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# The Highlands Voice

Since 1967, The Monthly Publication of the West Virginia Highlands Conservancy

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**New Study. Same Old Tune**

## “Persistent Failures” Says Office of Surface Mining

By Cindy Rank

In June 2013 eighteen state and national public interest groups including, the West Virginia Highlands Conservancy, filed a petition with the federal Office of Surface Mining (OSMRE) claiming that the state of West Virginia failed to meet its mandatory duty to properly regulate coal mining operations and sufficiently protect the environment and communities from the adverse effects of strip mining.

The Surface Mining Control and Reclamation Act of 1977 (SMCRA) provides for oversight of state regulatory programs by OSMRE to ensure that state programs comply with at least the minimum protections set by the SMCRA. In addition to annual reviews of specific aspects of state regulatory programs, Section 733 of the Surface Mining Act provides a mechanism to present evidence and petition OSMRE to do additional review - and to take over the administration of any state program that is found to be seriously lacking.

In the recent 733 petition plaintiffs asserted that West Virginia’s chronic failure to enforce the law has resulted in terrible harm to communities and the environment, that the state’s failure was systemic and required federal takeover of the regulatory

program. OSMRE has completed its three year review and issued final findings.

Of the 19 original allegations, OSMRE agreed to investigate five specific areas where the agency believed West Virginia’s program needed improvement. The federal review revealed persistent failures to enforce mandatory protections, such as water-quality standards designed to protect people and the environment. But OSMRE rejected the idea that the overall failure of the state program was dire enough to trigger federal takeover, citing West Virginia’s commitment to make substantive improvements in each of the areas under review as compelling reason.

Specific examples of actions West Virginia (via West Virginia Department of Environmental Protection) has promised to take in response to federal investigations resulting from the petition include:

- Requiring proper documentation for storm-water runoff analyses and increasing staffing to improve the quality of these analyses and their on-the-ground effectiveness in preventing flooding of nearby communities.

**(More on p. 3)**

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## Ramblin' the Ridges

By Cynthia D. Ellis

### In Marble Halls: Our History with E-Council

One poem. Thanks to an interest in one poem, I stumbled upon Tennessee State University's "Now & Then; The Appalachian Magazine" ---a publication of that school's Center for Appalachian Studies and Services. And through them I acquired several archive copies of their magazine.

One was the Spring 1995 issue with the theme "Appalachia and the Environment." In it one article examined the West Virginia Environmental Council. Our own long-time member Mary Wimmer wrote enthusiastically of the genesis of the Environmental Council [which we with Highlands Conservancy have long supported] from the vantage point of the first six years of its existence.

The West Virginia Environmental Council was formed in 1989, at a Hardee's in Morgantown, Wimmer noted. It's known

that the nineteen sixties were a time of activism and change, but people were agitating for causes in the eighties and nineties too. And, like us, the West Virginia Environmental Council came together from diverse groups and individuals.

FOLK [Friends of Little Kanawha], MOVE [Mon Organization for a Viable Environment], People Concerned with MIC, TEARS WV [Team Effort Against Ruining Southern West Virginia] and others were active then, as well as organizations of longer duration and larger membership such as Trout Unlimited, Sierra Club, and...us. Leaders of these groups hoped the presence of active volunteers could increase the potential for positive environmental impact by joining forces and communicating effectively to lobby at the West Virginia Legislature. Environmentalists



Members of the 1991 WVEC lobby team celebrate their successes, including passage of the West Virginia Groundwater Protection Act. Top to bottom and left to right: Martha Huffman, Tom Degen, Courtney Morrow, Wendy Ratcliff, Cindy Rank, Sheila McEntee, Mary Wimmer, Gary Zuckett, Tamara Schulman, Missy Wolverton, Norm Steenstra.  
**First Environmental Council Lobby Team**

did and do try to influence the lawmakers within the classic beauty of our state's capitol building in the February and March weeks of each annual session.

Then as now, a prevailing issue was that of clean water. A visit to the WVEC archives finds some déjà vu in that our lobbyists spoke like this about water degradation in February, 2001...

#### **"Water Wars: West Virginians Deserve Strong Antideg Policy"**

*by Nathan Fetty and Donald S. Garvin, Jr.*

Our regular readers know there's a water war brewing in the legislature this year. An industry Dirty Water Coalition has succeeded in substituting its own Dirty Water version of an antidegradation implementation rule in place of the version put forward by the WV Environmental Quality Board...It is not clear at this time how antideg will be treated

by the politicians here in Charleston...Of course, WVEC supports the strongest antideg policy possible, simply because we like clean water..."

Mary Wimmer praised the then-young WVEC for its work with the legislature on water and all issues. She noted that the presence of a physical office, sparkplug leaders, and a finely crafted newsletter were coupled with those numerous citizen volunteers to account for the successes of the WVEC. Later, the "E-Council" hired lobbyists to tread the marble floors and haunt the marble halls of the West Virginia Capitol as they labored to educate and inform legislators. Just a few examples among accomplishments have been: Rails-to-Trails Enabling Law [1992], Creation of DEP Environmental Advocate [1994], School Pesticide Act [1995], Permanent Non-game Program Funding [1995], and the Green Buildings Act [2012].

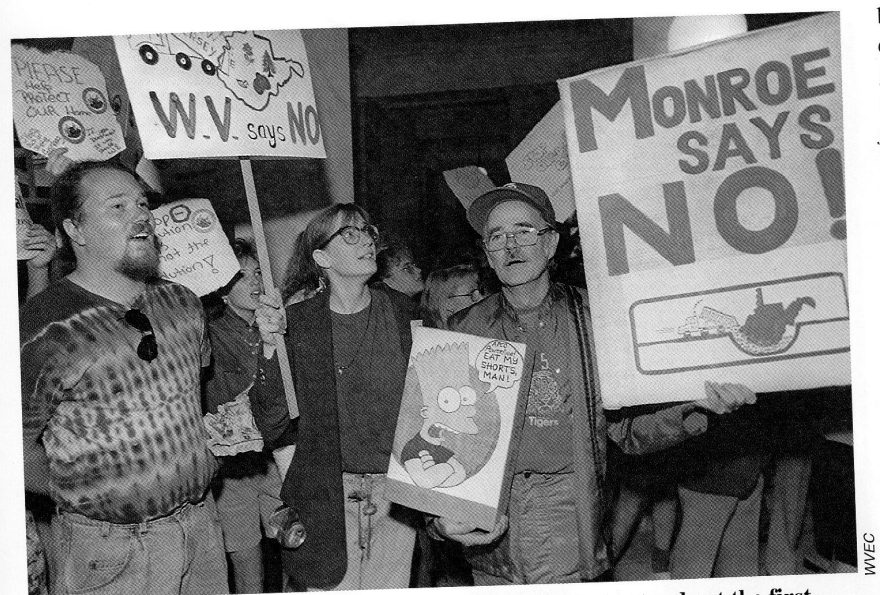
[For more on accomplishments and to see good bills and bad, scroll down on this WVEC link <http://wvecouncil.org/about/> ]

On one hand, it may be disheartening to think of all these years of continuing the fight for clean water. But on the other hand, it is cheering to see that the fight does go on. We have not given up. We, and those who we support in the work of lobbying the legislature, have the same commitment as ever, and the same resolve to win.

Something else I came across in looking at the beginnings of our Environmental Council were these words by the 39<sup>th</sup> U.S. President...

*"Whatever we do to a landscape can ultimately be seen in the river into which that landscape drains and we have done terrible things to many landscapes. To achieve the goals of the Clean Water Act, we must stop using our rivers and landscapes as though they were disposable. It takes more care and money, in the short run, to manage nature well than it does to abuse it, but the dividends are great."*

*-President Jimmy Carter*



Environmental activists crowd the West Virginia Capitol rotunda at the first E-Day Celebration at the West Virginia State Legislature, January 1990.

#### **First E-Day Celebration**



## “Persistent Deficiencies” in Mining Regulation (Continued from p. 1)

- Issuing comprehensive guidance and trainings to improve topsoil reclamation in addition to revisiting current permits that do not comply with existing requirements.
- Identifying water quality sampling protocols and increasing frequency of water sampling; committing to issuing notices of violation for releases that exceed National Pollutant Discharge Elimination System effluent limits — releases observed during OSMRE inspections.
- Nearly doubling the water-quality sampling budget to \$230,000 and hiring additional inspectors to improve enforcement.
- Committing to improve cumulative hydrologic impact assessment procedures with an emphasis on better defining the cumulative impact area and requiring operators

to include more accurate information needed to support the agency’s review; and conducting central review of those impacts.

So, .... taking a deep breath....If all that sounds vaguely familiar to other actions we’ve reported about in the *Voice* over the past several decades, it’s because it is. The history of West Virginia’s mining regulatory program has been rife with foot-dragging and delay when it comes to meeting its responsibilities - especially for protecting water resources and the communities that rely on those resources.

It continues to be disappointing that improvements in the mining regulatory program have to be spurred on by citizen lawsuits and petitions to federal mining regulators to nudge the state along, but we’re grateful for this new bit of prodding.

We now must watch carefully to ensure the promises made in response to this petition will lead to real, on-the-ground improvements, and assure that backsliding is held to a minimum.

[The groups on the original petition include Appalachian Catholic Worker; Appalachian Voices; Catholic Committee of Appalachia; the Center for Biological Diversity; Center for Health, Environment & Justice; Christians for the Mountains; Coal River Mountain Watch; Earthjustice; Keeper of the Mountains Foundation; League Of Women Voters of West Virginia; Mountain Health and Heritage Association; National Wildlife Federation; Ohio Valley Environmental Coalition; Sierra Club; West Virginia Citizen Action; West Virginia Environmental Council; West Virginia Highlands Conservancy; and West Virginia Rivers Coalition.]

### Going, Going, Gone

After fifteen years in the making, the “stream protection rule” lasted about a month in effect. According to the official press release, the new rule “updates 33-year old regulations and establishes clear requirements for responsible surface coal mining that will protect 6,000 miles of streams and 52,000 acres of forests over the next two decades, preserving community health and economic opportunities while meeting the nation’s energy needs.” The rule was developed during part of the George W. Bush administration and the entire Barak Obama administration and became final in January, 2017.

There is a statute called the Congressional Review Act. It allows Congress to pass a resolution prohibiting a regulation from going into effect. Now a resolution has been passed by both houses of Congress and signed by the President so the new stream protection rule is gone. The Congressional Review Act also prohibits an agency from promulgating a similar rule.

With the new, updated rule now gone, we revert to the 1983 rule. It prohibited mining within 100 feet of a stream. In the view of many, were it fully enforced it would provide greater protection than the rule that was just voided. The problem has always been in its enforcement.

For more details on the rule and its history (including what is good about the rule), see the January, 2017, and February, 2017, and August and November, 2015, issues of *The Highlands Voice*. All are accessible at [www.wvhighlands.org](http://www.wvhighlands.org).

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

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

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

# DEP Eliminates Protections for Noise, Light from Natural Gas Facilities

Ken Ward Jr.

Less than two weeks after taking office, Gov. Jim Justice's administration quietly deleted permit language intended to protect residents in West Virginia's natural gas regions from excessive noise and bright lights from compressor stations and other facilities that are springing up across those communities.

On Jan. 27, the state Department of Environmental Protection removed from a streamlined permit for compressor stations and some other facilities language that stated such operations "shall not create a nuisance to the surrounding community by way of unreasonable noise and light during operations."

The DEP, now headed by Justice appointee Austin Caperton, made the change in direct response to a request from the West Virginia Oil and Natural Gas Association, according to agency records.

The DEP's action comes just five months after agency lawyers, under the Tomblin administration, successfully defended the language against a legal challenge from the industry trade association. The reversal by the new leadership at DEP was noted on a posting buried on the agency website, and it emerged publicly only when mention of it showed up in one of Caperton's emails, included as part of a collection of documents obtained under the Freedom of Information Act.

Environmental groups and citizen organizations were shocked when they heard from a reporter about the DEP's action, saying agency officials had not consulted them or even informed them of the move despite citizens having played a central role in 2015 in convincing then-DEP Secretary Randy Huffman the additional protections were needed for residents who live in the middle of the Marcellus Shale boom.

"To say we are disappointed in this decision is an understatement," said Julie Archer, project manager for the West Virginia Surface Owners' Rights Organization, a group of landowners in the gas-producing counties of the state. "We feel completely ambushed. Eliminating these provisions is a huge disservice to those living near these facilities, and it's shameful that we are going to allow their lives, health and property to be ruined simply because the industry doesn't want to put adequate protections in place."

Fred Durham, the DEP air quality director who signed the permit change, did not return repeated phone calls. Neither Caperton nor the DEP's acting public information officer, Jake Glance, responded to offers to allow them to explain the agency's decision. Caperton, on orders from the governor's office, has declined interview invitations from the Gazette-Mail.

Anne Blankenship, executive director of the West Virginia Oil and Natural Gas Association,

indicated her organization was pleased with the DEP decision, citing in an email the same legal arguments her group raised about the permit language — and that the state Air Quality Board rejected in a unanimous decision in August.

"Not only were the noise and light conditions vague and unclear, which made compliance with them very difficult, such conditions are outside the jurisdiction of the Division of Air Quality as noise and light are not air pollutants," Blankenship wrote in her email message.

Last week, during his State of the State address, Justice said he had ordered Caperton and the DEP to stop saying "no" to business and industry. Justice did not offer any examples of the DEP doing so, but he used part of his televised speech to blast the agency's inspectors, saying they needed to stop wearing T-shirts and old jeans and looking like they "maybe haven't shaved forever."

"Now listen, I think they ought to look like something," Justice said of the DEP's inspectors. "And they will look like something, or we'll have them tending to Grizzly Adams."

Commenting in his speech about the state's natural gas industry, Justice said, "We need to do everything we can to exploit that to make it even better and better and better and better." The governor also offered his support for some version of a controversial "forced pooling" bill that could make holdout mineral owners sign leases.

As natural gas production in the Marcellus Shale region of North Central West Virginia and the state's Northern Panhandle has increased over the last decade, so have complaints and concerns from residents in those communities about all manner of impacts on their lives.

When lawmakers and the Tomblin administration passed a new state law to try to better regulate modern horizontal drilling and hydraulic fracturing, many concerns of local citizens were not addressed. Tomblin's bill was weaker than one recommended by a legislative committee that spent months reviewing the issue.

An earlier Tomblin executive order on the issue was also weakened after private discussions with oil and gas lobbyists, and the governor's office later refused to make public correspondence with the industry about that order.

In the final legislation, action on some key issues for citizens — concerns about air quality, noise and excessive light, questions about whether jobs were going to local residents and about the safety of waste disposal practices — were put off while additional studies of those matters were conducted.

The DEP later fell behind on getting those studies finished, and, even after extensive briefings on the eventual findings, lawmakers have declined

to take additional actions to address problems the studies identified. Instead, lawmakers have tried to push several bills that would erode permit requirements for drilling operations and take away the rights of citizens to file certain types of lawsuits against those activities. Those bills have so far failed, at least partly because of opposition from Huffman while he was DEP secretary.

When she returned as the DEP's environmental advocate in June 2014, one of the issues Wendy Radcliff worked on was the flood of complaints the DEP was receiving from residents near various operations of the oil and gas industry. The advocate office worked with others in the DEP to schedule public meetings and to plan visits to the area so Huffman and other top agency officials could get a first-hand look at what residents were concerned about.

Doddridge County resident Tom Bates attended some of those meetings to tell DEP officials about what it was like for his family when a large natural gas compressor station moved in across the road. Compressor stations use large engines — in the case of the one near Bates, 11 of them — to keep natural gas constantly pressurized while it is moved for many miles through various types of pipelines.

"We were trying to get them to do something about the noise," Bates recalled last week. "At night it lights up our front yard, and we can hear the engines inside our house."

Bates described watching a potted plant vibrate across a nightstand in his bedroom because of the shaking from the rumble of the engines.

"We are for oil and gas as far as energy independence and local jobs," Bates said. "We just think it needs to be done the right way."

Bates was disappointed to hear the new DEP leadership had deleted the noise and light protections.

"I wasn't aware of that at all," Bates said. "That's very discouraging. I think there should be rules and regulations."

While the legislatively mandated study of the issue did not find clear violations of noise or light standards, it did recommend the industry pay more attention to such matters.

So, in August 2015, the DEP proposed a change in one of the types of permits it issues for compressor stations and dewatering facilities associated with the natural gas industry.

Such facilities would normally have to obtain a standard DEP air pollution permit, one that is applied for and reviewed individually. But to save the

**(More on the next page)**

## West Virginia DEP ignores lights, dust, noise from drill sites (Continued from p. 4)

industry time in getting approval, the DEP also offers companies the ability to have such facilities authorized under a general permit. The general permit spells out standard construction and operating restrictions, and if companies agree to them up front, they avoid the most time-consuming individual permit process.

The change the DEP proposed was to simply insert a line into the general permit — called G35 — that said any facilities authorized under that permit “shall not create a nuisance to the surrounding community by way of unreasonable noise and light during operations.”

When the DEP sought public comment on that proposal, local residents and citizen groups turned out to support it, and industry officials spoke up to oppose it.

For example, Lyn Bordo described what it was like to live near a compressor station along the Doddridge-Ritchie county line.

“Most days, especially mornings, I feel like I am living on an airport runway,” Bordo told the DEP, according to an agency response to public comments.

On the other hand, Antero Resources Inc. complained that the DEP’s proposed language did not really provide a standard for what constitutes a nuisance.

“Absent a standard, the permittee and the agency have no tangible means of measuring compliance,” Antero said. “This uncertainty is unacceptable.”

On Dec. 18, 2015, the DEP finalized the changes to the general permit, which then became known as G35-C, because it was a revision of the original G35.

About a month later, on Jan. 15, 2016, Charleston lawyer David L. Yaussy, appealed the changes to the state Air Quality Board on behalf of the West Virginia Oil and Natural Gas Association. Yaussy challenged a variety of changes the DEP had made to the general permit, including the addition of the language about noise and light.

Board members held a hearing in March 2016. Jerry Williams, a DEP air quality engineer who wrote the permit, testified that the noise and light language was added because, “Historically, we’ve had issues from citizens who live nearby these facilities, who have provided objections to these facilities based on those issues. If a citizen comments on things, we take those issues very seriously.”

On Aug. 26, 2016, the air board issued a 14-page final order. The board ordered the DEP to make some changes in other parts of the general permit, but upheld the noise and light language.

Board members noted gas companies

didn’t have to use the general permit and could avoid the noise and light language by going through the process of seeking an individual permit for compressor stations or similar facilities.

Regarding the industry argument that the DEP’s air office did not have any legal authority to regulate noise or light, the board ruled language in state law giving the agency the authority to “impose any reasonable condition” as part of the general permit gave the DEP the authority it needed.

The oil and gas organization had the right to appeal the air board’s decision to Kanawha Circuit Court within 30 days, but it did not do so.

During a series of interviews before he left the DEP last month, Huffman talked about his belief that the agency needed to continue to do more to help address the on-the-ground effects of the natural gas boom on residents in those communities — and about how the standard agency inspectors should apply to what is acceptable for industry to do really wasn’t that complicated.

“When we run into issues out there that are subjective in the regulatory world, like the noise and light and mud on the road, the degree of a lot of that is subjective,” Huffman said. “I tell my folks there’s an easy standard here. The easiest one is to say if you lived in that house, how would you do it? Use your mother, if your mother lived in that house.”

“If you approached every person who had an issue out there with an activity that we regulate, if you approached them with the same sensitivity you would if it were your mother, because that is somebody’s mother, and they don’t need to be subjected to these kinds of inconveniences and nuisances in their lives. I have this notion that we need to be very sensitive to that.”

In late December, Huffman’s DEP had put out for public comment a revised version of the general permit, this time called G35-D. The new version was simply to include the changes the air board had ordered the DEP to make. Because those didn’t include the noise and light language the board had upheld, citizen groups didn’t really pay much attention to the issue.

Huffman’s last day on the job was Jan. 13, the Friday before Justice’s inauguration, on Jan. 16. The Justice transition team announced Caperton’s appointment on Jan. 13. Caperton visited the DEP office and Huffman introduced him to some of the senior staff.

Jan. 23, a week after the inauguration, was the final day of the public comment period on the revisions to the general permit.

That day, Blankenship sent the DEP a letter on behalf of the oil and gas association. Among

other things, Blankenship urged the DEP to reverse itself and get rid of the noise and light language. The letter raised the same issues the industry group brought up in its appeal before the air board.

“The West Virginia Division of Air Quality has no authority to regulate noise and light, and it cannot impose limitations in the Draft General Permit that purport to regulate noise and light,” Blankenship wrote. “Even if it could, the prohibition of a ‘nuisance’ and ‘unreasonable noise and light’ is too vague to enforce, as it gives the permittee no guidance as to what constitutes permitted behavior. This section should be eliminated from the General Permit.”

Four days later, on the morning of Jan. 27, it was the end of Caperton’s second week on the job at the DEP. Before noon, he fired Radcliff from the agency’s environmental advocate office and also dismissed Kelley Gillenwater, DEP communications director.

Later in the day, Durham signed the revised general permit, but not before removing the noise and light language. In a letter to Blankenship, the DEP said it was now the agency’s opinion that state law “does not require this permit condition” and therefore it was removed.

At 5:07 p.m. that Friday, Durham sent an email to Caperton and to DEP general counsel Kristin Boggs. “DAQ removed the noise and light provision contained in section 3.2.8 and issued the Natural Gas Compressor general permit G35-D today. It will be posted on the website Monday.”

### 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.



## Trail Truthing, Part 2: Another Surprise

By Hugh Rogers

Winter is shrinking. On President's Day, the snowdrops popped up, looked around, saw no snow, not even remnants. We've used a few of these warm days to answer questions that came up as we worked on a 9<sup>th</sup> edition of the Monongahela National Forest (MNF) Hiking Guide. This month's installment of Trail Truthing celebrates a little-known trail, thought to be closed, that leads to a spectacular view.

**But first, to repeat: you can help. Please check out trails, especially ones that might have changed in the past ten years. Let us know what you find, or how you would make the old description clearer.**

We do have help from the pros. Jack Tribble, District Ranger for the Greenbrier District, and Gray Buckles, North Zone Wilderness/Trails Manager, have corrected old misinformation and pointed to new hiking opportunities. Since I'm not familiar with the South Zone, we'll need even more help in Gauley, Marlinton, and White Sulphur Springs Ranger Districts.

### Smoke Camp Trail (TR324)

This one came to my attention on a list of trails that had been dropped from the MNF inventory. I checked the description in the 8<sup>th</sup> edition: exceptional scenery, moderate difficulty, good condition, a steep hike, just under two miles, from the historic Rothkugel Plantation to a former fire lookout. Sounded good to me. Was it worth keeping in the Guide, even without its official status? We're doing that, for instance, with the Blackwater Canyon RR Grade, which (because of a dispute with an adjoining property owner) is no longer maintained as TR115, but which will continue to be used, with caution, by hikers and bikers.

The Smoke Camp trailhead is three miles east of Bartow on WV28, north of the junction with US250. There's a large sign describing the Rothkugel Plantation, an early (1907) demonstration of scientific forestry, and a smaller sign for the trail.

Parking is a problem. The best option seems to be the junction of FR54, Buffalo Fork Road, with WV28. Coming from the fork where US250 turns south, it's just beyond the bridge over Little River. There is space for several cars. From there, it's a hundred-yard walk along the shoulder. I wouldn't do it with a family. Pull over at the trailhead, let passengers out, and go back to FR54.

TR324 begins as a loop trail, 324A, with informative signs on the history and consequences of the Norway spruce plantation. Some of the original trees are now well over a hundred feet tall. The ground is carpeted with clubmoss and spruce seedlings. Halfway around, TR324 turns off to the left and begins a more serious climb. Here is the last blue plastic blaze; the remainder of the trail has old paint blazes.

The climb is unrelenting. For comparison, Flatrock Run Trail has the greatest elevation change of all the trails on the MNF. It goes up 2200 feet over a course of five miles. Another trail up the Roaring Plains, Boar's Nest Trail, climbs 1300 feet in 2.7 miles. It's plenty steep. Smoke Camp Trail does 1300 feet in 1.8 miles.

At the ridgetop, plastic blazes reappear, and the trail joins an old woods road for 0.2mi. It ends at FR58, a smooth, well-graded gravel road. Ahead is a clearing and a new sign, "Smoke Camp Overlook." It has a picnic table, a grill, benches, the concrete bases of the old fire tower – and a view that few places on the MNF can equal, looking toward a line of iconic mountains: dark, blocky

Cunningham Knob, seeming to float upon the pale treeless ridge that tops out at Bayard Knob; pointy Pharis Knob; Spruce Mountain, foreshortened but easily recognizable; and North Fork Mountain, from Panther Knob and Kile Knob way off into the distance. Over in Virginia are The Stamp, Bearcamp Knob, and Red Oak Knob's distinctive cap of blond grass and black spruce. Below, in the foreground, an unbroken forest.

There's no clue to this payoff at the foot of the trail. A sign is at the beginning of FR57, Long Run Road, which turns off WV28 between Camp Pocahontas and Island Campground, 2 miles from the trailhead. You can drive three miles up FR57 to the Virginia line, and double back three miles on FR58 to the overlook. Most people who get there will get there by road.

Hardy hikers – even this old man -- want to earn their views. I'm reminded of Edward Abbey's famous benediction: "May your trails be crooked, winding, lonesome, dangerous, leading to the most amazing view." Your trails, your life. Now, I'm not saying Smoke Camp Trail is dangerous; it's just steep. It's not particularly crooked, either. But it winds through a varied and beautiful forest on its way to an amazing view. All the way back down, you'll feel a renewed zest for this place, these highlands.

At home, a quick email exchange reassured me that Smoke Camp Trail has NOT been dropped from the MNF list. The interpretive loop trail is new, and that made for a slight reworking of the connection to TR324. We'll keep double-checking the notes our late author, Allen de Hart, left us. **And we're looking forward to trail reports from you.**



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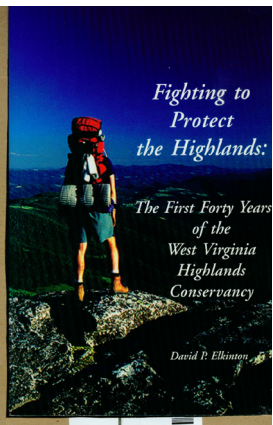
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518 pages, 6x9, color cover, published by Pocahontas Press

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.

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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.



## Support a Healthy Environment at No Cost to You!!!

If you shop at Kroger stores and you support West Virginia Highlands Conservancy you can add to that support at no cost to you.

**Kroger has a program called Community Rewards that donates to non-profit organizations 5% of your purchase amount! This does not affect the fuel points that you earn on your Kroger card or cost you anything extra.**

To do this, sign up for a Kroger Plus card and then sign up for the Community Rewards program, naming West Virginia Highlands Conservancy as the organization you want contributions to go to. This must be renewed once a year for Kroger to continue making these contributions.

**To sign up:** (If you already have a Kroger card, go to step 2.)

- 1) Get a Kroger Plus card, either, a) by going to a Kroger store and asking for one at the customer service desk, or b) Go to Kroger.com and click on «Register» and fill out the information and click «Create Account.» Next, add a Plus Card by clicking on «Get a Digital Plus Card online today,» fill in your name, and enter your ten-digit phone number where it says «Alt ID», and click «Save.»
- 2) If you already have Kroger Plus card, but have not created an account on-line, go to Kroger.com and click «Register» and enter your existing Kroger card number, the number below the bar code on your card. Click «Save.»
- 3) After you click on «Save» in one of the above, an «Account Summary» screen will come up. At the bottom of that screen is «Community Rewards.» Click «Enroll» and fill out the required information there, click «Save», and it takes you to a new page, then click «Search» and click on button in front of West Virginia Highlands Conservancy, then click «Enroll.» You're done!

## Congress Unfixes a Problem

By John McFerrin

Congress is considering and, Congress being Congress these days, probably will take an action that will be a step back in both efforts to curb greenhouse gases and in efforts to make the federal government solvent. It is considering voiding a rule designed to prevent the waste of natural gas on federal land.

The main manager of land that the federal government owns is the Bureau of Land Management. Altogether it manages 245 million acres of land and 700 million acres of subsurface estate.

Much of this land has natural gas under it. In 2015 production from 96,000 onshore gas wells accounted for 11 per cent of the nation's natural gas supply. The production value of this oil and gas exceeded \$20.9 billion and generated over \$2.3 billion in royalties, which were shared with tribes, Indian allottee owners, and States.

One of the problems with this program is that we are wasting a lot of the gas. Some of it is flared (burned on site), vented (released to the atmosphere) or leaked. Gas that is leaked, flared, or burned is not sold, depriving the United States of royalties.

Royalty loss is not the only problem. The wasted gas harms local communities and surrounding areas through visual and noise impacts from flaring, and contributes to regional and global air pollution problems of smog, particulate matter, and toxics (such as benzene, a carcinogen). Vented or leaked gas contributes to climate change, because the primary constituent of natural gas is methane, an especially powerful greenhouse gas with climate impacts roughly 25 times those of carbon dioxide (CO<sub>2</sub>), if measured over a 100-year period, or 86 times those of CO<sub>2</sub>, if measured over a 20-year period. Thus, measures to conserve gas and avoid waste may significantly benefit local communities, public health, and the environment.

To fix these problems, the Bureau of Land Management proposed a rule that would require gas companies to stop or reduce the flaring, venting, and leaking at gas wells and compressor stations on public lands. After the public comment, etc. that is part of all rulemaking, the rule became final on January 17, 2017.

This was not entirely the Bureau of Land Management's idea. The Office of the Inspector General of the Department of the Interior (OIG) and the Government Accountability Office (GAO) had both reviewed the leasing program and had raised concerns about waste of gas from Federal and Indian production.

Correcting the problem could be done at a relatively small net cost. The additional equipment and operational changes required to comply would have a cost. At the same time, the gas that had been wasted could be sold. According to Bureau of Land Management estimates, the value of the additional gas captured and sold would not entirely offset the additional cost of compliance. It estimates that gas company profits would decrease by an average of fifteen hundredths of one per cent as a result of the rule.

So, problem solved? Less gas wasted (my Great Depression era mother would be so pleased), more royalties for the United States, and less greenhouse gasses. A government agency addressing and fixing a problem. Another happy ending?

Now for the rest of the story. Although Mr. Trump did not run on a platform or increased greenhouse gases while collecting less in royalties, gas companies and their friends in Congress saw an opening and took it. On January 31 a resolution was introduced by Rep. Tom Cole (R-OK) voiding the rule. On February 2 it passed the House, with Congressmen Mooney, Jenkins, and McKinley all voting for it. An identical resolution was introduced in the Senate by **Sen.** Barrasso, (R-WY) with Sen. Capito (R-WV) as a cosponsor. So far the Senate has taken no action.



## HIGH-RISK DRILLING THROUGH THE BLUE RIDGE

By Rick Webb

The Dominion Pipeline Monitoring Coalition has submitted a report to Federal Energy Regulatory Commission on the Draft Environmental Impact Statement (DEIS) for the Atlantic Coast Pipeline (ACP) and the proposal to drill through the Blue Ridge Mountains under the Appalachian National Scenic Trail, the Blue Ridge Parkway, and the George Washington National Forest.

The National Environmental Policy Act requires an opportunity for informed public and agency review and comment. The DEIS for the ACP, repeatedly fails to address or provide the critical information required for meaningful review. The DEIS treatment of Dominion's proposed Blue Ridge drilling operation is a significant example of this deficiency.

The information provided in the DEIS is insufficient to support evaluation of the proposed Blue Ridge drilling operation. The scope and degree of excavation are not fully disclosed or considered, and the results of critical geophysical investigations have not been provided. Identification of geohazards and evaluation of mitigation measures have been deferred until later, precluding a meaningful opportunity for informed review of the project. The published DEIS fails to meet the information needs of the public or the multiple governmental agencies that have permitting and oversight responsibilities related to the ACP project.

FERC must release a revised DEIS to:

- prove that boring through the Blue Ridge is a practicable option, by providing reliable and complete geophysical data
- disclose the extent of land disturbance and water quality damage the proposal would create
- include detailed, site-specific plans and pollution control measures for all alternatives for crossing the Blue Ridge

**Note: This is a tiny summary of a longer report by the Dominion Pipeline Monitoring Coalition. To see the the entire report, go to [www.pipelineupdate.org](http://www.pipelineupdate.org). For a presentation of the same material (with better pictures) see the story map on the topic at the same website.**



In-stream blasting would be used for crossing the South Fork of the Rockfish River, a native trout stream in the pipeline corridor below the proposed drilling operation.

### Synopsis of DEIS Process and Highlights Now Available

In preparation of its evaluation of the Atlantic Coast Pipeline, the Federal Energy Regulatory Commission (FERC) has prepared a Draft Environmental Impact Statement (DEIS) for the Atlantic Coast Pipeline. This Draft EIS gathers together all the environmental information which FERC believes is relevant to its decision on the pipeline. It is currently only a draft, available for public comment until April 6. Commenters may point out relevant facts which FERC did not consider, agree or disagree with FERC's conclusions, or make any other relevant comments.

The draft is over 2300 pages. Fortunately the Appalachian Blue Ridge Alliance has done an overview: *DEIS: What is it? What's in it? What you can do!* It is a 16-page overview of the DEIS process, prepared by the Appalachian Blue Ridge Alliance. It features highlights and excerpts of the 2300+ page document and a discussion of how concerned citizens can comment on the document. The overview is designed as a resource for those preparing to file comments or deliver them at the FERC public sessions that began this week in North Carolina and conclude March 2 in West Virginia.

# Celebrating 50 Years!

The West Virginia Highlands Conservancy was officially founded in 1967 but the people and Groups that came together to form the organization actually began to meet in 1965 while the first issue of The Highlands Voice appeared in 1969. For many years we were THE environmental organization in the state and tackled issues as diverse in topics as in geography. Some of its major roles were defined early in its existence. Protecting Rivers, Coal Mining, the Monongahela National Forest and other public lands, Highways,

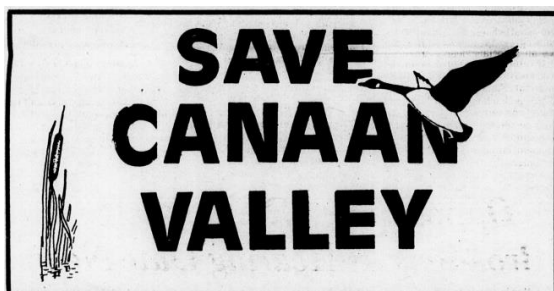
Wilderness and Canaan Valley all have deep roots that permeate our history. We will be highlighting some of these issues, the places, and the people involved, in upcoming issues of The Highlands Voice. We'll also be visiting some of these places throughout the year to see the successes, or sometimes failures, of our work. We'll get together to celebrate and reminisce with each other at the Canaan Valley Resort State Park, September 15-17, 2017.

## Help Us Celebrate!

We are seeking help and input from our members. Please participate in the outings and events we are planning, but also help us make the 50<sup>th</sup> Celebration extra special.

- Contact us with the names and contact information of people you know who have some connection with the Highlands Conservancy who may not still be engaged. We are creating a list of folks to reach out to, from Agencies, Organizations, and others we've worked with, to invite to join our celebrations.
- Using Google, or the Archives for The Highlands Voice, research an issue that you know about, were involved with, or the success from our efforts you enjoy, and write an article or just share personal memories or experiences.
- Offer to lead an outing to one of the places we've fought to protect over the last 50 years. Share your stories or experiences working with, or even against, us on some issue.
- Clean out your closets for memorabilia, or other items to bring to the Canaan Celebration in September and donate to a silent auction.
- Get out those old photo albums and bring them with you to Canaan for a photo-sharing display.
- Send us your photos of people, places, or events from our long and storied history to include in the Celebration's publications and Web pages.

Contact us at; [wvhc50@gmail.com](mailto:wvhc50@gmail.com)



*"Celebrating 50 Years"*

Mark your calendar!

## Canaan Valley State Park

September 15-17, 2017

Outings  
Workshops  
Round-table discussions  
Expert panels  
Partner displays  
Music  
Food  
Good company  
Reminiscing  
Old Friends  
Good times  
Beautiful Places

## Celebrating 50 Years T-Shirts!

Heavy weight Black t-shirts  
with our new color  
"Celebrating 50 Years" logo

S, M, L, XL & XXL. \$20 each, postage included



21" square black bandana  
with color "Celebrating 50 Years" logo.

\$5.00 postage included.





# Highlands Conservancy Founding Fathers

## Bob Burrell

Bob Burrell came to the Highlands Conservancy as a canoe paddler. Born in Springfield OH, he earned bachelor's and graduate degrees in bacteriology from The Ohio State University. He joined the West Virginia University School of Medicine in 1961 where he taught and conducted basic medical research in immunology and microbiology, retiring in 1996.

He was an environmental activist in West Virginia where he served in many leadership capacities, particularly in the fields of protection of wildlife habitat and free-flowing rivers and was the co-author of the first reliable guide to the whitewater rivers of West Virginia.

He began his activism with the Highlands Conservancy as a member of the Scenic Rivers Committee. He became the first editor of the Highlands Voice and wrote a regular monthly column for the next ten years. He also served as the organization's second President beginning in 1971.

"The success of the Highlands Voice as a publication, the involvement of a second generation of its leaders, and therefore the Highlands Conservancy as we know it today, is in no small way a direct result of the talents of Bob Burrell," Dave Elkinton writes.

His steady hand was vitally important as the infant Conservancy organization gained credibility and standing in the eyes of West Virginia political, media, social, and commercial leadership.

Bob's personal stationary in the 1970's included a little saying that went something like: "Turn off a light and listen to a free-flowing West Virginia stream whisper thanks."

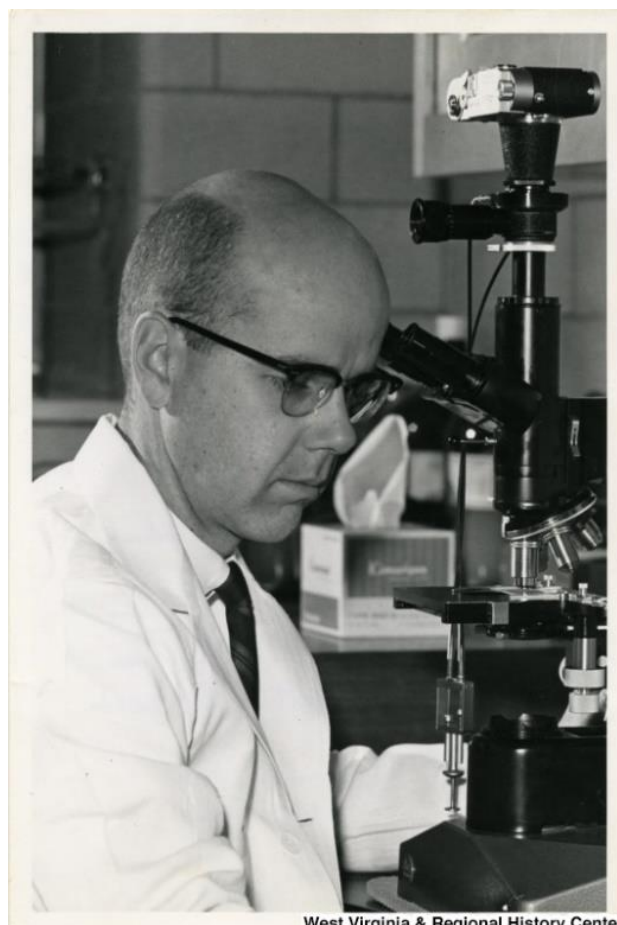
Bob joined us at the Cheat Mountain Club for our 40<sup>th</sup> Anniversary Celebration in 2007. He participated on a panel moderated by Rupe Cutler, remembering the early days. He remembered fondly campaigns for Otter Creek Wilderness, Dolly Sods, and the Cranberry. He quoted former Gazette reporter Skip Johnson describing the Otter Creek effort as West Virginia Highlands Conservancy's finest hour.

Robert Guthrie Burrell, 78, passed away quietly at home in Morgantown, WV, on July 23, 2012.



*"I am a professional Biologist who looks around and sees life decaying all around him. I have inherited a reverence for life in all its forms from my father, quite aside from any professional interest, and all around me I see the profaning of those living forms. Those forms of life need a spokesman. Their habitat needs a spokesman. Man can speak for himself, but other forms of life and their habitats cannot. I feel I owe it to these forms of life to be their spokesman as sort of an apology for the idiocies perpetrated by other members of my species."*

**-Bob Burrell-**



West Virginia & Regional History Center

## From the Archives

Most issues of our monthly newsletter, The Highlands Voice, beginning with Volume 1, in 1969, are archived on our website at [www.wvhighlands.org](http://www.wvhighlands.org).

Enjoy the following highlights taken from;

## 1970

### Winter Workshop and Board meeting

Much of the Board's attention was devoted to Otter Creek and the Conservancy's Wilderness proposal for this area. There was concern about the Forest Service's lack of support, noting that, on paper the Forest Service is supposed to be committed to the multiple use concept, but it appears that in practice, timber management, sale, and harvest are the prime multiple uses of the forest. Conservationists feel that wildlife and recreational values are too often ignored.

### Clear Cutting on the Mon National Forest

Let it be resolved that:

- 1) within the Monongahela National Forest there be a moratorium of at least three years on all clearcuts and shelterwood cuts exceeding 30 acres. During this period the Forest Service and other specialists will study the impact, both immediate and long range, of clearcutting on the wildlife, fish, soil, watershed, recreation potential and other resources of the forest and surrounding regions. The results of these studies will be made available to the public.
- 2) there be appointed by the Forest Supervisor a committee of specialists, representatives of conservation organizations and local citizens to review the evidence for and against even-aged management and present its recommendations to the Forest Service.

### Wilderness Bill Introduced

Senator Jennings Randolph has introduced S.3937, a bill to designate as wilderness the Cranberry, Otter Creek, and Dolly Sods areas in the Senate recently. Mr. Ken Hechler has introduced a similar measure, H.R. 17774 in the House. "There is a need to protect these areas and to preserve them in their present environment, for the enjoyment of our citizens and future generations. We must act to establish wilderness areas, of which there are only two on the East Coast," Randolph said. Secretary of State Jay Rockefeller supported Congressional action on Otter Creek in a speech to the graduating class of Pickens High School. He applauded efforts of the West Virginia Highlands Conservancy to spare the entire 18,000 acre tract from logging.



# West Virginia Native Plants and Seeds

The West Virginia Highlands Conservancy organizes volunteers to collect seeds from our native plant species in West Virginia. We contract with commercial growers to grow seedlings, and process seed, for use in ecosystem restoration projects. When we have a surplus of plants or seeds, we make them available to the public. All proceeds support red spruce ecosystem restoration efforts in West Virginia.

**Red Spruce, Picea rubens**

Spring 2017

**2 ft tall - 3 yr old Red Spruce Trees**

- Tree bands – 4” square, 10” deep.
- Limited quantities

Red Spruce Tree bands, \$7.00 ea. 4/\$25.00

Spring 2018

**2-year Red Spruce plugs**

- 10-15 inches tall seedlings.
- Plugs – 2” in diameter and 6” deep.

Spring 2018 Red Spruce Plugs,  
100 - \$220.00; 1,000 - \$1,100.00

**Winterberry Holly**  
**Ilex verticillata,**

2-3 ft. tall - Tree band containers

- Tree bands – 4” square, 10” deep.
- Limited quantities

Winterberry Tree bands, \$7.00 ea. 4/\$25.00

All plants FOB Morgantown, WV

<u>West Virginia Wildflower Seeds</u>	
<u>Common Milkweed, Asclepias syriaca</u>	
Packet (100+ seeds)	\$5.00
10 grams	\$20.00
25 grams	\$35.00
50 grams	\$65.00
100 grams	\$100.00
<u>Yellow Coneflower, Ratibida pinnata</u>	
Packet (1000+ seeds)	\$5.00
5 grams	\$10.00
10 grams	\$15.00
25 grams	\$30.00
50 grams	\$50.00
<u>Downy Sunflower, Helianthus mollis</u>	
Packet (300+ seeds)	\$5.00
5 grams	\$10.00
10 grams	\$15.00
25 grams	\$30.00
50 grams	\$50.00

<u>Bee Balm, Monarda didyma</u>	
Packet (500+ seeds)	\$5.00
1 gram	\$10.00
5 grams	\$30.00
<u>Wild Bergamot, Monarda fistulosa</u>	
Packet (500+ seeds)	\$5.00
1 gram	\$10.00
<u>Basil Balm, Monarda clinopodia</u>	
Packet (500+ seeds)	\$5.00
1 gram	\$10.00

All seed prices include postage.

Send check to:  
West Virginia Highlands Conservancy  
PO Box 306  
Charleston, WV 25321

For more information contact;  
Dave Saville, Program Coordinator  
david.saville12@gmail.com

## Move Afoot to Weaken Water Quality Protections

The West Virginia Legislature is actively considering a bill (HB 2506) that would weaken West Virginia’s water quality protections. It would do two things. First, it would change how compliance with standards is determined. Compliance with a standard is determined by measuring the amount of pollutant that is in a given volume of water in the stream. If we can assume when granting permits that there is more water in the stream, then more pollutants can be added to the stream.

For years and years, permits were issued based on assumptions that streams were at their lowest flow. Low flow means that fewer pollutants can be added. The proposal is to change the assumptions about stream flow so that we assume there is more water in the stream. If we change those assumptions, then industries will be allowed to discharge more toxins into our streams.

Second, the proposal would remove mixing zone protections. Currently, toxic dischargers must space out the discharges so that any discharge will be diluted. The dilution allows more pollution while at the same time requiring it to be spread out. The proposed bill would allow more toxic dischargers to locate closer together and create larger toxic hot spots.

There is no evidence to suggest that more toxic discharges would enhance West Virginia’s economic future. Neither has there been any example of an industry which has declined to locate in West Virginia because our water is too clean.

There have, however, been instances of lobbyists for industry going to the legislature and whispering the magic words (Jobs! Jobs! Jobs!) in the ears of the Legislators.

By the time you read this, this information will almost certainly be obsolete. *The Highlands Voice* comes out once a month, about one percent of the pace at which things change in the Legislature. To get more current information, try the West Virginia Environmental Council website ([www.wvecouncil.org](http://www.wvecouncil.org)) or the Legislature website [www.wvlegislature.gov](http://www.wvlegislature.gov). It has information on the status of bills, who voted which way, etc. You can also check the West Virginia Highlands Conservancy Facebook page for updates.



## Calendar of Events:

Wednesday, March 1: **Public Comment Session for ACP pipeline draft EIS in Elkins, WV** 5:00 – 9:00 pm, Gandy Dancer Theater, 359 Beverly Pike, Elkins, WV 26241. <https://dl.dropboxusercontent.com/u/21393847/DEIS%20Notice%20of%20Availability%2020161230-3005%2831865337%29.pdf>

Thursday, March 2: **Public Comment Session for ACP pipeline draft EIS in Marlinton, WV** 5:00 – 9:00 pm, Marlinton Community Wellness Center, 320 9<sup>th</sup> Street, Marlinton, WV 24954. <https://dl.dropboxusercontent.com/u/21393847/DEIS%20Notice%20of%20Availability%2020161230-3005%2831865337%29.pdf>

Saturday, March 4: **WV – VA Water Quality Monitoring Program**, 10:00 am – 4:00 pm, Davis, WV, National Youth Science Center. Sponsored by Trout Unlimited and the WV Rivers Coalition. Training will educate volunteers about the potential impact to fish and wildlife resources in the shale gas region of WV and VA and train volunteers to effectively monitor the water quality in these areas. To register contact Jake Lemon, Mid-Atlantic Angler Science Coordinator, at 814-779-3965 or [jlemon@tu.org](mailto:jlemon@tu.org) March 1<sup>st</sup>.

Monday, March 6: **DEP Public Hearing for proposed Mountain Valley Pipeline**, 6 pm, Webster County High School auditorium. For State 401 Water Quality Certification and Oil and Gas General Water Pollution Control Permit. Oral and written comments will be accepted. <http://www.dep.wv.gov/news/pages/MVPinfo.aspx>

Tuesday, March 7: **DEP Public Hearing for proposed Mountain Valley Pipeline**, 6 pm, Hinton, WV, Summers Memorial Building, 451 First Ave. For Natural Streams Preservation Act permit, State 401 Water Quality Certification and Oil and Gas General Water Pollution Control Permit. Oral and written comments will be accepted. <http://www.dep.wv.gov/news/pages/MVPinfo.aspx>

Thursday, March 9: **DEP Public Hearing for proposed Mountain Valley Pipeline**, 6 pm, Robert C. Byrd High School Large Group Instruction Room, Harrison County. For State 401 Water Quality Certification and Oil and Gas General Water Pollution Control Permit. Oral and written comments will be accepted. <http://www.dep.wv.gov/news/pages/MVPinfo.aspx>

Sunday, March 19: **Last day to comment to WV DEP on the water quality permits for the Mountain Valley Pipeline.** <http://www.dep.wv.gov/news/pages/MVPinfo.aspx>

Saturday, March 25: **Blue Jean Ball**, 6 pm, Camp Muffly, Morgantown, WV, \$50.00. A party for green space featuring the Halftime String Band, sponsored by the WV Land Trust and the Mon River Trails Conservancy.

April 6, 2017: **Last day to comment on the draft EIS for the Atlantic Coast Pipeline.** <https://dl.dropboxusercontent.com/u/21393847/DEIS%20Notice%20of%20Availability%2020161230-3005%2831865337%29.pdf>

Saturday, April 22: **Spruce Tree Planting**, Canaan Valley National Wildlife Refuge, meet at the office/visitor center at 9 am. Volunteers are invited to come out and help plant red spruce seedlings. Learn why we are restoring red spruce in our forest and then help us plant trees. Come dressed for the weather, wear sturdy shoes or boots and bring water. Lunch will be provided. For more information contact Dawn Washington @ 304-866-3858 or email [Dawn\\_Washington@fws.gov](mailto:Dawn_Washington@fws.gov).

Thursday, May 4, 2017: **Special Places Celebration**, 6:00 pm, Beni Kedem Ballroom, Charleston, WV, \$125.00. Celebrating the land we love and honoring those who protect it! Featuring a Farm to Table Dinner by the Bridge Road Bistro. Sponsored by the WV Land Trust.

Friday-Sunday, September 15-17: **WVHC Highlands Conservancy 50<sup>th</sup> Anniversary Celebration and Conference**, at Canaan Valley Resort State Park. Lodging or camping options are available. Save the Dates. More info will come.

### An Old, Timely Word from Julian

The coal interests take our coal almost free of taxes. They pollute our air and streams and seduce our politicians. Coal barons don't build anything more lasting and beautiful than a rusted out coal tipple or a mountain top stripped bare of its natural beauty. They ask us to consider them our number one asset.—Julian Martin

**Julian wrote this in 1965; at the time he was living in Morgantown and working for West Virginia University as the foreign student advisor. It has never been published.**

## Big Mining Continues

*Contrary to what many believe, Mountaintop Removal and other large scale mining has not disappeared from southern West Virginia.*

*Ask the brave folks at Coal River Mountain Watch (CRMW) and they will tell and show you how Mountaintop Removal still haunts their hometowns and communities in Boone and Raleigh Counties.*

*Below is a recent plea from Vernon Haltom, Executive Director at CRMW about events we should all be aware of and respond to.*

*Cindy Rank*

### Speak up now to stop a 2,000-acre mountaintop removal mine before it starts!

We have a chance to revoke a 2,000-acre mountaintop removal permit issued in 2008, now owned by Alpha Natural Resources. Though the permit was issued years ago, no mining activity has occurred yet on this portion of Coal River Mountain. Federal law states that a permit "shall terminate" if mining has not begun within three years of the permit being issued.

Coal River Mountain Watch requested that the West Virginia Department of Environmental Protection (DEP) terminate the Eagle 2 permit, prompting the department to instead retroactively grant Alpha an extension, in clear violation of the law. The federal Office of Surface Mining Reclamation and Enforcement (OSMRE) affirmed the DEP's action.

Fortunately, a federal judge has now vacated OSMRE's decision, and compelled the agency to reconsider terminating the permit, in light of evidence spelled out in a lawsuit brought by Coal River Mountain Watch. As part of this process, OSMRE has asked the DEP for supplemental information.

West Virginia's DEP, now under a new administration, can correct the mistake of their predecessors and terminate the permit. Please join us in contacting the Secretary of WVDEP, Austin Caperton, to urge him to correct this mistake, and to uphold his agency's mission to promote a healthy environment.

Vernon Haltom

Executive Director

Coal River Mountain Watch

[Go to [www.crmw.net](http://www.crmw.net) for more information]

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

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# What is The Cost of Subsidies?

By Larry V. Thomas

Senate Bill 16 (SB16), proposing to repeal West Virginia Code Section **§11-6A-5a** has been introduced in the legislature and is making its way through the House, Energy, Industry and Mining Committee. SB16 proposes to repeal the statute that sets up a salvage value tax benefit to owners of industrial wind turbines used in industrial wind energy projects. It costs the state about \$8,000,000 in annual revenue because the industrial wind turbine units are not assessed and taxed at rates of other similar property. SB16 proposes to entirely repeal the statute so owners of turbines would be taxed on the assessed value of the turbines.

Obviously, the industry is against the proposal, although they have not identified other revenue-producing benefits of having the industrial wind turbines on property in West Virginia since the power generation is primarily for other states, and the renewable energy credit certificates the companies receive for the turbines are used for other states, or sold for profit.

What is particularly concerning is the now cumulative impact to West Virginia taxpayers, provided since July 2007 to industrial wind energy projects, of reducing the taxation of industrial wind turbines in accordance with the provisions of **§11-6A-5a**.

While public policy has helped the emerging renewables market, there is a growing realization, all over the world, that subsidies have outlived their usefulness and may be harmful in their current form. The industrial wind industry insists subsidies are an effective tool to keep electricity rates low. In fact, it is nothing more than a cost imposed on all taxpayers in order to accommodate development of a politically well-connected, high-priced, low-value resource that cannot meet our electric capacity needs.

Subsidies are often credited for most of the growth in the industrial wind energy sector but attributing market activity to subsidies is overly simplistic and fails to consider other crucial factors driving development. When evaluated against key economic and environment criteria, the cost of the subsidies have proven excessive and the benefits to West Virginia taxpayers minimal and even nonexistent. If subsidies were to expire, the economics of

the industrial wind energy industry would shift to States with renewable mandates. Power markets will ultimately confront the real cost of industrial wind energy, and price it accordingly. The overall impact on the industrial wind energy industry would be far less severe than proponents claim.

After over 24 years of the Federal Production Tax Credit (PTC) and various state subsidies, the arguments supporting industrial wind energy subsidies no longer make sense.

**High Cost: Since adopted in 1992, the cost of the PTC for industrial wind energy has ballooned from \$5 million/year in 1998 to over \$1.5 billion annually today. In many regions of the country the PTC now equals, or is greater than, the wholesale price of power. Even if the PTC were to sunset, taxpayers are still obligated to cover nearly \$10 billion in tax credits for wind projects built in the last decade. This is in addition to the \$15 billion debt for wind projects eligible under Section 1603 grants.**

**Here's the math. In 2016, according to the New York Independent System Operator, the average wholesale price of electricity in the state was \$34.28 per megawatt-hour. NYSEDA, which gets most of its funding from surcharges added to New Yorkers' electric bills, will pay \$24.24 per megawatt-hour for the electricity produced by two new wind projects being built by NextEra and Invenergy.**

**The federal production tax credit is worth \$23 per megawatt-hour. The total of those two subsidies: \$47.24 per megawatt-hour.**

**That means the wind subsidies will exceed the 2016 average wholesale price of power in New York by \$12.96.**

**The industrial wind energy industry is a mature industry; No need for subsidies - The industry is no longer an infant industry, but a mature one. As of June 30, 2015, 67,870 MW of wind were operating in the U.S. There is no need for further subsidies.**

**Subsidies are skewing energy markets –** Industrial wind energy demands significant revenue streams from sources outside of the energy market (i.e. the PTC and RECs), enabling project owners to undercut competition in wholesale markets

by artificially driving down the price of energy. This predatory pricing, which harms the economics of our reliable generators, is directly tied to government subsidies. There is no justification for a government program that harms otherwise healthy, competitive businesses.

**Other factors advancing wind development:** The industry insists it's at risk of a slow-down without subsidies. This view ignores other crucial factors driving development including state mandates and natural gas prices. It is not possible given available data to identify the extent to which subsidies have contributed to growth in the sector. In fact, demand for electricity produced by industrial wind energy facilities has eroded recently due, in part, to states meeting their renewable mandates. Lower natural gas prices further reduced industrial wind's attractiveness as a 'fuel saver'.

**Job losses:** Most of the jobs are temporary construction positions requiring peak levels of development year-after-year to maintain current levels. Attempts to attribute job creation to subsidies must be tempered with corresponding job losses due to higher renewable energy prices.

**Environmental benefits:** Industrial wind energy is an unpredictable, variable resource that cannot be relied on to serve load. Its primary benefit is in reducing U.S. electric carbon emissions. Subsidies are high-priced vehicles for very questionable reductions of CO2 emissions.

**Conclusion:** The key question is whether the benefits of subsidies for industrial wind energy are worth the cost. 24-year old subsidies are expensive, inefficient, have failed to produce net-job increases that are sustainable, and the cost applied per ton of CO2 is more than the market price of carbon. The U.S. power market has undergone significant change since subsidies were first adopted, including deregulation. It is not possible to isolate the extent to which subsidies contribute to the industrial wind sector growth. Without the subsidies, project economics would shift to states with RPS policies. The value of renewable credits might rise in response, but power markets will ultimately confront the real cost of wind energy, and price it accordingly.





# THE CENTRAL APPALACHIAN SPRUCE RESTORATION INITIATIVE

## 2016 Highlights

### YEAR-END REVIEW

*We are pleased to share highlights of the Central Appalachian Spruce Restoration Initiative!*

CASRI is a diverse partnership of private, state, and federal organizations who share a common goal of restoring historic red spruce-northern hardwood ecosystems across the Central Appalachians.

CASRI envisions a functioning red spruce-northern hardwood forest ecosystem with the scale, connectivity, and maturity to support the natural communities dependent upon this ecosystem. To achieve this landscape scale restoration, CASRI works on both public and private lands, promoting the health of forested, riparian, and agricultural lands, as well the multitude of plant and animal species which make their home in the central Appalachian mountains.



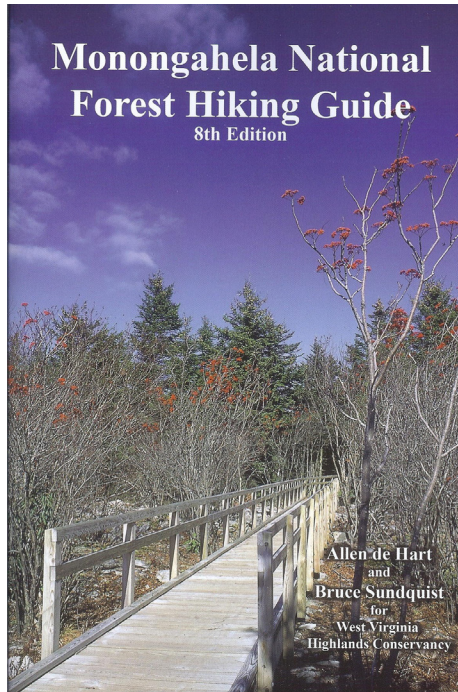
Students from WVU volunteer to plant red spruce seedlings at Canaan Valley National Wildlife Refuge. (PC: Dave Saville)

### MAJOR HIGHLIGHTS

*2016 proved to be yet another year of impressive accomplishments for CASRI:*

- Over 1,798 acres of high-elevation lands placed on a trajectory to develop into functioning red spruce ecosystems, bringing our restoration total to over 5,794 acres.
- 51,850 red spruce seedlings and 14,760 native plants planted on high-priority conservation and restoration sites.
- 530 acres of early successional habitat created.
- 538 acres of red spruce forest protected from damage by livestock use.
- Over 544 acres of non-native invasive species treated in high-elevation red spruce systems.
- Over 300 volunteers dedicated their time to restoring red spruce habitat and planted just shy of 10,000 trees.





## 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:  
**West Virginia Highlands Conservancy**  
 P.O. Box 306  
 Charleston, WV 25321  
 OR  
 Order from our website at  
[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:

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

Price: \$20.00 from the same address.

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



# West Virginia Lax in Stream Cleanup

By John McFerrin

The United States District Court has ruled that West Virginia was lax in its duty to beginning cleaning up impaired streams and that the United States Environmental Protection Agency has violated federal law by not requiring West Virginia to be more diligent.

## How the Clean Water Act works

The goal of the federal Clean Water Act is, not surprisingly, clean water. There are two main ways that the Act accomplishes this. The first, and most prominent, is by limiting the amount of polluted water that goes into streams. This case is not about permitting failure or violations of limits on discharges. It is about the second tool that the Clean Water Act provides.

The second is by identifying the streams that are already polluted and figuring out how to clean them up.

Like everything else lawyers, bureaucrats, or both ever touch, this tool has its own jargon: Total Maximum Daily Loads, Water Quality Limited Streams, and Pollutants of Concern. Buried within the jargon was a pretty simple duty: figure out what streams are messed up, figure out how they got that way, and figure out what we are going to do about it.

Now the West Virginia Department of Environmental Protection has been scolded by the Federal Court because it did not do its duty to figure out what streams are messed up, etc. The United States Environmental Protection Agency is also in trouble because it stood by and allowed West Virginia Department of Environmental Protection to shirk its duty.

## How we got here

The Federal Clean Water Act was passed in 1972. West Virginia was supposed to begin looking at what the Act calls “impaired streams” and coming up with plans to correct the problems. They were supposed to finish by 1985. If West Virginia didn’t do it, then the Environmental Protection Agency was supposed to step in and do it.

In the next twenty years, West Virginia’s progress was meager. Finally, in the mid-1990s, the West Virginia Highlands Conservancy, the Ohio Valley Environmental Coalition, and three individuals sued the Environmental Protection Agency, asking that it be required to step in and do what

it was supposed to do to identify impaired streams and make plans to fix them.

Even while the suit was pending, the EPA and West Virginia sprang into action (more or less) and started doing these plans (called Total Maximum Daily Loads or TMDLs).

Among the streams and pollutants added to the list of pollutants we had to address was dioxin in the Ohio River. The recognition of dioxin as a pollutant of concern in the Ohio River had an impact upon the controversial pulp and paper mill that had been proposed for Apple Grove. This recognition was one of the factors which persuaded the West Virginia Environmental Quality Board that the pulp mill proposed for Apple Grove should be required to operate without discharging dioxin into the Ohio River.

In the fall of 1996, the litigation was settled. Under the terms of the settlement, EPA and West Virginia were to prepare lists of impaired streams and plans to fix the problems. The settlement contained a list of streams that would be done first and a commitment to complete the lists within ten years.

Although it has not done all that it was supposed to do under the settlement, West Virginia now has a substantial list of impaired streams. The list is reviewed and updated from time to time and streams are often added to the list.

## The controversy in this case

This case addresses a specific type of impaired streams: those who are impaired by what is called “ionic pollution” or high conductivity. West Virginia has between two hundred and six hundred such streams, depending upon who is doing the estimating.

Conductivity is a measure of the ability of water to pass an electrical current. Totally pure water is a poor conductor of electricity. The more substances that are in the water, the greater the conductivity. Conductivity is useful as a general measure of stream water quality. Research has shown that high conductivity can make a stream inhospitable to aquatic life, making the stream biologically impaired.

Since 2012, West Virginia has not been considering conductivity when it prepares lists of impaired streams and

plans for cleaning them up. It did this largely because in 2012 the West Virginia Legislature directed it to not do any more lists until it had developed a new method of determining whether a stream was biologically impaired. Such a direction would be beneficial to the coal industry. The West Virginia Department of Environmental Protection has been “working on” developing a new method since then but has not made much progress. It has offered no estimate of when it might finish.

The plaintiffs (West Virginia Highlands Conservancy, Ohio Valley Environmental Coalition, West Virginia Rivers Coalition, and Sierra Club) contended that submitting lists that do not include streams impaired by high conductivity is the same as submitting no lists or cleanup plans at all. EPA has a duty to approve or disapprove the lists West Virginia has submitted. Since the lists submitted do not address conductivity, it could not approve them. If it does not approve West Virginia’s lists, EPA must step in and do West Virginia’s job or preparing lists of impaired streams and cleanup plans.

The Court agreed with the plaintiffs. It concluded that West Virginia had been lax in creating the legally required plans to clean up impaired streams. It also ruled that the Environmental Protection Agency had been equally lax in its oversight of West Virginia.

## What happens next

In the past, West Virginia has submitted clean-up plans (TMDLs) for some streams, just not the ones that are biologically impaired by high conductivity. EPA is required to either approve or disapprove the submissions or—in the case of the biologically impaired streams—the non-submissions of clean up plans. The judge ordered EPA approve or disapprove the plans within thirty days. From the tenor of the decision, it is apparent that the judge thinks that EPA should disapprove the plans (or non-plans).

Once this happens, the EPA will have a duty to step in and write the necessary clean-up plans. If it does not do so, there will be more litigation seeking to require it to do so.

The other possibility is that EPA could appeal this decision. Then it is back to court for more arguing, etc.



## A Bear Was There

Donna Weems  
September 14, 2016

The dry spell has lingered  
Moisture from the soil is gone  
The goldenrod wilts, yellow flowers  
still brilliant on their  
drooping stalks

The odd torrent of rain  
from a stray thunderhead  
runs off the surface

Worms, salamanders, sow bugs and beetles  
move with the  
retreating moisture under  
large rocks and  
dead stumps

Jon and I check on the baby red spruce trees  
in the field  
ferns and  
grass now brittle

We notice a large rock has been  
moved and laugh  
at this anomaly

Until we notice  
every large rock  
in the field has been  
moved



In anticipation of Earth Day (April 22), we offer one of the posters from the original Earth Day in 1970. Thanks to Marion Harless for finding this and calling it to our attention.

## Insider View of West Virginia Highlands Conservancy Marketing Machine

Each month in *The Highlands Voice*, and on our website, we offer for sale a variety of t-shirts, hats, etc. For the offerings in the *Voice*, we are fortunate to have a variety of models for our offerings of infant and children wear. If nothing else, it gives readers a monthly shot of adorableness. Even if readers are worn out by serious stories and an occasional environmental setback, there is always the hope that comes from a picture of a child.

The models are friends and relatives of members. Those friends and relatives send in the picture of the child in the t-shirt or onesie and it goes in an upcoming issue. Most of the pictures have come to our President, Cindy Ellis, who apparently has extensive contacts in the ACC (adorable child community).

We now have about fifteen models. The editor keeps a list of who was in the *Voice* when; the same model appears about every fifteen months. A new photo usually goes in the next issue and everybody else moves back a month.

The *Voice* has been featuring models for almost five years now. Many of the infants in the pictures are now tots, the tots are now tykes, etc. It has not been long enough for any of the tots or tykes to have become teenagers. We can confirm this from the fact that any teenager worthy of the name would die of embarrassment at the thought of his or her baby picture being published and there have been no reports of teenagers suddenly and unexplainably keeling over.

We have not been so lucky with the polo shirts. Once upon a time we had a picture of Cindy Ellis and Jim Solley posing in the shirts, looking quite pleased with their purchases and life in general. Then Cindy decided to pursue a career path other than supermodel so she asked that her picture not be used any more. Since she and Jim were in the same picture, that ended our supply of polo shirt models.

Should you or your infant, tot, tyke, etc. wish to be a model for either the children's clothing or the polo shirt, send a photo of yourself or of the infant, etc. wearing the item to [johnmcferrin@aol.com](mailto:johnmcferrin@aol.com) and then look for yourself in an upcoming issue.

# 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