law extending those credits had extending them for a year at a time. This resulted in annual drama as opponents, proponents, etc. of the credits argued over whether the credits would be renewed. Now those credits have a five year extension which will be gradually phased out.

Land and water conservation fund.

This Fund collects royalties from oil and gas firms drilling on public lands and in public waters. Since 1965 it has provided funding to both protect federal lands and to make grants to states and communities for major conservation projects. In West Virginia it provided funding, in part, for such federal projects as the Canaan Valley National Refuge Area, Cranberry Wilderness, and the Gauley River. It has also provided funding for many of West Virginia's state parks. The Fund was allowed to expire September 30, 2015. Now it is back, thanks to the budget agreement which renewed it for another three years.

Stream Protection Rule

There is a rule, in effect since 1983, which prohibits mining within one hundred feet of a stream. Many, including the West Virginia Highlands Conservancy, have believed that if mining within one hundred feet of a stream was prohibited then filling a stream must be prohibited too. While this rule has never been enforced adequately, it has the potential to dramatically affect mountaintop removal mining.

In about 1999 the federal Office of Surface Mining started to address this issue. What followed was fifteen years of litigation, interpretation, proposed rule changes, more litigation, etc. In 2015 the Office of Surface Mining finally published a package of rules which repealed the 1983 rule but also proposed several other rules which would change how the effects of mining on water

is controlled. The Highlands Voice has had several stories on this entire process. For the latest, see the August and October, 2015, issues. It has been the Highlands Conservancy's position that the proposed rule was a mixed blessing. On the whole we supported it although there were some aspects we considered less effective than they could be in protecting out water.

Some sought to persuade Congress to order the Office of Surface Mining to scrap the rule. The final deal did not do that. Instead, the deal allowed the rule to go ahead while chastising the Office of Surface Mining for now working closely enough with state agencies which must ultimately enforce the new rule. Sooner or later we will find out how the Office of Surface Mining reacts to its trip to the Congressional woodshed, whether this results in a different rule, more hearings, etc.

All these disputes remind us once again how complicated environmental policy really is. It is not just a simple problem, pass a law, problem solved process. Anybody who doesn't like a statute can try to influence the regulations that carry it out. If that doesn't work, get Congress involved again. Then there is always litigation. The budget process was just one of the multiple pieces, all of which keep moving.



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

FERC Holds Scoping Hearing

On December 10, 2015, a FERC scoping hearing regarding the proposed Mountaineer XPress mega pipeline was held at a theater in South Charleston, [Kanawha County] WV and local residents here are beginning to be aware that the state-wide boom in natural gas activity is touching our south-western counties too. A similar hearing was held in Jackson County on the previous day; about 80 people attended. The location of the meeting of the 10th was poorly suited for those in Putnam County; for whatever reason attendance was noted at only about 40 people. As in Jackson though, those present seemed to be split--- half with jobs concerns and half with property or environmental concerns. One of the FERC staffers conducting the meeting pointed out that there is no process for review of FERC decisions by the Congress or the President; "This safeguards independence."

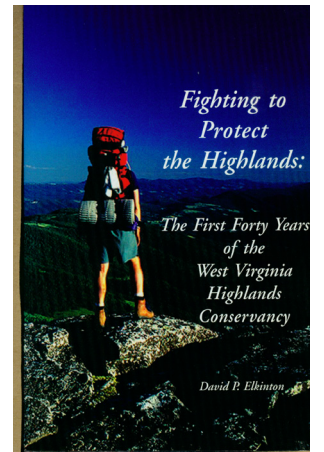
At this hearing only 6 persons spoke. One represented the trade union for Operating Engineers. All others opposed the line; two were directly affected property owners. One Putnam resident spoke of fears for cumulative effects and urged consideration of the No Build option. Representatives from two environmental groups also detailed cumulative worries and questioned need for the line. Stinging comments were made by veteran activist Dianne Bady, who listed examples to bolster this statement, "People in our area have learned that the government will not protect us!" She pointed out that, "FERC isn't required by law to see if THE REST OF THE WORLD needs this pipeline!"

SUCH A DEAL!

Book Premium With Membership

Fighting to Protect the Highlands, the First 40 Years of the West Virginia Highlands Conservancy is a history of the organization. Although it 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.



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. With electronic delivery, you will receive a link to a pdf of the Voice several days before the paper copy would have arrived. The electronic Voice is in color rather than in black and white as the paper version is.

ALPHA - Another Bankruptcy, More Unfunded Reclamation Liabilities

By Cindy Rank

Even as reliance on coal wanes and the world warms in the mad rush to yet another fossil fuel, the coal industry continues to assert its identity as the bully on the block, the kid on the playground who takes your lunch money and leaves you hungry.

The few remaining boasts that Coal is king are fading as the fantasies they have always been are exposed. But the industry is not going away entirely, nor is it giving up what it has to without some final insults to the land and water and communities impacted by mining projects over the years.

The emperor-king has no clothes --- nor does he have the financial resources to clean up the mess he leaves behind. And so we see one company after another filing for bankruptcy to find easy ways out of the mess they've created.

The Patriot Coal settlement has been written about here in *The Highlands Voice* ... and only time will tell if and how the Virginia Conservation Trust will do any better job of resolving the legacy liabilities it has assumed from Patriot.

And now Alpha Natural Resources, as part of its bankruptcy proceedings, has struck a deal with West Virginia Department of Environmental Protection (WVDEP) that allows Alpha to guarantee the state hundreds of millions of dollars LESS than is needed to adequately reclaim the damage at its many mining operations throughout the state, over \$200 million dollars LESS than it promised to have available for reclamation.

Over the years, instead of requiring the company to post reclamation bonds backed by a third-party financial institutions WVDEP has allowed Alpha to 'self-bond' based on the company's own good fortunes and financial well being.

Well now it just so happens the company isn't doing so well these days and the funds just aren't there.

Both federal and state mining laws prohibit mine operators like Alpha from mining if they lack adequate reclamation bonds, but that is precisely what WVDEP has agreed to allow. Rather than require Alpha to stop mining or provide adequate substitute bonds, WVDEP is agreeing to let Alpha walk away from more than 80% of its reclamation bonding liability and continue

to mine.

The state has agreed to let Alpha's \$244 million in self-bonding disappear into an agreement whereby Alpha would post a \$15 million letter of credit, give DEP priority rights to a claim in the amount of \$24 million during bankruptcy proceedings, and the company continues to mine.

WVDEP has indicated that the agency views this agreement and the reduced amount of guaranteed dollars as "providing substantial additional financial assurance that Alpha will continue to perform its reclamation obligations in West Virginia."

Oh? Excuse me for not being overly impressed.

On December 14, 2015 WV Highlands Conservancy, along with the Sierra Club and the Ohio Valley Environmental Coalition, filed an objection seeking to halt this significant cut in mine reclamation funds saying "It's unacceptable to expect West Virginians to put their money on the hook to clean up Alpha's destructive legacy. The reclamation of surface mines is a critical obligation that Alpha must fulfill, not an extraneous cost to be handed off to the taxpayers. Today we're taking action to ensure that Alpha Natural Resources keeps to its responsibility and cleans up its own mess."

The court, unfortunately, did not accept our arguments and the Judge approved the agreement December 22nd.

An appeal is likely by deadline January 5th.

Afterthoughts:

It is bitter consolation to know how much WV Highlands Conservancy and others since the late 1980s have been spot on in pleading and litigating to have the state increase bonds for mine operations, and improve the alternative bonding program.

The incremental increases in bonding and the West Virginia Special Reclamation Fund tax squeezed out over the years of court action are now proving to be as inadequate as we have long predicted.

Reverberating in my mind are words from the late U.S. District Court Judge Charles Haden in a 2001 court order during WV Highlands Conservancy's litigation about regulatory responsibility for

maintaining a legally required adequate bonding program:

"The direct consequences of decade-long delay have been examined here before: thousands of acres of unreclaimed strip-mined land, untreated polluted water, and millions (potentially billions) of dollars of state liabilities.

"The indirect results, however, may be more damaging: a climate of lawlessness, which creates a pervasive impression that continued disregard for federal law and statutory requirements goes unpunished, or possibly unnoticed. Agency warnings have no more effect than a wink and a nod, a deadline is just an arbitrary date on the calendar and, once passed, not to be mentioned again

"Financial benefits accrue to the owners and operators who were not required to incur the statutory burden and costs attendant to surface mining; political benefits accrue to the state executive and legislators who escape accountability while the mining industry gets a free pass,"

How difficult it is to see just how true these words still are some 15 years later. The chickens are coming home to roost.

Office of Surface Mining Weighs In

The United States Office of Surface Mining was not a party to the agreement between Alpha Natural Resources and the West Virginia Department of Natural Resources, the agreement to which the groups objected.

It has, however, weighed in. In a separate filing with the Bankruptcy Court, it reserved its rights under the Surface Mine Coal Reclamation Act to take action to require that Alpha comply with the Act and its regulations. In its filing, it pointed out that, "notwithstanding the Motion or Consent Order, Debtors [Alpha] must at all times during this Bankruptcy Case act expeditiously to bring themselves into full compliance with the valid laws of the State, which include SMCRA's reclamation bonding requirements, as required by 28 U.S.C. § 959(b)".

What Happens If Alpha Goes Under?

By John McFerrin

The 1977 Surface Mining Control and Reclamation Act (SMCRA) included provisions that required companies to post a bond sufficient to complete reclamation if the company couldn't or wouldn't meet reclamation obligations.

West Virginia met this requirement through an 'alternative bonding system.' Under this system, companies would post a flat per acre bond which was designed to be relatively low. The bonds were designed to be inadequate to do the reclamation. At least in theory, these inadequate bonds would be sufficient because West Virginia had its Special Reclamation Fund. All coal companies would pay into this fund based upon the tons of coal they produced. If a company went under or disappeared, the Department of Environmental Protection could forfeit the inadequate bond and then take whatever it needed from the Special Reclamation Fund to pay the rest of the cost of reclamation.

This system only worked in theory. In actual practice, the rate at which companies pay into the Special Reclamation Fund has always been too low to fund all the reclamation at bond forfeiture sites.

The Department of Environmental Protection has made it possible for the Special Reclamation Fund to limp along using various techniques. Sometimes it would do inadequate or incomplete reclamation. Occasionally it would stretch out the Fund's obligations by pretending that a mine was only temporarily idle instead of deserted and ready for reclamation, paid for by the Fund. Mostly they kept their fingers crossed that they wouldn't have to make several large payments from the Fund at the same time.

The specter that has always haunted the Special Reclamation Fund is the possibility that a big operation will fail and it will have to reclaim several large mines. So long as the mines the Department of Environmental Protection was reclaiming were small, it could juggle its obligations, delay some reclamation, etc. and keep the Fund going. If big mines started to go belly up, no amount of juggling could cover the Fund's insolvency.

Now the specter is at DEP's door. Its name is Alpha Natural Resources. If it goes belly up and the Special Reclamation Fund has to pay for all that reclamation, it will swamp the Fund. The state of West Virginia will be left holding the bag.

A Bridge Over the Arboretum? (Continued from page 1)

a road through it or a bridge across it would ruin something that cannot be replaced.

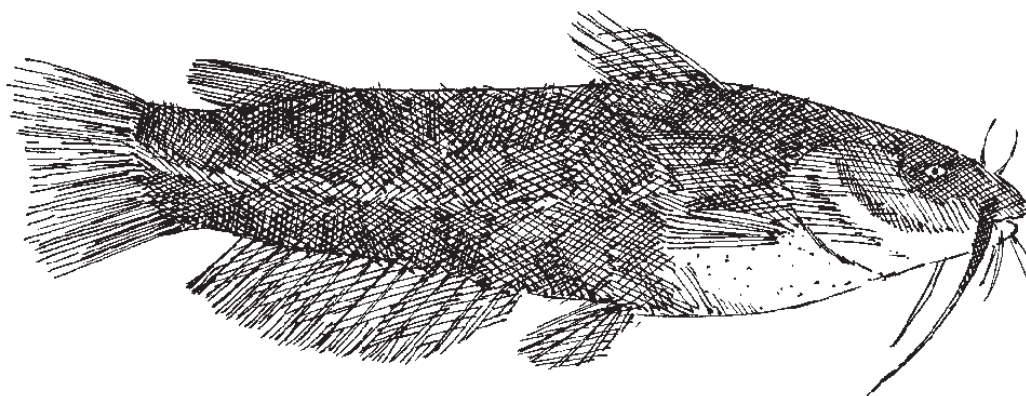
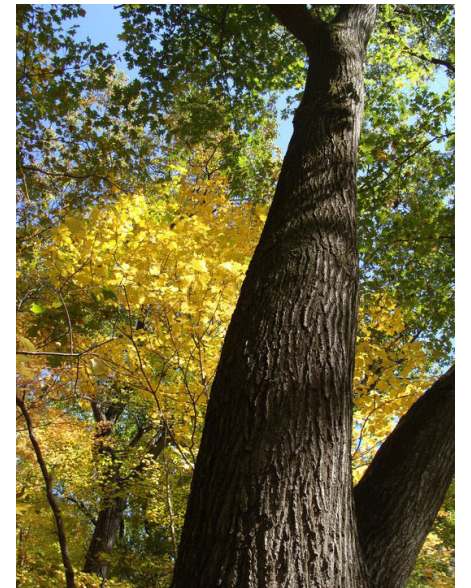
Its example of old growth habitat is what makes it so valuable as a research and teaching tool for West Virginia University. Biology classes study it; researchers conduct research there. In the Arboretum they can see and learn things that they could not learn elsewhere.

The Arboretum is essential to recreational life in Morgantown. It is always listed as one of the best spots in Monongalia County for birding. In the spring it is thick with wildflowers, many of which only grow in mature or old growth forests. People take their dogs there; they exercise there; they mountain bike (on the trails where that is allowed) there. Whenever a visitors' bureau talks about Morgantown, it always lists the Arboretum as one of the best attractions. For an account of one visit, see the July, 2015, issue of *The Highlands Voice*.

The importance of the Arboretum is recognized nationally as well. When Forbes Magazine rated cities as places for businesses, it mentioned the Arboretum. When Money Magazine rated Morgantown as one of the top places to retire, it mentioned the Arboretum as one of the benefits of living here. It is one of the greatest assets that Morgantown (and West Virginia) has. It should never be sacrificed, particularly when there are other options available.

Although the study was a major undertaking, we are still reasonably early in the planning process. Even if the Morgantown Monongalia Metropolitan Planning Organization may privately have an option it prefers, its public position has been that the process is still open. It accepted comments from the public in December, 2015, and there will be public meetings in the future.

The West Virginia Highlands Conservancy made comments on the proposal. It urged that the option that involved going through or over the Arboretum be abandoned entirely.



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 \$15 by mail; **long sleeve** is \$18. West Virginia residents add 6% sales tax. Send sizes wanted and check payable to West Virginia Highlands Conservancy ATTEN: Online Store, 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 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 \$20 by mail. West Virginia residents add 6% tax. Make check payable to West Virginia Highlands Conservancy and send to West Virginia Highlands Conservancy, Atten: Online Store, P.O. Box 306, Charleston, WV 25321-0306



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West Virginia Environmental Council Sets Legislative Priorities

The WV Environmental Council (E-Council) is the lobbying group for the greater community of both large and small West Virginia environmental organizations, including WV Highlands Conservancy. Most of WV E-Council's budget comes from its member groups' financial support. Accordingly, at its annual fall conference this past October the E-Council developed its legislative lobbying priorities for 2016. And it is in that context that *The Highlands Voice* endeavors to inform its readers of the importance of the legislative lobbying agenda set forth by WV E-Council.

WV E-Council's listing of priorities includes more than a dozen matters of legislative concern, and which include three priority concerns: (a) better siting rules for certain electrical power generating facilities (b) the Local Energy Efficiency Partnership ACT, and (c) requiring Bureau of Public Health impact assessments to new, or modification to, existing air and water quality rules proposed by the Secretary of the Department of Environmental Protection.

In the December issue of *The Highlands Voice* we discussed proposed siting rule legislation for construction and operation of Exempt Wholesale Generator (EWG) electrical power facilities, including wind farms. This month we discuss some of the other priorities for WV E-Council's lobbyists.

Local Energy Efficiency Partnerships

One of the WV E-council's legislative priorities for the 2016 session is the Local Energy Efficiency Partnership (LEEP) Act. It creates a funding mechanism to improve energy efficiency in commercial buildings. Bonds backed by savings on energy costs would pay for the efficiency upgrades, and the bonds are repaid by commercial building owners on their tax assessments. Currently about 30 states have similar programs in place.

In the 2015 WV legislative session the LEEP Act was introduced as S.B. 520, sponsored by Senators Blair, Miller, Snyder and Woelfel; and H.B. 2945, sponsored by Delegates Hanshaw, Canterbury, Ashley, Fleischauer, Cooper, Walters, Ambler, D. Evans, Guthrie, Manchin and Skinner. The bills died in committee, however, having been introduced relatively late in the

session. This year, WVEC and its partners at Energy Efficient West Virginia (<http://www.eewv.org/leep>) plan to have the bill introduced early, again with bipartisan and bicameral sponsorship.

LEEP loans would be somewhat on the model of certain kinds of economic development loans.

Local Energy Efficiency Partnerships (LEEP) would be sponsored by local government- usually at a county or city level.

Financing would be available for all types of commercial and industrial properties, large and small, and may be available to non-profits and government facilities. Financing would be simple, but WV-LEEP projects must demonstrate that they will save money for the property owner. Energy audits, benchmarking and evaluation can be used to ensure that projects make economic sense.

WV LEEP would be 100% voluntary. In communities that adopt WV-LEEP sponsorship, assessments would be paid only by participating owners, and only for their own projects, not by public tax monies. Programs would be locally based and tailored to meet local market needs.

WV-LEEP financing has many features that can uniquely solve barriers to the adoption of energy efficiency measures. 100% financing requires no up-front cash investment.

Long-term financing (up to 20 years) results in immediate positive cash flow. No payoff upon sale would accrue because WV-LEEP assessments (and energy savings) remain with the property.

Assessment costs and savings can be shared with tenants. WV-LEEP can attract a wide range of private investors with low interest rates. WV-LEEP may be treated as off balance sheet financing, and with non-recourse, non-accelerating financing.

WV-LEEP programs would be managed locally, and designed such that community members are motivated to engage in outreach and marketing efforts.

Public Health Impact Assessments Legislation:

The purpose of this bill is to require the Commissioner of the Bureau for Public

Health to conduct a public health impact statement assessing the health impact of any new air or water rule, or modification of an existing air or water rule, proposed by the Department of Environmental Protection (DEP). This is to insure that no air or water rule is promulgated without substantiating independent medical and/or scientific evidence that there is no detrimental public health impact from the rule.

The bill also requires that the findings in the health impact statement be incorporated into the proposed rule. This legislation is designed to have the effect of incorporating scientifically derived conclusions about the actual health effects of proposed air quality and water quality rules. In recent decades State of West Virginia air and water quality rules have typically been promulgated in a politically charged DEP agency atmosphere, with but cursory or no input from state agencies whose charge and actions are more scientifically driven.

Other Issues of Lesser Priority:

Impact of fracking and pipelines (Fast-tracking); Campaign finance reform/disclosure; Impact of fracking and pipelines – Subsidies; Power plus resolution; Solar incentives; Birthplace of Rivers National Monument (BORNM) defense (if anti-BORNM legislative resolution is introduced); Clean power plan; Impact of fracking and pipelines – Siting of intrastate gas lines; Impact of fracking and pipelines - Fee for water withdrawals; Comprehensive water impacts; and Emergency planning for environmental disasters.

Still other issues that are coming but which WV E-Council is not leading the charge include:

Restoration of DEP rules (repeal SB 357 (from 2015)- the misnomered "Coal Jobs and Safety Act"; Above ground storage tank rules, Source water protection plan, Oil and gas rules; Impact of fracking and pipelines- land owner rights; Right to work legislation opposition; Tax reform; Impact of fracking and pipelines- Forced pooling.

This is *Not* Your Grandparents' Oil & Gas Industry



**Shale and Pipelines:
What the Frack is Going On in Putnam County?
Community Forum:
Meet Your Neighbors and Discuss These Issues
6 – 8 p.m. Thursday, January 21
Eleanor Presbyterian Church
205 Eleanor Circle, Eleanor, WV**

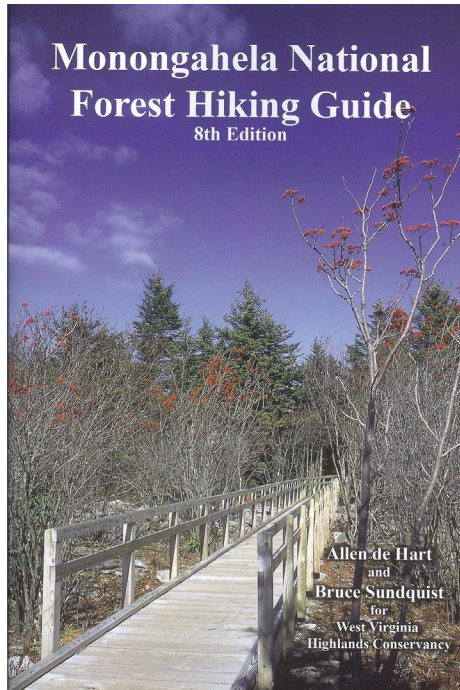
What does the development of Rogersville Shale and the proposed Mountaineer XPress Pipeline mean for our region? Have you have been approached by oil & gas industry representatives seeking to lease your mineral rights, or to gain right-of-way access to your property? Come learn about disruptions to health, well-being and property already impacting our neighbors in north-central West Virginia.

This community forum is hosted by OVEC.



www.ohvec.org

OVEC – The Ohio Valley Environmental Coalition – is based in Huntington, WV.
Contact us by e-mail: info@ohvec.org or by phone: 304-522-0246.



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
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Charleston, WV 25321
OR
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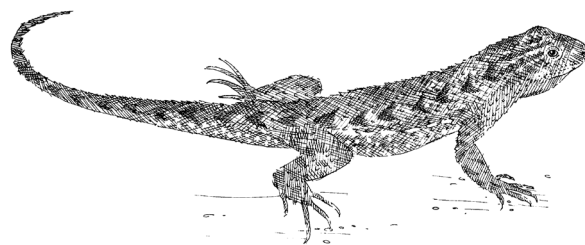
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This new CD edition includes the text pages as they appear in the printed version by Allen deHart and Bruce Sundquist in an interactive pdf format. It also includes the following mapping features, developed by WVHC volunteer Jim Solley, and not available anywhere else:

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WEST VIRGINIA HIGHLANDS CONSERVANCY, PO BOX 306, CHARLESTON, WV 25321-0306 • www.wvhighlands.org



Thinking About Winter

By Charlie Feldhake

Winter solstice has passed and with it the festivities that various religions align traditionally with the beginning of day length increasing. This is used as a reason to celebrate the beginning of a new year. Temperatures, however, lag behind day length and the coldest day of the year on the average here is around January 17th. So in my opinion January 18th is a better day to celebrate because it is the time things will start getting warmer.

Humans evolved in ecosystems near the equator where sunshine is abundant throughout the year and newborns laid and played in it. In these northern cloudy latitudes there isn't much winter sun in duration and intensity and being indoors where glass blocks UV makes it worse! The result is that many have vitamin D deficiencies (Eskimos got it from sea animal blubber; how much blubber do you eat?).

Vitamin D isn't really a vitamin but a steroid that our bodies require for healthy metabolisms. A real problem is that mother's breast milk is very low in Vitamin D so babies need a supplement in places like WV during winter for healthy development. Late in life, diabetes, hypertension, and heart disease are all related vitamin D deficiencies while an infant.

My ancestors were German and Irish. Those countries are much further north than WV with very short days in the winter. They are about as far north as Bearskin Lake, Ontario Canada and Goose Bay, Labrador Canada. In winter, people conserved energy during the cold short days and lived off stored food and occasional fresh hunted meat. Predators like saber tooth tigers were also hunting in the dark so roaming from the clan in the dark unnecessarily was a dangerous risk.

So, I have a bit of Seasonal Affective Disorder (SAD). Yep, between Thanksgiving and the last week in January when days are short, I don't feel like getting out of bed and doing much. Evolution at work, my family being here 150 years hasn't reversed several millennia of natural selection. My ancestors weren't eaten by sabretooth tigers so their strategy of hanging out close together and minimizing energy intensive activity must have had some advantages.

Being an energy producing state, WV has had economic transitions. Starting with small subsistence farms where Europeans displaced Native Americans, forest harvesting became king until it was largely depleted. Then coal became primary. Now natural gas is muscling out the increasingly depleted and environmentally difficult coal mining. Industry evolves just like species and societies. Finding economic security for our families can be painful during these transitions. I know because I lost my job due to the US government rescinding the research budget for the USDA Appalachian Farming Systems Research Center after Senator Robert C Byrd died.

Gas harvesting, just like timbering and coal mining, is fraught with economic and environmental risks. But, the earth's tilt is gradually making the sun feel warmer and comforting. The mostly out-of-state controlled, corporate harvested, energy sources are just stored solar radiation. Why don't we evolve an industry in WV that cuts out the middle mess and just harvests our solar benefactor directly?

In graduate school I had an Harvard-educated organic chemistry professor that told our class that fossil fuels are too valuable a resource for now and future generations to simply burn for energy. That was a good insight back in 1976. But back to energy and warmth, I'm looking forward to January 18th.

January

Whether the weather be fine
Or whether the weather be not,
Whether the weather be cold
Or whether the weather be hot,
We'll whether the weather
Whatever the weather,
Whether we like it or not.

[Anonymous British](#)

Send Us a Post Card, Drop Us a Line, Stating Point Of View

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

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.

Book News

Saving Annie's Mountain by Lillie Gill-Newton, Maryann Keeley, Nicholas Mokhiber, and Samantha Stewart

Reviewed by John McFerrin

This is a children's book of historical fiction. It is fiction in that the particular people and what happens to them in the story are fiction. The setting and the background events are, however, real events.

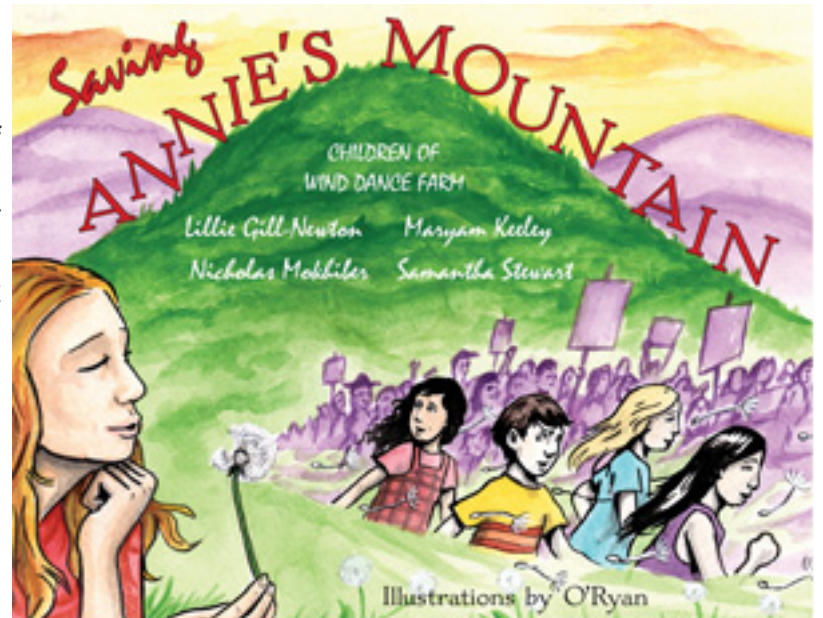
The real events are the 1921 Battle of Blair Mountain, the culmination of long struggle to gain rights for miners. The plot focuses on four tweens who accompany their parents to a protest march objecting to the destruction of Blair Mountain by mountaintop removal mining. Once there they are separated from their parents and end up at the home of Annie. Annie had been a child, about the age of her visitors, at the time of the battle. She tells them the story of the battle and the events leading up to it. The children go away with a new sense of urgency in the fight to save what they now refer to as "Annie's Mountain."

There are not many books about the Battle of Blair Mountain and the mine wars in general that are accessible to children. That makes this an important addition to the available literature. It tells the story in an interesting and engaging way that children could understand.

The story behind the book is interesting as well. The authors are ages nine through thirteen. The book was the result of a school history project that began with an investigation of mountaintop removal in West Virginia.

Although the cover gives the impression that this is a picture book, it is not, at least in the sense that the pictures tell the story and words are less important. There are pictures throughout but about half of the book is taken up with text. A parent could read it to younger children but a child under about ten would have trouble reading it independently.

Saving Annie's Mountain is published by Cold Run Books of Berkeley Springs, WV, and distributed by West Virginia Book Company, 1125 Central Avenue, Charleston, WV 25302.



Trees by Roland Ennos

A book review by Beth Little

Although they are made out of trees, books are my favorite gift – both to give and receive; so every year before Christmas I make a big discount book order, and I invariably include one or two for myself (if I order early enough, I can even read one for someone else before I have to wrap it for mailing). Those of you who know me will understand why I couldn't pass up one titled *Trees*, without even checking much about it. I think I thought it might be a coffee table book, but it turned out to be a fascinating science book covering the evolution and cellular structure of trees with in-depth description of how the various tasks of delivering water and nutrients from the roots to the leaves and vice versa were realized in different ways by different species. I learned why oak and ash are so hard and burn with more btus; why birch and maple have sweet sap that we render into scrumptious syrup; why trees in the northern and southern hemispheres tend to be different and more...

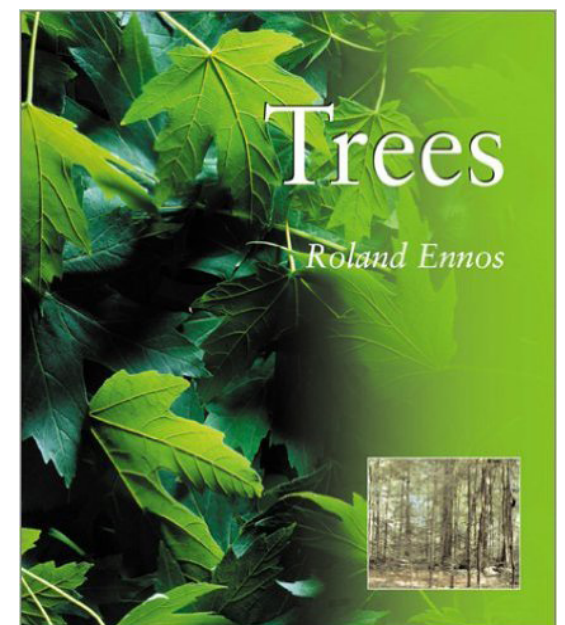
The Contents reads:

Advantages of being a tree	The tree story
How trees lift water	How trees stand up
Limits to the height of trees	Trees with different survival strategies
Trees in different climates	Specialist trees
Southern Hemisphere trees	Trees and people

This is a very readable book in everyday language with photographs and diagrams that show and explain the knowledge. I don't think I have ever learned so much 'hard' science so easily in such a short time. It is listed at a pretty steep price on Amazon, but like I said, I ordered from a discount bookstore. I am contemplating ordering more copies, if available, for our local library and fellow treehuggers; so contact me if you are interested.

It was in the *Trees with different survival strategies* section that I was moved to write the author, Professor Ennos of the University of Hull in England. Our Black Locust (*Robinia pseudoacacia*), easily the most all-around useful tree to homesteaders since the demise of the Chestnut, did not quite fit in any of the categories he described, and I was hungry to understand more. In his response Professor Ennos said: "I am just starting on a second edition of this book and will write a bit more about trees and wood in the development of civilisation and I'm lucky enough to have a new PhD student who is looking at native people in the forests of the Eastern USA and how they and the new settlers used forests. Any information would be gratefully received."

My first recommendation to him and his grad student is *The Appalachian Forest* by our own Chris Bolgiano. If we didn't have a book review of that in the Voice, we should have.



FOLA – Stillhouse Branch Part 3

By Cindy Rank

Articles in past issues of *the Highlands Voice* have explained litigation against FOLA Coal Company, a subsidiary of CONSOL, and the conductivity pollution from the company's Clay and Nicholas County Surface Mine #3 that discharges into Stillhouse Branch of Twentymile Creek, a tributary of the Gauley River that flows into the Gauley at Belva, WV, approximately five miles upstream of Gauley Bridge in Fayette County.

The FOLA Stillhouse case first went to trial way back in August 2014 and more recently had a trial for liability this past October 2015. Plaintiffs WV Highlands Conservancy, Sierra Club, and Ohio Valley Environmental Coalition were represented by Appalachian Mountains Advocates.

Part 1 of the FOLA Stillhouse Branch story appeared in the February 2015 *Highlands Voice*. That article explained how U.S. District Judge Robert C. Chambers for the U.S. District Court for the Southern District of West Virginia in Huntington after considering days of testimony and mountains of legal and expert filings in a court hearing in August 2014 found that FOLA Coal had indeed violated its water pollution discharge permit and in so doing impaired aquatic life in Stillhouse Branch by discharging high amounts of ionic pollution into the stream.

The article quoted portions of a January 27th court order that laid out in plain terms the problem emanating from the Stillhouse operation:

"In multiple ways, the chemical and the biological components of the aquatic ecosystems found in Stillhouse Branch have been significantly adversely affected by Defendant's discharges. The water chemistry of this stream has been dramatically altered, containing levels of ionic salts—measured as conductivity—which are scientifically proven to be seriously detrimental to aquatic life. The biological characteristics of the stream have also been significantly injured, in that species diversity—and, in some areas, overall aquatic life abundance—is profoundly reduced. Stillhouse Branch is unquestionably biologically impaired, in violation of West Virginia's narrative water quality standards, with current WVSCI [WV Stream Condition Index] scores falling well below the threshold score of 68.

Part 2 of the FOLA Stillhouse story appeared in the November issue of the Voice and described an October 6, 2015 court hearing held to consider appropriate measures the company could and should take to reduce the conductivity to legal limits and to allow for improvement in aquatic life in the affected waters.

Experts for the Plaintiffs (WV Highlands Conservancy, Ohio Valley Environmental Coalition and Sierra Club) explained how reverse osmosis is the most effective, if not only, treatment technology currently available for treating conductivity in discharges such as those at the FOLA Coal operation in Stillhouse Branch.

In its Memorandum Opinion and Order of October 14, 2015 (ECF No. 167), the Court found that injunctive relief to correct Defendant's violation was appropriate, but declined to order a specific remedy, and indicated that it would consider appointing a Special Master.

In that same court order the judge recognized that at this FOLA Surface Mine #3 such a water treatment system could cost \$136 million to build, install, operate and maintain for 35 years.

The court further noted that the company proposed an alternative approach consisting of a series of "water management strategies" that they argued would cost less (some hundreds of thousands of dollars) but in their opinion would be adequate to meet the requirements of the law. The court asked the company for additional legal documentation to explain their proposal.

Part 3 – this article – reports on the order on injunctive relief U.S. District Court Judge Robert C. Chambers issued December 12, 2015 after considering the treatment options presented at the October hearing and the additional documentation submitted following the trial.

The court has ordered defendant FOLA Coal to improve Stillhouse Branch so that it meets a conductivity level of 300 microsiemens/cm or less or achieves a passing WVSCI score. The company must do this by implementing a strategy that will separate overland flow (surface runoff) from water that infiltrates through the valley fill.

They may also have to implement measures to reduce the permeability of the valley fill so that runoff increases and overall conductivity is reduced. The theory is that if water does not flow through the valley fill it will not come into contact with materials that dissolve and produce conductivity in the receiving streams.

A Special Master has been appointed to oversee implementation of the injunctive relief which includes complex analysis and implementation of environmental engineering plans and monitoring to correct Defendant's violations.

There is to be continued oversight by the Court as well.

Though not as strong an order as we had hoped for when recommending Reverse Osmosis as the most – and possibly only – effective treatment, it will allow us to continue to monitor and the specific measures FOLA chooses to implement and to challenge them if they prove to be ineffective.

One might wonder why we continue to engage in all these specific cases, and why we believe each is so important, especially when they involve very small headwater streams such as Stillhouse Branch.

Perhaps the best most recent and concise answer to those questions came from the court itself in its January 27th order:

"Losing diversity in aquatic life, as sensitive species are extirpated and only pollution-tolerant species survive, is akin to the canary in a coal mine. This West Virginia stream, like the reference streams used to formulate WVSCI, was once a thriving aquatic ecosystem. As key ingredients to West Virginia's once abundant clean water, the upper reaches of West Virginia's complex network of flowing streams provide critical attributes—"functions," in ecological science—that support the downstream water quality relied upon by West Virginians for drinking water, fishing and recreation, and important economic uses. Protecting these uses is the overriding purpose of West Virginia's water quality standards and the goal of the state's permit requirements."

Checking on the Baby (and teenager) Trees

By Rick Steelhammer

Five years ago, volunteers had to kneel down to plant red spruce seedlings, each a foot tall, along the upper reaches of Gandy Creek bordering the Monongahela National Forest in the highlands of Randolph County.

Keith Fisher and Mike Powell were among those planting the native conifers. Last week, as they walked through, they had to look up to see the tops of some of the former seedlings now flourishing on the site.

“Some of these trees have been growing a foot or more a year,” said Fisher, director of land conservation for the West Virginia chapter of The Nature Conservancy.

“This one’s had about 18 inches of new growth,” said Powell, TNC’s state land conservation practitioner, as he eyed the needle-studded spire extending above one spruce’s highest branches. The two were walking around the 555-acre conservation easement owned by Steve Callan, of Morgantown.

Since 2007, when a coalition of state and federal agencies and conservation groups, including TNC [and West Virginia Highlands Conservancy], the U.S. Forest Service and the U.S. Fish and Wildlife Service, launched the Central Appalachian Spruce Restoration Initiative (CASRI), 584,000 red spruce seedlings have been planted in and around the Monongahela National Forest, home to most of the evergreen’s natural range in West Virginia.

Starting in April, weather permitting, the coalition will launch its most ambitious annual reforestation effort yet by planting an additional 80,000 red spruce seedlings in the state.

A blend of red spruce and northern hardwoods once covered more than 1 million acres of northeastern West Virginia’s highest terrain, but clearcut logging and widespread forest fires in the late 1800s and early 1900s left just a few hundred acres untouched and intact. Over the decades that followed, hardwood species took over much of the terrain formerly occupied by the spruce.

Today, about 50,000 acres of red spruce-dominant second-generation forest remain in West Virginia, mainly in isolated patches within or adjacent to the Monongahela.

“The idea is to use planting to connect those patches of red spruce, and then let nature take over” the restoration process, Fisher said. “Here, we’re creating a habitat bridge through private land, connecting a peninsula of Forest Service land on Pharis Knob with Forest Service lands in the Laurel Fork Wilderness and the Spruce Knob-Seneca Rocks National Recreation Area.”

CASRI’s goal is to eventually establish about 150,000 acres of connected red spruce-northern hardwoods forest on the Monongahela, Canaan Valley National Wildlife Preserve and other adjacent private and state-managed lands.

Red spruce, which can grow to heights of 130 feet, mainly at elevations above 3,000 feet, was logged for use as pulpwood for paper mills, for the ship-building industry and for use in making such musical instruments as violins, guitars and pianos. Red spruce from West Virginia was also used to build struts for at least one model of the Wright Brothers’ experimental aircraft.

Stands of red spruce provide a dense, all-season canopy that provides a cool, moist micro-climate during the summer months, creating habitat for 240 rare plant and animal species, including the threatened Cheat Mountain salamander and the West Virginia Northern flying squirrel, recently removed from the federal

endangered species list due at least in part to red spruce restoration work completed so far.

Red spruce seedlings used in the restoration effort come from native seed stock collected annually by crews of volunteer cone-gatherers led by Dave Saville, of Morgantown. Seed from the cones is sent to a large commercial nursery in Washington state. “There, they are grown for two years in a controlled environment, then pulled out of the ground and shipped here frozen,” Fisher said. “The different CASRI partners then divvy them up.”

Blends of northern hardwoods, including yellow birch and basswood, are planted along with red spruce on relatively open areas, like the former pastures that make up the 555-acre conservation easement along Gandy Creek, in an effort to restore the landscape’s historic mix of trees. Canaan balsam firs, the state’s only native fir species, are also being re-established at the Gandy Creek site.

But to reach CASRI’s 150,000-acre goal, “planting alone won’t get us there,” Powell said. “In some places, the hardwood canopy is so thick, we’re only seeing an inch or two of red spruce growth each year.”

In such locales, “we’re using silvicultural techniques to release red spruce from the hardwood overstory,” said Kent Karriker, forest ecologist with the Monongahela National Forest. Those techniques include creating canopy openings by removing strips of bark from the circumferences of trees — a process known as girdling — to kill spruce-stunting hardwoods, or by cutting down selected hardwoods to let in sunlight and accelerate spruce maturity.

On former strip mine sites atop Cheat Mountain in the Monongahela, bulldozers rigged with hydraulic rippers have been used to loosen compacted soil to accommodate red spruce planting. At one 90-acre former mine site used to test the technique, 85 percent of the red spruce seedlings planted there survived. Project wide, the seedling survival rate is about 90 percent.

“We’ve done a couple thousand acres of restoration on old strip mine lands,” Karriker said. Other reforestation efforts on the Mon include treating selected stands of hemlock to resist the deadly hemlock woolly adelgid, now sweeping through the state, decommissioning and returning unused logging roads to the natural landscape, and applying invasive species controls to nearly 2,000 acres of the forest.

The U.S. Forest Service recently announced that it has posted a 9 percent increase in the pace of forest restoration since 2012, despite having more than 50 percent of its operating budget being used to fight western wildfires.

“We’re happy to see that the advances we’ve made in West Virginia are being reflected nationally,” said Thomas Minney, state director of The Nature Conservancy in West Virginia. “We’re bringing back our iconic mountaintop forests through restoration efforts in the Monongahela National Forest and elsewhere, providing habitat for everything from migrating songbirds to native brook trout.”

Note: This story originally appeared in *The Charleston Gazette*.

HIGHLANDS CONSERVANCY BOUTIQUE



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