

West Virginia Highlands Conservancy  
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# The Highlands Voice

The Monthly Publication of the West Virginia Highlands Conservancy

Volume 49 No. 9 September 2016

## Big Strip Mines and Public Health: Are We Finally Going to Address This Problem?

The federal Office of Surface Mining has announced that it will fund an independent examination of existing research concerning the potential correlation between increased human health risks and living near surface coal mine sites in Central Appalachia. The \$1 million study will be conducted by the National Academy of Sciences over a two-year period.

West Virginia had originally announced that it would initiate an evaluation of the growing body of studies that have found residents living near mountaintop removal coal-mining operations face increases risks of serious illnesses and premature death. (See *The Highlands Voice*, April, 2015 /[www.wvhighlands.org/2015/](http://www.wvhighlands.org/2015/)). In 2015 it made a request for the Obama Administration's help. The request came soon after the rally demanding that West Virginia do something about the impact of mining on public health. (See *The Highlands Voice*, April, 2015 /[www.wvhighlands.org/2015/](http://www.wvhighlands.org/2015/)).

Similar studies are also being conducted by the Centers for Disease Control and the U.S. Environmental Protection Agency.

Under the agreement between Office of Surface Mining and the National Academy of Science, the Academy will independently choose a committee of 12 subject matter experts to examine a growing amount of academic research that relates to possible correlations between increased health risks as a result of living near surface coal mine operations.

The committee will identify gaps in the research and consider options for additional examination to address concerns about potential public health effects. The committee will not consider the occupational health aspects of workers at coal mines. The office of Surface Mining will not have a role in the research, the development of the final report, or identification of any findings that may result from the study.

The experts will have backgrounds in areas such as (but not limited to) mining engineering, exposure science, epidemiology, public health, environmental medicine, statistics, and regulatory decision making. Experts will come from academia, state government agencies, industry and other non-governmental organizations. None of the experts participating in the National Academy of Sciences committee will be active members of the coal industry or any governmental agency that regulates coal mining.

The committee of experts will hold four hearings to gather information from the public about the potential effects on human health associated with coal mining. The dates will be announced later.

The problem of large strip mines making people sick is not new to the West Virginia Highlands Conservancy. In November, 2012, we published a listing of the then-existing studies on the correlation between large strip mines and illness. (*The Highlands*

**(More on p. 3)**

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## Ramblin' the Ridges

By Cynthia D. Ellis

The West Virginia Highlands Conservancy celebrates its 50-year anniversary in 2017, and the phrase “nurse log” surfaced in my subconscious as I thought about that milestone. Plans are chugging along for the 50<sup>th</sup>, and, thanks to Dave Elkinton, we have a whole volume devoted to our history to help us with our memories.

Some among us lived through that history and know details of our struggles and achievements. Other of us are newer to the organization; we enjoy using Dave’s book or hearing the stories of fellow members to help us realize who we are. Our group may not be easy to define.

But one of our stellar characteristics is the loyalty and generosity of our members. Many of our supporters have been with us for a long time...and they do not hesitate to keep us boosted and funded. That sustaining theme is one that cheers board members four times a year...our quarterly meetings nearly always feature an acknowledgment of those who prop us up.

Another point of pride for the West Virginia Highlands Conservancy is our volunteer status. Our board knows the work of WVHC because they are actually doing it, together with general members and allied individuals and groups.

It is with those general members and allies that the phrase “nurse log” or “nurse tree” may fit. Wikipedia notes, “A nurse tree is a larger, faster-growing tree that shelters a small, slower-growing tree or plant. The nurse tree can provide shade, shelter from wind, or protection from animals who would

## Nurturing the Nurse Tree

feed on the smaller plant.”

We might see ourselves functioning, in our 49<sup>th</sup> year, as a “nurse tree”. We do try and have tried to lend assistance and give a boost to others who are beginning their efforts to save or promote something wild, natural, or traditional in our state. We hope they’ve enjoyed some time in our “shade”.

A slightly different phrase brings up a slightly different definition. “A **nurse log** is a fallen **tree** which, as it decays, provides ecological facilitation to seedlings. Broader definitions include providing shade or support to other plants.”



We could puzzle briefly on whether any of us see WVHC as fallen...or falling. We know every group has a dynamic; has its ups and downs, both in membership and energy and activity. We would have to admit we are not a “sapling”. And a casual look at the visible face of our group--our Board of Directions---might show smiling faces--- and lots of gray hair. But we have and do welcome younger faces and newer volunteers. And as some of us have widened our circles of environmental

associates we’re becoming energized by new perspectives and new actions.

One example is our upcoming Fall Review; our 2<sup>nd</sup> annual combined meeting with the West Virginia Environmental Council. There we’ll be co-hosts for a lively weekend of updates and breakouts. The only fallen logs among us at Camp Virgil Tate will be the wood for an evening campfire.

So that’s enough musing on our pre-anniversary state, but here’s a few words about someone in our history book.

Joe Rieffenberger was a legend in Brooks Bird Club; I met him there. Joe was like no other. With salty language, and a seemingly gruff manner, he shared outdoor news with birders. In his prime he was West Virginia’s leading supervisor of black bear population. When we birders were really lucky, we could tag along to the retrieval of a bear in trap, captured by the DNR for research. Joe obviously kept the critter’s wellbeing topmost, and he snapped out plenty of “hells” and “damns” with directions for the sedating and study process. We were told that the traps were most successfully baited with donuts! Later I learned that the sow bears were most indicative of the population numbers, so they were radio-collared...and named. Their names began with successive letters of the alphabet, and their cubs’ names began with the letter of the mama’s name. A video tape was produced for educational TV; it showed a moment of Joe’s softer side as he cuddled two cubs while the female was fitted with the tracking collar. I can’t quite remember the names of those bears...but I’ll never forget Joe.

## Chance for Big Fun on Kayak Outing

The Morgantown Area Paddlers and the West Virginia Highlands Conservancy have a joint kayak outing planned for **September 10, 2016**.

We will start at the new Van Voorhis trailhead of the Mon River Trail and paddle north. It is a beautiful section, with lots of birds, and bands of wetland vegetation. Folks can also see the new launch in action. (For a picture of the new launch and an explanation of how it works, see the August, 2016, issue of *The Highlands Voice*. [www.wvhighlands.org/highlands-voice-mag/](http://www.wvhighlands.org/highlands-voice-mag/)).

**Meet at the Van Voorhis Trailhead of the Mon River Rail-Trail** in Morgantown, where the launch is located, and be ready to paddle at **9:00 a.m.** If the weather is hot, we can stop and swim on the way back. Bring lunch, snacks, drink, sunscreen, hat/cap, swimwear, rain gear, and any allergy or other meds. Don’t forget the drink! We will paddle for 7-8 miles round trip, taking 3-4 hours depending upon how long we study birds and flowers along the way.

RSVP to Mary Wimmer [mwimmer@hsc.wvu.edu](mailto:mwimmer@hsc.wvu.edu). If the weather is bad she will be able to contact people to cancel.



## Strip Mines and Sick People: What is the Connection?

Voice, November, 2012, [www.wvhighlands.org/2012/](http://www.wvhighlands.org/2012/). In March, 2015, Cindy Rank did a story for *The Highlands Voice* headlined *Human Health Impacts of MTR: What Will It Take?* [www.wvhighlands.org/2015/](http://www.wvhighlands.org/2015/). In it she detailed efforts that had been made, with mixed success, to address this problem.

More recently, we have had the disappointment of a decision by the United States Court of Appeals for the Fourth Circuit in the Raven Crest Mining case. In that case, the plaintiffs (including the West Virginia Highlands Conservancy) had submitted to the Corps the studies linking large scale strip mining to adverse health effects. They contended that the Corps should have considered them as part of the evaluation of the permit application.

The Court decided that the Corps did not have to consider the health impacts in communities near big strip mines. It reached this conclusion by determining that the Corps of Engineers did not issue

a permit for the entire mine. It only issued its permit allowing the company to “mine through” streams (“mine through” means that the company obliterates the streams and then “reconstructs” them after mining is over).

It is the West Virginia Department of Environmental Protection that grants the permit for the entire mine. Its rules control blasting, revegetation, prevention of offsite damage, etc.

The United States District Court reasoned that the health studies did not connect the adverse health outcomes with mining through streams. The studies connect the health outcomes with the entire mine. They only say that people who live near big strip mines get sick more often than those who do not. The studies do not identify the exact mechanism by which the mines cause illness or point the finger at any specific part of the mining. Since the Corps only controls a part of the whole permit (the stream obliterating part) then it

did not have to consider the health studies.

The United States Court of Appeals for the Fourth Circuit recently affirmed this ruling.

Like much litigation, this decision does not answer the ultimate question: should we continue to allow big strip mines when there is evidence that such mines make people who live nearby sick? Instead, the decision is about who gets to decide, what evidence they have to consider, etc.

In one way or another, we will continue to inch toward the answer to this ultimate question of whether we should continue to allow big strip mines when they are making people sick. This study that the National Academy of Sciences just announced will be another inch forward.

The Ohio Valley Environmental Coalition keeps a list of studies examining the effects of strip mining on public health. To look at its list, go to <http://ohvec.org/mountaintop-removal-articles/health/>.

## A Legend, a Character, a Bear of a Man

Joseph Rieffenberger, age 89 years, of Elkins, was born December 2, 1926, and passed away on August 27, 2016.

He received a B.S. in zoology in 1951 from the University of Illinois and an M.S. in ecology in 1953 from the University of Illinois. Joe started work as a wildlife biologist with the WVDNR in 1953. He spent 46 years working on various projects with the WVDNR including National Forest, farm game evaluation, waterfowl, planning, and woodcock. He retired from the WVDNR in 1999 after serving 27 years as project leader of the black bear research study.

Joe is best known to West Virginia Highlands Conservancy members as its two time President, having served in 1974-75 and again in 1979-81. In addition to his presidency, he will be remembered for his role in the founding of the organization. He was present at, and even before, the founding. In his role as a Department of Natural Resources staffer, he worked with Lou Greathouse in organizing several Highlands Fall Review events. Beginning in 1965, he worked with Greathouse promoting the idea of a multi-disciplinary organization of users of the highlands region.

He also did the research on wildlife in Canaan Valley. He was one of the key witnesses in proceedings considering the Davis Power project. It was the scuttling of that project that made way for the Canaan Valley Wildlife Refuge that exists today.

He and Mary More, his late wife, were avid birders. Joe served as president of the Brooks Bird Club in 2008-09.. When asked, he would serve as an outing leader. He would take groups of club members into the field to share his passion for bear management by demonstrating tagging the bruins.

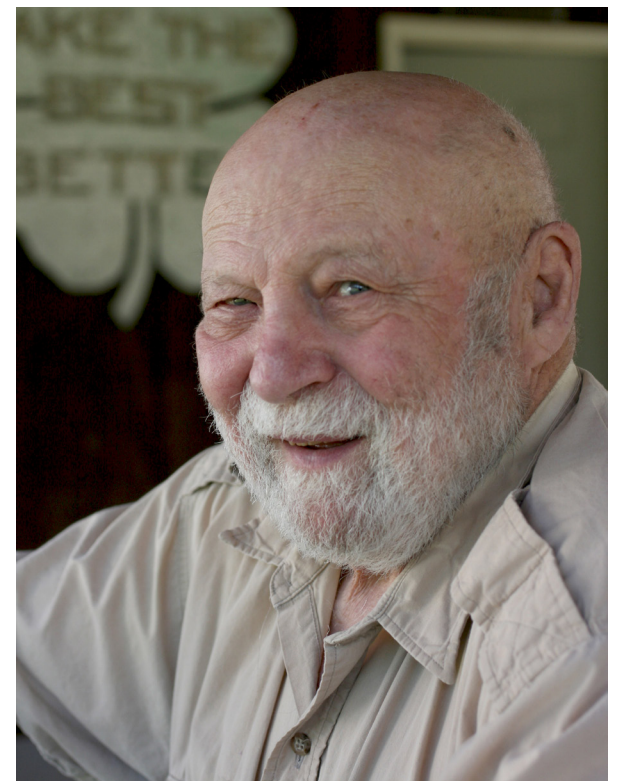
To the world, Joe was best known as the bear man. Rumors that he knew personally every bear in West Virginia have never been verified and are probably apocryphal. He did, however, spend his career researching, tracking, and tagging bears for the West Virginia Department of Natural Resources. His truck was a rolling

bear tracking laboratory. As he headed down the road he would listen to the rhythm of chirps from his receiver as it caught signals from bears he'd collared. He would point up coves or down along the creeks and name the bear strolling out there in the woods. He was utterly invested in and engrossed by knowing these animals, understanding their movements, grasping their population dynamics. This was clearly a vocation, not the humdrum demand of a particular job.

During the time that Joe was keeping tabs on bears, the bear population increased from an estimated 500 in 1972 to approximately 10,000 in 2000. Joe is widely credited with advocating for the policies that resulted in the increase.

He was also a chain saw artist, adept at making carvings of (what else?) bears with a chain saw.

Many people will remember his hearty laugh. Anywhere within earshot, you knew if Joe was around. He cut a broad swath in any crowd and was always a center of attention. We will miss him.



# Fayette County Commission Runs Into Roadblock Regulating Well Waste Disposal

By John McFerrin

The Fayette County Commission has filed an appeal of a decision by the United States District Court (Copenhaver, J) which enjoined enforcement of a Fayette County ordinance which banned the disposal of fracking wastewater.

The hydraulic fracturing that is part of almost all oil and gas drilling produces a lot of waste water. See *The Highlands Voice*, June, 2016 ([www.wvhighlands.org/highlands-voice-mag/](http://www.wvhighlands.org/highlands-voice-mag/)). It is too dirty to just go into streams so it has to go somewhere. One of the options is an underground injection well where the water is injected deep underground where (we hope) it will never cause any damage.

Largely because of difficulties at one facility in Fayette County, the Fayette County Commission passed an ordinance that prohibited its disposal in Fayette County. A gas drilling company sued to enjoin enforcement of the ordinance. The United States District Court enjoined enforcement of the ordinance.

## How we got here

At the root of this controversy lies the Danny Webb Construction Company. For years it has been operating an underground injection well in Fayette County. The site has been a mess for years. For years it has been stinking. Holding ponds leak, water is polluted. The company was cited for non-compliance. In 2008, the Department of Environmental Protection entered into a consent decree that allowed the company to continue operating; the company did not comply with the consent decree.

Danny Webb Construction also has a history of ignoring legal obligations and regulations. In 2007, a UST inspector found that Danny Webb was not managing his storage tanks properly. In an email to other DEP personnel, the inspector stated that Danny Webb, "is not to be trusted. He is a loose cannon, doing as he jolly well pleases, right or wrong, regulations be damned." This is not the sort of operator who should be granted permits.

Although the permit expired in 2012, Danny Webb Construction kept operating. It also applied for a new permit. The Plateau Action Network, a citizen's coalition in Fayette County, objected to the permit renewal, as did the West Virginia Highlands Conservancy. In spite of the objections, the permit was renewed in early 2014.

While this was going on, the Danny Webb Construction operation was the site of a study by the United States Geological Survey. It studied the water and sediments found upstream and downstream of the site. The study found increased levels of lithium, sodium, chlorine, barium, bromine, and strontium as well as higher levels of dissolved solids and specific conductance in the downstream water. In sediments they found higher levels of iron and radium. The presence of these and other pollutants were affecting the stream quality, including the biological community that lives there.

The researchers made no determination of how the hydraulic fracturing waste water got from the disposal well to the stream: "Potential pathways for wastewater to enter surface water or groundwater include: (1) releases from pipelines or tanker trucks transporting fluids, (2) leakage from wastewater storage ponds through compromised liners and overflows from the ponds, or (3) migration of the fluids through the subsurface at the injection depth or through failed injection well casings." They only determined that an underground injection well was allowing Marcellus Shale water to enter the area streams.

With their own experience with the Danny Webb Construction site verified by the research from the United States Geology Survey, citizens of Fayette County were ready for action. A new organization, Headwaters Defense, sprung up. With its leadership, over 5,000 Fayette County citizens signed a petition to the County Commission asking that it do something about the disposal of hydraulic fracturing waste in Fayette County.

The County Commission responded by passing a ban on the disposal of oil and gas within Fayette County. In response, an oil and gas company—EQT Production Company—filed suit, asking the Court to enjoin the enforcement of the ordinance. The United States District Court granted the injunction.

## The legal argument

The Fayette County Commission (or any County Commission) only has the authority given it by the West Virginia Legislature. West Virginia Code contains a long list of powers that a County Commission may exercise. As a general

rule, if something is not on this list, then the County Commission does not have the authority to do it.

The list contains the power to "[E]nact ordinances, issue orders and take other appropriate and necessary actions for the elimination of hazards to public health and safety and to abate or cause to be abated anything which the commission determines to be a public nuisance". The County Commission contends that it is regulating oil and gas waste disposal under this section.

The gas company contends that the ordinance in question is not enforceable because of state statutes which regulate the oil and gas industry. West Virginia has a Clean Water Act and an Underground Injection Control program. Both of these have permitting requirements and enforcement mechanisms. The company contends that, when it comes to preventing pollution, etc., the Legislature intended that the Department of Environmental Protection, and it alone, is to regulate the oil and gas industry. Because the Department of Environmental Protection has so occupied the field of regulation, there is no room for the Fayette County ordinance.

The United States District Court agreed with the gas company. It concluded that state law completely regulated the oil and gas business. The legal term for this is "pre-emption", meaning that the state statutes pre-empted efforts by anyone else to regulate the industry. The Court ruled that, because of the existence of state laws and regulations, the Fayette County ordinance was not enforceable:

In the present context, the state of West Virginia has concluded that oil and natural gas extraction is a highly valuable economic activity subject to centralized environmental regulation by the DEP. To that end, plenary power over oil and gas activities in the state is given over to the DEP. See W. Va. Code § 22-6-2(c) ("The [director of the DEP] shall have full charge of the oil and gas matters" set out in articles 6, 6A, 8, 9, 10, and 21 of Chapter 22 of the state

(More on p. 5)



## Blocking an Attempt to Stop Waste Disposal (Continued from p. 4)

code.). In the absence of an express grant of authority to the contrary, or the necessary implication of such authority flowing from an express grant, the Commission cannot interfere with, impede, or oppose the state's goals. Consequently, the Commission lacks the power to legislate in conflict with the state in this area. Those parts of the Ordinance that prohibit disposal of wastewater in UIC wells conflict with and stand as obstacles to state law, and hence are void.

Now that the District Court has ruled, the Commission has appealed to the United States Court of Appeals. We'll see what it has to say.

The commission is being represented pro bono by Charleston firm Appalachian Mountain Advocates and Rist Law Offices, Fayetteville.

Meanwhile, the citizens of Fayette County find themselves in a peculiar position. There is a problem; the state won't do anything; the body that wants do something—the Fayette County Commission—isn't allowed to do anything. It can't do anything because of the West Virginia Department of Environmental Protection, whose existence prevents the County Commission from doing anything.

*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. Electronic submissions 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](http://www.wvhighlands.org).

### Celebrate!

On September 20, 2016, former Congressman, Secretary of State and lifetime West Virginia Highlands Conservancy member and friend will celebrate his 102<sup>nd</sup> birthday. Happy Birthday, Ken!



## What You Need to Know About Pipelines and Water Supplies

For all landowners whose land is on or near the route of a natural gas pipeline there is now a great new resource. The Allegheny-Blue Ridge Alliance has released a report for landowners and water providers concerned about the potential impacts of pipeline development on water supplies.

The report gives contains information on how a landowner can monitor water quality. It tells how to establish a baseline, showing what the water was like before construction began. It tells how to do ongoing monitoring, including what a landowner can do and when a landowner needs a professional testing company.

The report has a section on the kinds of threats that a pipeline presents to surface and groundwater. It describes the monitoring programs that the Federal Energy Regulatory Commission will require of the developers of both the Atlantic Coast Pipeline and Mountain Valley Pipeline.

Although the report is focused on water monitoring, it has a lot of useful background information. For those of us who have heard such terms as "karst geology" or "hydrostatic testing" but were fuzzy on exactly what those were, there are understandable explanations of what those are and the issues they might present for landowners. There is also a brief but helpful overview of the Atlantic Coast Pipeline and Mountain Valley Pipeline projects, including a map showing the Virginia and West Virginia counties they are proposed to pass through.

There is also information about other resources, particularly statutes that protect surface and ground water and governmental agencies which enforce those statutes.

Although some of the information in this report is specific to the MVP and ACP pipelines, the guidelines for monitoring water resources is applicable to any landowners and water providers who may be impacted by pipeline development.

The report was prepared by Downstream Strategies, a West Virginia-based environmental consulting firm. Funding was provided by Allegheny-Blue Ridge Alliance member groups (including the West Virginia Highlands Conservancy) and individual contributors. To get a copy, go to <http://www.downstreamstrategies.com/projects.html>.

Allegheny-Blue Ridge Alliance ABRA is a coalition of 50 organizations (including the West Virginia Highlands Conservancy) concerned about the natural gas pipeline that Dominion Resources and its partner companies have proposed to build through portions of West Virginia and Virginia.

## WVEC and WVHC Biennial Joint Fall Conference 2016

**Camp Virgil Tate – Charleston, WV**

**Friday October 21 through Sunday October 23, 2016**

### Information and How to Register

Conference theme - Green Voices:

- Presentations on the Clean Power Plan by Downstream Strategies; Birthplace of Rivers National Monument campaign; Effects of Extractive Industries on WV Health and Environment (Dominion Pipeline and more); Blair Mountain; and Clean Elections.
- Attendees will be setting WVEC's 2017 Legislative Priorities, with input from groups who return a new questionnaire on legislative priorities mailed out and returned ahead of the conference.
- Silent Auction (**please bring auction items**), Tabling and Posters, Recreational Opportunities!

Please register at [www.bit.ly/FallConf16](http://www.bit.ly/FallConf16) or send the registration below to Paul Dalzell at WVEC, PO Box 1007, Charleston, WV 25234. Online registration is highly encouraged. Pay at the conference (cash or check), or pay online at <http://www.wvecouncil.org/join/index.html>. When paying online, where it asks for "Organization" please write "WVHC/WVEC Fall Conference". Charges are for room and board only. Additional donations welcomed!

**Please register by October 10** so we can have a meal count for the camp. (Reservations will be accepted at the conference for registration and lodging only. Late lodging is based on availability. Meals must be booked in advance.)

For more information, call Paul Dalzell at 304-414-0143.

Directions to Camp Virgil Tate: Exit off I-77 at Exit 111 (Tuppers Creek Rd), turn left onto Walker Dr., County Hwy-26/1 if coming from Charleston, (turn right if coming from Parkersburg), road becomes Call Rd./County Hwy-29, turn right onto Sissonville Dr./County Hwy-21, turn left onto Martins Branch Rd/WV-622, turn left onto Rocky Fork Rd./WV-622, take first right onto County Hwy-7/3/Camp Virgil Tate Rd., take first right to stay on route, then 1.29 miles to camp.

### **Annual Meeting!**

Among the activities that will take place during the Joint WVEC-WVHC Conference are the Annual Membership Meeting and the quarterly Board meeting of the West Virginia Highlands Conservancy. The Annual Membership Meeting will be held at 9:30 AM on Sunday, October 23rd at the location indicated for the joint WVHC-WVEC fall conference. The Board meeting will follow immediately afterward.

The main item of business at the Annual Membership Meeting will be the election of officers and at large board members.

We have a nominating committee: Cindy Rank, Wayne Spiggle, and Jim VanGundy. If you wish to suggest someone for the Board or an officer position, please contact one of them. Contact information is on page 8. Nominations will also be taken from the floor at the Annual Meeting.

If you would like to serve on the Board, feel free to suggest or nominate yourself. This is no time to be modest. The only requirements are membership in the organization and enthusiasm.

All members are welcome at the Board members. Although they are not allowed to vote or make motions, WVHC members who are not on the Board are welcome to participate in the discussion.

## **!! START THE COUNTDOWN !!**



**12 Months to go !!**

MAKE PLANS NOW

Save the Dates

September 15-17, 2017

West Virginia Highlands Conservancy  
50<sup>TH</sup> Anniversary Celebration

Canaan Valley

# Registration

Name(s): \_\_\_\_\_

Organization (If applicable): \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_ Cell: \_\_\_\_\_

E-Mail: \_\_\_\_\_

Number of people being registered: \_\_\_\_\_

Accommodations:

**Maxwell Lodge:** 2 double beds, private bath, \$ 63.60 per room per night.

Check: \_\_\_ Friday \_\_\_ Saturday \_\_\_ **Total \$** \_\_\_\_\_

Please assign me a roommate for Maxwell Lodge: \_\_\_ (Cost reduced to \$ 31.80 per night if you have a roommate)

I have a roommate for Maxwell Lodge who is registering separately, please give the name:

\_\_\_\_\_

**Bonar Cottage** with linens provided: \$ 26.50 per person per night, 2-4 twin beds per room.

Check: \_\_\_ Friday \_\_\_ Saturday \_\_\_ male \_\_\_ female \_\_\_  
coed **Total \$** \_\_\_\_\_

**Bonar Cottage** with no linens: \$ 21.20 per person per night, 2-4 twin beds per room.

Check: \_\_\_ Friday \_\_\_ Saturday \_\_\_ male \_\_\_ female \_\_\_  
coed **Total \$** \_\_\_\_\_

**Tent Camping:** \$10.00 per tent per night. Check: \_\_\_ Friday \_\_\_ Saturday **Total \$** \_\_\_\_\_

**Meals:** (check here if vegetarian) \_\_\_\_\_

Friday Evening: Pizza and other snacks – will you be present?  
Yes \_\_\_ No \_\_\_

Saturday Breakfast: \$ 7.00 per person (number of meals \_\_\_)  
**Total:** \$ \_\_\_\_\_

Saturday Lunch: \$ 8.00 per person (number of meals \_\_\_)  
**Total:** \$ \_\_\_\_\_

Saturday Dinner: \$ 11.00 per person (number of meals \_\_\_)  
**Total:** \$ \_\_\_\_\_

Sunday Breakfast: \$ 7.00 per person (number of meals \_\_\_)  
**Total:** \$ \_\_\_\_\_

Sunday Lunch: \$ 8.00 per person (number of meals \_\_\_)  
**Total:** \$ \_\_\_\_\_

**Total for all meals:** \$ \_\_\_\_\_

Donation amount to help with conference expenses, sponsor attendees, and/or to benefit the hosting organizations:

\$ \_\_\_\_\_

**Conference Total, please add your lodging, meals, and donation:** \$ \_\_\_\_\_

**Method of Payment**

\_\_\_\_\_ PayPal on WVEC webpage, type conference in space for organization

\_\_\_\_\_ Pay at the conference, cash or check only (Make checks payable to WVEC)

\_\_\_\_\_ Mail check and registration to:

WV Environmental Council  
PO Box 1007  
Charleston, WV 25234

What to bring: If needed, bring bed linens and blanket or sleeping bag, towels; All bring: toiletries, flash light, insect repellent (for fire circle), silent auction items, musical instruments.



## “Self-Bonding”-Intensifying Efforts to Fix It

By John McFerrin

As *The Highlands Voice* has reported (most recently in July, 2016) there are problems with the system for assuring that money will be available to do mine reclamation should coal companies fail.

Under West Virginia and federal law, mining companies are required to post performance bonds to assure that reclamation is completed. If the company disappears, the Department of Environmental Protection would forfeit the bond and pay for the reclamation. Historically, bonds were posted by insurance companies or some other financial institution. Companies would pay the premiums; if the bond had to be forfeited, the financial institution would pay.

There is an alternative called “self bonding.” Under that alternative, the mining company in effect becomes the financial institution. It tells the Department of Environmental Protection that it has plenty of money so that if reclamation is ever needed it can pay for it. If it meets financial standards set forth in the regulations, it is approved for “self bonding” and doesn’t have to post a bond backed by an insurance company, etc.

“Self-bonding” worked well enough as long as companies were profitable. Now that there is financial turmoil in the coal industry that system is not working and the federal Office of Surface Mining is scrambling to fix it.

Its first step was to propose changes in regulations to restrict self-bonding. These changes are being considered.

In the meantime, it has issued what is known as a “guidance” suggesting that states who regulate surface mining restrict self-bonding. More specifically, it suggested that state regulators review all companies who have self-bonded in the past to make sure that they are still financially sound enough to self-bond. It also suggested that states not issue any more permits with self-bonding until coal markets stabilize, something it does not expect until 2021.

A “guidance” is not binding in the way that a regulation is. It is only the Office of Surface Mining’s view on what a prudent state regulatory agency should do. That the Office of Surface Mining issued one is an indication that the Office of Surface Mining thinks that we have a serious problem on our hands and need to do something to fix it.

### 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](mailto: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.

### Roster of Officers, Board Members and Committee Chairs, and Board of Directors

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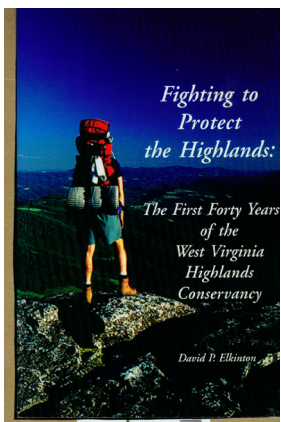
Mail to West Virginia Highlands Conservancy, P. O. Box 306, Charleston, WV 25321

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**Working to Keep West Virginia Wild and Wonderful**

You may also join on-line at [www.wvhighlands.org](http://www.wvhighlands.org)

**GET A GREAT HISTORY BOOK**

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.



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 \$15.95, plus \$3.00 shipping, visit the Conservancy's website, [wvhighlands.org](http://wvhighlands.org), where payment is accepted by credit card and PayPal. Or write: WVHC, PO Box 306, Charleston, WV 25321. Proceeds support the Conservancy's ongoing environmental projects.

**SUCH A DEAL!**

**Book Premium With Membership**

Although *Fighting to Protect the Highlands, the First 40 Years of the West Virginia Highlands Conservancy* normally sells for \$15.95 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.

**Tell a Friend!**

If you have a friend you would like to invite to join the West Virginia Highlands Conservancy just fill out this form and send it to West Virginia Highlands Conservancy, Box 306, Charleston, WV 25321.

Person you wish to refer: \_\_\_\_\_

Address: \_\_\_\_\_

Email \_\_\_\_\_

Your name: \_\_\_\_\_

Filling out the form, etc. is, of course, the old school way of doing things. If you prefer, just email the information to Beth Little at [blittle@citynet.net](mailto:blittle@citynet.net).

The way it works: Anyone you refer gets *The Highlands Voice* for six months. At the end of the six months, they get a letter asking if they want to join. If they join, we're happy. If not, then maybe next time.

**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.

## Joining Hands

Hands were joined and hearts lifted at recent “Hands Across Our Land” events which highlighted efforts for renewable energy in seven states including West Virginia. Mega-pipelines were the target of resistance here. Folks gathered in Greenbrier County, where WVHC member Leslee McCarty, also a member of the Greenbrier Watershed Association, said, “A local circuit judge declared he could not see a benefit to local citizens who would get no gas from these 42 inch lines. With two pipelines proposed to cross the Greenbrier River, it is clear that water quality will suffer.” McCarty continued, “Devastating floods which took many lives and millions of dollars in property just ravaged our region. Clearing wide swaths of steep hillsides for hundreds of miles in these mountains would probably not improve the situation in a future flood event.”

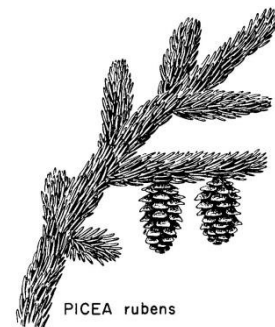


In Putnam and Mason Counties, a fledgling group opposing the Mountaineer Xpress pipeline met at the off-grid cabin of WVHC member Alex Cole. They heard an update on the line and, at dusk, made their way to the highest knob in the area to witness the sunset and reflect on the folks who had joined them in protests that day, and on the reasons they had come together. This event was co-sponsored by the West Virginia Highlands Conservancy and the Ohio Valley Environmental Coalition who are also leading informational activities focusing on the MXP, which is one of 16 large pipelines planned to cross the mountain state.



## West Virginia Source Red Spruce Trees Available for Sale!

The West Virginia Highlands Conservancy organizes volunteers to collect seeds from our native plant species. We contract with commercial growers to grow seedlings for ecosystem restoration projects in the highlands. When we have a surplus of plants, we make them available to the public.



We currently have a limited number of high quality Red Spruce trees available for Fall 2016 and Spring 2017. New for 2016 we have a few Winterberry Holly plants available too.

All proceeds support red spruce ecosystem restoration efforts in West Virginia.

### Fall 2016

**New this year!!!**

2 feet tall - 3 year old Red Spruce

2-3 feet - Ilex verticillata, Winterberry Holly

Tree band containers, \$6.00 Each, 4/\$20.00

- These Tree bands are 4 inches square and 10 inches deep.
- Available September 1<sup>st</sup>, 2016
- Limited quantities available on a first-come- first served basis.

### Spring 2017

Red Spruce plugs

2 year old container-grown seedlings approximately 10-15 inches tall.

50 (minimum Order)- \$120.00, 100 - \$210.00, 1,000 - \$1000.00

- These Plugs are 2 inches in diameter and 6 inches deep.
- Available for pick-up during April or early May, 2017.

All prices FOB Morgantown, WV For more information contact: Dave Saville, [david.saville12@gmail.com](mailto:david.saville12@gmail.com) 304 692-8118



## It's Not Just the Pipeline; It's the Roads That Go With It

By Rick Webb

Dominion has proposed 206 miles of access roads for the western section of the Atlantic Coast Pipeline between Buckingham County, Va. and Harrison County, W.Va. Access roads can be as problematic as the pipeline itself and may be subject to even less regulatory oversight.

Some roads are new. Others involve enlarging and reworking existing roads and trails to accommodate heavy construction equipment and large transport trucks for hauling 40-foot sections of 42-inch pipe. Low impact forest roads and trails, undisturbed watersheds and ridgelines, and private drives and farm roads will become permanent industrial corridors.

Twenty miles of this would be in the George Washington and Monongahela National Forests, nearly doubling the impact of the ACP on our national forests, and intruding on unfragmented natural landscape, endangered Indiana bat habitat, native brook trout streams, Special Biological Areas, and popular public recreation sites.

Dominion is seeking to operate under previously issued general approvals and avoid providing site-specific plans for agency and public review. In response to project delays, Dominion is planning to proceed with construction during difficult wintertime conditions and is seeking waivers from standard environmental restrictions.

For more information, see [Ground Truth about ACP Access Roads](#), another in the Dominion Pipeline Monitoring Coalition Story Map series.



This small road in the National Forest would be converted to a permanent industrial corridor for the ACP.

### Coming attractions

## Dominion Pipeline Monitoring Coalition Working on More "Story Maps"

As mentioned last month, The Dominion Pipeline Monitoring Coalition has started a series of "story maps" that collect and present information on the proposed Dominion Pipeline. So far, they have done maps on *Forest Fragmentation and The Atlantic Coast Pipeline*, *Dominion's Pipeline Threatens Protected Private Land*, and *Unique Shale Barrens Threatened by the Atlantic Coast Pipeline*.

More are on the way. There are maps under development for these topics:

Karst Hydrology and the ACP

A Comparative Terrain Analysis for the ACP Route

Critical Zones for Erosion and Sediment Control

ACP Blast Radius and Evacuation Zone

General Versus Individual Permits for the ACP

The Question of Need and Necessity

To see the ones that have been done, start at <http://pipelineupdate.org/>. From there, look over to the right, click on the Story Map title for the title you are interested in. For example, click on *Forest Fragmentation and The Atlantic Coast Pipeline* and you go to a page telling you what forest fragmentation is and why it is a problem. There are tabs which take you to more specific information.

To find out when a new one is added, you can check back with the Dominion Pipeline Monitoring Coalition webpage. You can also go to the Dominion Pipeline Monitoring Coalition Facebook page [www.facebook.com/DPMCoalition/](http://www.facebook.com/DPMCoalition/). When new story maps are added it is announced there.

The West Virginia Highlands Conservancy is a member of the Dominion Pipeline Monitoring Coalition.

### An interesting little fact

If a butterfly lands on a person's bare skin and neither of you panics, it will often settle in, extend its proboscis and start sucking sweat off your skin. It is after minerals. Butterflies need minerals, particularly for reproduction. It is the same reason that butterflies will flock around a puddle. They are after the minerals dissolved in the water.



# What KD2 Tells Us About Coal in West Virginia

By Jim Waggy

The recently announced Consent Order between the WV Dept. of Environmental Protection (DEP) and Keystone Industries has brought coal mining to an end on the controversial KD#2 mining permit located directly adjacent to Kanawha State Forest. From this point forward, the only activities allowed on the site will be ongoing reclamation efforts, with the permit undergoing a phased release as the stages of reclamation are completed.

This announcement is cause for celebration for the many citizens who strongly opposed this permit both before and after it was issued just over two years ago. But the saga of KD2 is also a learning opportunity, a chance to consider the weaknesses and strengths of mining regulation in the state, as well as the future of coal in WV.

Opposition to the KD2 permit was spearheaded by the Kanawha Forest Coalition, based on the permit location; the known adverse impacts to water quality, public health, and ecological diversity from mountaintop removal mining; and the well-documented non-compliance history of the mine operator, Revelation Energy, when they mined the ridges close to the KD2 mine.

Those prior operations created a widespread problem of acid mine drainage (toxic and biologically devastating to watersheds) that the operator could not control and that continues to this day. Since granting a permit for KD2 would allow the same operator to expose the same geologic layers, using an engineering plan virtually identical to the plans used on those nearby permits, DEP had every reason to conclude that issuing a permit for KD2 would lead to the same problem of uncontrolled acid drainage.

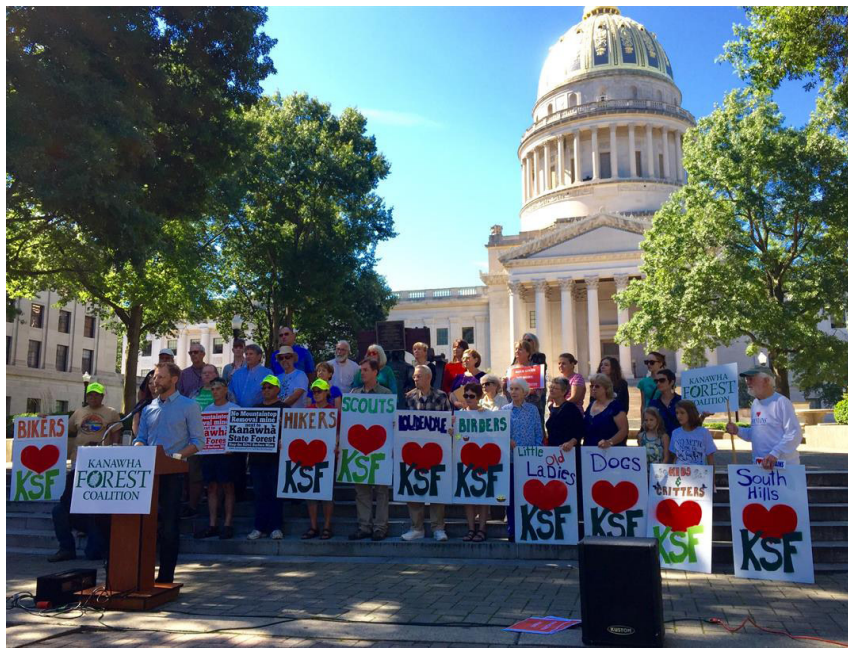
In short, this permit should never have been granted. And this exemplifies a glaring weakness of mining regulation in WV, which is that DEP almost never denies a permit application, no matter how strong the evidence that a site will be problematic. On KD2, acid runoff began soon after the onset of operations and has continued ever since, highly resistant to corrective efforts.

This problem of acid mine drainage is exacerbated by a second glaring weakness in mining regulation, which is inadequate

monitoring of water quality. DEP is too dependent on data generated by either the mine companies themselves or their paid contractors. DEP does not have sufficient funding and staffing to independently and effectively monitor water quality on all mine sites in WV.

In the case of KD2, concerned citizens were able to present evidence of water quality problems to DEP. To DEP's credit, they conscientiously followed up on these reports and confirmed the problems with their own testing.

Kanawha Forest Coalition knows from direct experience that DEP has many hard-working, dedicated employees. DEP staff met several times with members of



Kanawha Forest Coalition (just as they meet regularly with coal company reps). They listened to us and took our concerns seriously. WV's regulatory system would be strengthened by having more of this kind of mutually respectful, cooperative engagement between citizen groups and the DEP.

Regulating extractive industries in WV is an extremely challenging task. As a government agency, DEP is influenced by both the governor and the legislature, and these two entities are heavily influenced by the never-ending lobbying of the powerful coal and gas industries. To counter these influences and build a truly effective regulatory system, we need a chorus of citizens telling the governor and the legislature that we expect adequate funding, staffing, and support for the DEP.

But this raises a question. If a stronger DEP forces coal companies to use more responsible methods, methods that minimize harm, can mining still be profitable? Perhaps it could have been in the past, or at least the industry could have moved substantially in that direction.

When there were thicker, more accessible coal seams and less competition from other energy sources, the industry could have afforded to use more responsible mining methods. Sadly, they chose the cheap and dirty route instead, utilizing their political influence to fiercely oppose meaningful regulations. They've made their extravagant profits (with a high percentage going out of state) and left behind a toxic mess for the rest of us to deal with, a legacy that will haunt WV for many generations to come.

Circumstances are different now. With other energy sources becoming more cost effective, and with federal regulations becoming unavoidably tougher because of the increasingly obvious dilemma of climate change, the industry is desperately trying to remain competitive by jettisoning pension and health care obligations to retired miners and weakening regulations pertaining to the environment and to the health and safety of miners.

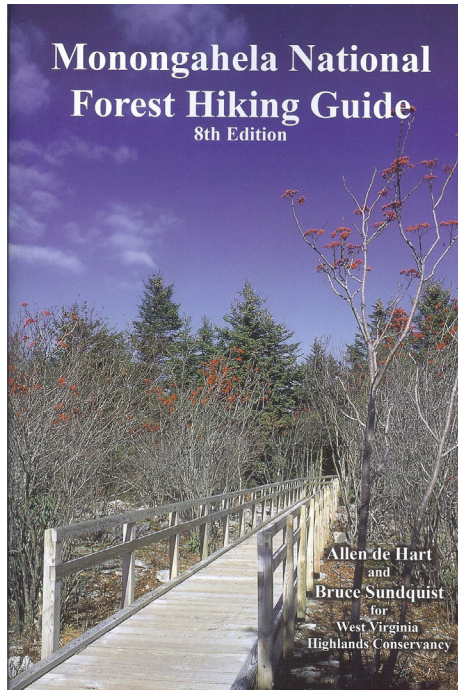
This will not work. Squeezed from all sides, coal is on its way out, and the ruthless leaders of this industry deserve no sympathy. Coal miners and coal communities, however, need and deserve support while adjusting to this abrupt economic transformation.

Miners can be put to work restoring the ecological health of old mine sites. Federal money is becoming available for coalfield communities, and WV political leaders need to work hard to maximize this funding and channel it effectively.

The global economy is necessarily transitioning to energy sources that are far less harmful to human health and to the ecosystems that ultimately support all life on Earth. This presents a challenge for WV, but also an opportunity.

**(More on the next page)**





## 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 \$15.95 plus \$3.00 shipping to:  
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[www.wvhighlands.org](http://www.wvhighlands.org)

### 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:

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Price: \$20.00 from the same address.

## Mining Stopped at Kanawha State Forest (Continued from previous page)

Coal has long dominated the politics and economy of WV, but this exploitive industry has never provided a solid foundation for strong, healthy, sustainable communities. Now is our chance to do better, to redefine and reinvent ourselves, bringing our best energy and ingenuity to this opportunity, looking bravely to the future instead of clinging fearfully to the past.

To learn more, visit [kanawhaforestcoalition.org](http://kanawhaforestcoalition.org)

**Jim Waggy is a member of the Kanawha Forest Coalition. This article has also been published in *The Charleston Gazette*.**

### 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). 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.

### BUMPER STICKERS

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



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



## The [not-so] Sleeping Gas Giant

By Cindy Rank

News reports about the gas industry today are enough to make one's head spin.

Unconventional gas drilling in shale regions this past decade has been productive enough that gas has greatly contributed to the demise of coal as the major energy producing fossil fuel. Politicians in coal producing states like West Virginia are caught in the middle, tripping all over themselves to at one moment blame EPA and others for a "war on coal" and turn around and lavish praise on the rapid rise and promise of natural gas in the next.

Rumors that such high yields of shale gas are but short term and short lived haven't diminished what appears to be a glut of natural gas and prices are so low as to discourage new investments as unprofitable.

Marcellus shale gas drilling is at a *relative* standstill.

Local newspapers are full of discouraging stories about areas and towns recently alive with frenzied gas drilling and busy restaurants and man camps and full hotels and newly built motels that are now devoid of activity. They are feeling the crunch in the aftermath of a boom.

Ah, but ask anyone from Doddridge, Wetzel, or Marshall Counties, or anyone along the path of the many pipelines now in the planning and permitting stages for West Virginia and the underlying reality emerges.

Not only is drilling still going on in the northern part of West Virginia - though at a significantly reduced rate - but there are still dozens, if not hundreds, of drilling permits already granted and just waiting for better market conditions before companies commit to investing the millions of dollars required for even one new well.

Monster pipelines such as the Atlantic Coast and Mountain Valley lines are undergoing a lot of public scrutiny as they work their way through the FERC (Federal Energy Regulatory Commission) permitting process. Regionally as well as nationwide pipelines large and small have attracted attention and are fast becoming a major issue.

But other pieces of the puzzle, other ancillary facilities required to process and put into production gas that has already been drilled, are also needed to fully wake the sleeping gas giant. It is these pieces of the complex system of gas production that have been moving along relentlessly and pretty much under the radar.

They are the compressor stations that pressurize and push the gas through the pipelines, and the pig launchers that provide access to maintain the pipes. They are the facilities that strip off the natural gas liquids which often are valuable as separate products, the ethane and propane and butane and pentane, etc. They are the facilities needed to treat the brackish frac and production water and dispose of the solid waste from the water treatment and the drilling process itself. They are the facilities needed for disposal of waste - always the problem child and greatest challenge of industrial development.

One need only travel to Doddridge County west of Clarksburg WV along Rt 50 near West Union WV for examples.

At Sherwood, or what once was Sherwood, is the MarkWest cryogenic separation facility where a mountain was leveled for the expansive operation [see picture]. A pipeline will transport ethane from the Sherwood facility to the Mobley processing facility in Wetzel Count on north to the planned Shell Cracker Plant along the Ohio River in Monaca PA northwest of Pittsburgh.

Some 10-15 miles west on Rt 50 from the Sherwood cryogenic facility is the proposed site of the Antero Clearwater facility, a 486 acre site meant to house a frac and processed water treatment plant and solid waste/salt residue landfill that is designed

to accommodate some 2,000 tons/day of waste salt for a possible 26 years, and hold 200 tons/day of TENORM (technologically enhanced naturally occurring radioactive material) until it can be shipped to appropriate waste facilities out west. Preparation for the treatment facility has begun, but permits are still needed to operate it and to operate the associated landfill which will cover some 5 miles of headwater streams and 11 wetland areas. The size and capacity of the proposed operation is breathtaking --

What seems to be lacking in this scenario is any truly overall assessment of the cumulative impact of all the pipelines, compressor stations, access roads, forest fragmentation, health

impacts, property damage and devaluation, long term impact on ground and surface water - water withdrawals, water contamination, injection wells, salt storage, waste treatment and disposal, etc., etc.....

Unfortunately ignoring the warnings offered in newspaper op-eds by Cindy Ellis, David McMahon and others we seem to be determined to repeat our mistakes of the past and watch the recent history of the coal industry repeat itself.

Major questions about the impact of huge strip mines these past 20 years were only asked after much of the destruction was already done or at least underway. What did it take to focus attention on the multitude of problems?

How many valley fills ?

How many mountains ?

How many streams ?

How many communities ?

How many health problems ?

As air, water, fields and forests are once again besieged by a bull-headed commitment to yet another fossil fuel the questions remain hauntingly similar.





# Selenium Settlement Agreement Signed with Patriot Coal Successor Virginia Conservation Legacy Fund

By Cindy Rank

On August 19, 2016 West Virginia Highlands Conservancy (WVHC), Ohio Valley Environmental Coalition (OVEC) and Sierra Club (Sierra) announced a \$6 million stream restoration and reforestation settlement with the Virginia Conservation Legacy Fund (VCLF).

## A Bit of History

The agreement comes five years after our 2011 legal action against Patriot Coal for water quality violations at several of its mining operations in southern West Virginia and the federal court approved Consent Decree that followed.

At the time of the original Consent Decree, Patriot paid civil penalties and funded a Supplemental Environmental Project implemented by the West Virginia Land Trust to benefit the larger watershed areas impacted by mining in southern West Virginia.

However, requirements and timelines to design, install and maintain adequate water treatment measures had not been when Patriot filed for bankruptcy. During the Patriot bankruptcy proceeding in 2015, the environmental groups succeeded in ensuring the cleanup and selenium treatment obligations would be respected by the new owner, the Virginia Conservation Legacy Fund (VCLF).

Given the time lost during Patriot's bankruptcy proceedings and VCLF's limited resources and less than anticipated start-up capital, VCLF has been unable to meet construction deadlines or remedy existing states of noncompliance at mining operations subject to the original Consent Decree(s). To allow VCLF and its subsidiary ERP Environmental Fund time to come into compliance with its obligations and to regain its financial footing, plaintiffs have agreed to an extension of compliance deadlines.

## The Selenium Settlement Agreement

As part of the \$6 million settlement, VCLF will receive a three-and-a-half year extension to the selenium water pollution treatment deadlines in the existing settlements reached between the groups (WVHC, OVEC, Sierra) and Patriot Coal. VCLF was given a reprieve from a Clean Water Act conductivity pollution enforcement case brought by the environmental groups -- though the groups can re-file that case again in the future.

The agreement will support pilot restoration projects in West Virginia to address damage caused by mountaintop removal mining. The projects will be administered by Appalachian Headwaters, a nonprofit created to foster environmental improvements in Central Appalachia.

The six million dollars is to be paid to Appalachian Headwaters in monthly installments through October 2017. As collateral to secure future payments under the Selenium Settlement Agreement VCLF has put in escrow a 313 acre parcel of land in Loudoun County, Virginia, land which may be taken and sold by Appalachian Headwaters if any scheduled payment is over 30 days due.

Additional in-kind services worth some \$900,000 will be provided by VCLF to aid with pilot projects on mining sites controlled by VCLF -- at least \$300,000 per year in 2017, 2018 and 2019. A first-priority lien on the non-active dragline at the Catenary Mine Complex was granted to secure the in-kind contributions. Discussions will be on-going about additional possible long-term in-kind assistance and collaboration on expanding successful pilot projects.

VCLF has also agreed not to conduct any further surface coal mining in West Virginia, other than coal removal "necessary for and incidental to reclamation." [NB: A cautionary note -- It should be understood that this sentence doesn't mean mining will stop entirely, and may in fact include a good bit more disturbance than one might at first assume.]

## Post Scripts

- Legal Documents have been submitted to the Department of Justice (DOJ) (as legal representation for the federal government in any such Clean Water Act litigation) for review and to the Federal District Court seeking approval of a modified Consent Decree that reflects the 42 month extension of deadlines agreed to as part of the Selenium Settlement Agreement. The DOJ has 45 days to comment and so we don't expect any Court action until at least the first part of October.

- It may be important to note that this settlement in no way affects or relieves VCLF of its responsibility to comply with applicable federal, state and local laws, regulations and permits. It applies only

to the plaintiffs WVHC, OVEC and Sierra who have agreed not to seek any additional remedies (beyond those in the Agreement and modified Consent Decree) under the Clean Water Act or Surface Mining Control and Reclamation Act for violations of selenium effluent limits at the outfalls covered so long as the Decree is in effect.

- Where several of our earlier consent decrees have directed funds to the good works of the Land Use and Sustainable Development Clinic at the WVU Law School, and the West Virginia Land Trust, both of those entities are limited as to what they can do on mine lands per se. As with our agreement with Alpha Natural Resources [July 2016 *Highlands Voice*] this settlement will go a step further and create opportunities for new reforestation and stream restoration projects designed by reputable scientists to show what will be required to reverse the damage on strip mined lands and start a new chapter for Appalachia.

- And finally, a few words about **Appalachian Headwaters:**

*Appalachian Headwaters will work with leading academic experts, engineers, coal mining companies, community groups and landowners to establish productive native hardwood forests and restore water quality on mountaintop removal and other large scale surface mining sites in the region. These projects will achieve far higher levels of reclamation than typically found on mountaintop removal and other large scale surface mines. Instead of merely establishing grasslands and planting invasive species on mined sites to reduce sedimentation, Appalachian Headwaters will work to establish native hardwood forests and significantly improve water quality in Appalachian streams.*

*Appalachian Headwaters will work to establish commercially viable, native hardwood forests on mined sites where only grass or invasive plant species will grow now. The new group's work will also improve seriously degraded mountain streams so they will support the sensitive aquatic life that once thrived in those streams. Appalachian Headwaters' reclamation work has the potential to develop agroforestry and other sustainable economic activities in the economically depressed region.*

# HIGHLANDS CONSERVANCY BOUTIQUE



- ▶ 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.]---\$25, Infant tee [18 mo.]---\$20, Toddler tee, 2T,3T,4T, 5/6---\$20
- ▶ Soft pima cotton adult polo shirts are a handsome earthtone light brown and feature the spruce tree logo. Sizes S-XL [Shirts run large for stated size.] \$ 25.00, 2XL \$26.50

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

**The same items are also available at our on-line store: [www.wvhighlands.org](http://www.wvhighlands.org)**

## 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 \$18 by mail; **long sleeve** is \$22. 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 The colors are stone, black and red.. The front of the cap has ♥ 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