

# THE HIGHLANDS VOICE

Published monthly by the W. Va. Highlands Conservancy

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September 1982

CRANBERRY BACKCOUNTRY

## Bogged Down

AS OFFICIALS PASS THE BURDEN OF ANALYSIS AROUND, ENVIRONMENTALISTS FEAR TIME RUNNING OUT FOR CRANBERRY BILL

If the Cranberry Bill is to pass before Congress adjourns sometime in October for the fall election, West Virginia Senators Robert C. Byrd and Jennings Randolph will have to work closely with the Senate Public Lands and Reserved Water subcommittee to get the legislation ready for a vote of the full Senate, according to Leslie McCarty, a Highlands Conservancy member who has worked many hours to get the Cranberry Backcountry protected as a Wilderness Area.

Both Byrd and Randolph expressed concern in written statements to the Aug. 12 subcommittee meeting that the economic impact of the bill on Pocahontas and Webster counties had not been adequately addressed.

In addition, Randolph want-

ed the subcommittee to investigate the proposed compensation for owners of mineral rights in the area.

The question of the mineral rights exchange was eased on Aug 12, when CSX Corporation, who owns the mineral rights under the Cranberry, submitted written testimony in support of the bill. According to CSX officials, "We sent a letter to Senator Malcolm Wallop, chairman of the senate subcommittee, telling him the bill could be amended to limit the rights to be exchanged to only the federal lands lying east of the 100th meridian -- effectively keeping us from rights in Montana, Wyoming and Idaho."

"CSX has no interest in coal rights in the west, any-

way," said Woody Price, vice-president for government relations for CSX, "because our rail doesn't run there."

Wallace, a Wyoming Senator, and Senator James McClure of Idaho have been leary of a mineral rights exchange that would involve coal under federal lands in their western states, according to Larry George of the West Virginia Highlands Conservancy, who feels the wilderness bill came out stronger after the subcommittee hearing.

According to George, every local resident in attendance at

the hearing supported the wilderness bill, though some had reservations concerning tax compensation for minerals.

Speaking afterwards, George said, "Subcommittee staffers told me that they do not have the expertise or staff time to come up with a dollar figure on how much counties will lose in taxes in the long run, nor do conservationists have the expertise to do this -- it is up to Senators Randolph and Byrd to take the bull by the horns and get the financial analysis (Please turn to page 2)

WATOGA

## Fall Review

FIELD TRIPS, MOVIES AT CONSERVANCY'S FALL REVIEW

The annual fall review weekend of the W. Va. Highlands Conservancy will begin Oct. 1 at 6 p.m. with registration at the recreation building at Watoga State Park.

The two-day event planned by the Conservancy's highlands vice-president, George Warrick, includes field trips, speakers, movies, slide shows and socializing. Though the identity of the featured speaker is yet unknown, Warrick promises plenty of activity and urges those who play a musical instrument to bring it along.

According to Warrick, meals will be available at the Park Restaurant, which is remaining open to the public this fall. Participants can also cook at their campsite or in their cabin.

Limited dormitory sleeping is available in cabins, which Warrick has reserved. Reservations for these must be sent to George Warrick, 1709 S. Davis Avenue, Elkins, WV 26241, by Sept. 20. Cabin fee is \$18.00 for the weekend.

Warrick says campsites are

available in the park and other lodging is available in Marlinton motels and hotels (about a 45 minute drive from the park).

The Board of Directors meeting will be held Sunday morning beginning at 9:30 a.m. Anyone desiring to make a presentation at the Fall Review is urged to contact George Warrick.

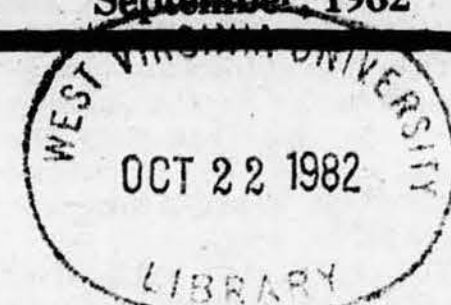
A registration fee of \$2 will be charged participants. For additional information contact George Warrick at 304-636-5896.

Conservancy president Jeanetta Petras of Fairmont asked that registration for the conference be made immediately. Child care will be available, and a form to indicate members' needs for such is included on page seven of this issue of the Voice.

Also available is a form for those who may want to help with child care. Either form should be returned to the Conservancy's Fairmont headquarters as soon as possible, Petras urged.

- ACTION IS NEEDED!!!!**
- WRITE** Byrd and Randolph, telling them we must have their active support for Cranberry
  - ASK** interested friends to write, also
  - MEET** with either the senators or their staffs when they are in the state or when you are in Washington
  - VOLUNTEER** to arrange a meeting, present a slide show, and pass out literature in your area  
— call Leslie McCarty 304-799-6097
  - CALL** your local newspaper editor and find out whether they will editorialize in favor of the bill

**TIME IS RUNNING OUT FOR THE CRANBERRY THIS YEAR!!!!!!**



## Bogged Down

(Continued from page 1)  
needed, and then ask the committee to amend the bill appropriately."

Commenting during a conference call about a week after the subcommittee hearing, Byrd indicated that the financial analysis would be up to the subcommittee to do, and that more investigation was needed before the bill could come before the full senate.

CSX officials said that "putting a dollar figure on the coal under the Cranberry is normally something that is done by the secretary of the interior after the bill is passed."

Testifying before the subcommittee their concerns about tax compensation to the local counties were Pocahontas County Commissioner Walter Helmick and Webster County Commissioner Joe Adams.

Helmick said an analysis shows the measure would cost his county \$27,000 in tax revenue annually, and more if the mineral values are reappraised in accordance with a state Supreme Court ruling requiring 100 percent assessment.

Adams said, "Our unemployment rate is 17 percent -- we have no future unless we can mine coal."

Other opposition to the bill came from Howard and Lawrence Deitz of Richwood, representing the Richwood Chamber of Commerce and the West Virginia State Isaac Walton League.

The Deitzes, who at one

point in time wanted the Cranberry Backcountry to be a proving ground for select tree cutting management, told the subcommittee that wilderness designation would decrease the diversity of wildlife and plantlife. Their remarks were countered by Roy Moose, a biology teacher garnered reports from plant and wildlife biologists around the country to discredit Deitz's theory.

Other residents of Pocahontas, Webster and Nicholas counties in attendance and pushing for the bill were: Marlinton counselor Donna Borders, co-owners of the Marlinton Motor Inn Natalie Austin and Charles Hankerson, Mental Health employee Richard Evans, editor of the Pocahontas Times Bill McNeel, Linda Elkinton of the mid-Atlantic region of the National Audubon Society and Peter Coppelman of the Wilderness Society.

Testifying in support of the measure on behalf of Governor Jay Rockefeller, was director of the Department of Natural Resources Dave Callaghan, who gave a "very supportive" report according to George.

Also testifying for the measure was Rep. Cleve Benedict, sponsor of the bill, and a challenger of Byrd's for a senate seat this fall.

Benedict said, "This bill strikes a balance between developmental and environmental interests." He urged the senators to support the bill, which passed the House June 14.

The mailing list has changed hands. If your address was incorrect this month, but was addressed correctly last month, it is probably due to an error in transcribing the mailing list. There is no need to bother the membership secretary if you find an error such as this. Simply send the coupon below to the Highlands Voice, P. O. Box 2362, Elkins, W.Va. 26241.

If your address has changed, please notify the membership secretary at the address on the form below.

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SUTTON \ SUMMERSVILLE

# Dam Shame

## HYDRO COMPANY'S DRAFT LICENSE APPLICATION ASKS FOR FINDING OF NO SIGNIFICANT IMPACT

Within 45 days Noah Corp., of Aiken, S.C. will submit draft license applications to the Federal Regulatory Commission (FERC) for hydroelectric facilities at Summersville and Sutton dams, with final drafts to be submitted by November.

Noah proposes to install power stations beside each dam and use the lake outflows to produce electricity. An 85-95 megawatt facility costing approximately \$67 million is proposed at Summersville, while a 14 megawatt facility costing between \$12 and \$14 million is proposed at Sutton.

The town of Summersville is the official applicant there, while the town of Gassaway is the official Sutton applicant.

The Army Corps of Engineers, which built and operates both dams for flood control and other purposes, has a hydroelectric proposal of its own in the works at Summersville. The COE's facility would be much bigger and more costly from a power production standpoint than the Noah facility.

Noah Corp.'s president Howard Hickey contends that the proposed facilities would not adversely affect either lake or

river downstream. He said they would not require any additional water releases, but would only change the times of discharge.

Hickey also said that Noah wants the COE to release flood water more slowly to lengthen the hydroelectric capability. He said tailwater fishing would not be adversely affected at either dam, and that lake fluctuations would not be significant.

But officials at the State Department of Natural Resources have expressed concerns that the projects would adversely affect the lakes' environments.

"The company says stopping

all discharges from the reservoir for 2-3 days at a time will cause minimal or no impact; we feel it will cause a significant impact," said DNR wildlife biologist Jim Rawson.

"In the case of Summersville, the company intends to raise the water level from 1.5 to 3 feet per hour, which they say will have a minimal impact; we feel that increasing the water velocity and amount of water at that rate will make it impossible to use conventional types of fishing equipment," continued Rawson.

"The corporation says that flows of water that are good for white water rafting are also good for fishing; we say not true.

"At Sutton, the corporation intends to release all of the water from the bottom of the reservoir which is very cold; we suggest using a multi-level outlet structure so the fish can continue to spawn -- the fish won't spawn if it gets too cold."

In Noah's Sutton Dam draft license application to FERC to dispute a 1968 study saying the Elk River is not fishable above 1,000 cfs, a representative of Noah Corporation visited Sutton Dam tailwater to observe fishing. He reported, and Noah wrote this up in their draft license application, that "the temperature was in the high 50s and the sky was overcast; it was a pleasant day following recent rains, but not a prime day for recreation. 22 fishermen were fishing in the tailwater area near the training wall and downstream along the bank. The flow was 1137 cfs. Two men were fishing from a boat about a half mile downstream. Questioning revealed the fishermen were after trout. Obviously the conclusion reached by the 1968 study that the river is not fishable above 1,000 cfs is erroneous."

It is hard to believe that Noah Corp. would use a one-man, one-day trip on the tailwaters to dispute a long-term DNR study on general fishing conditions on the Elk River, but that is what is contained in their report.

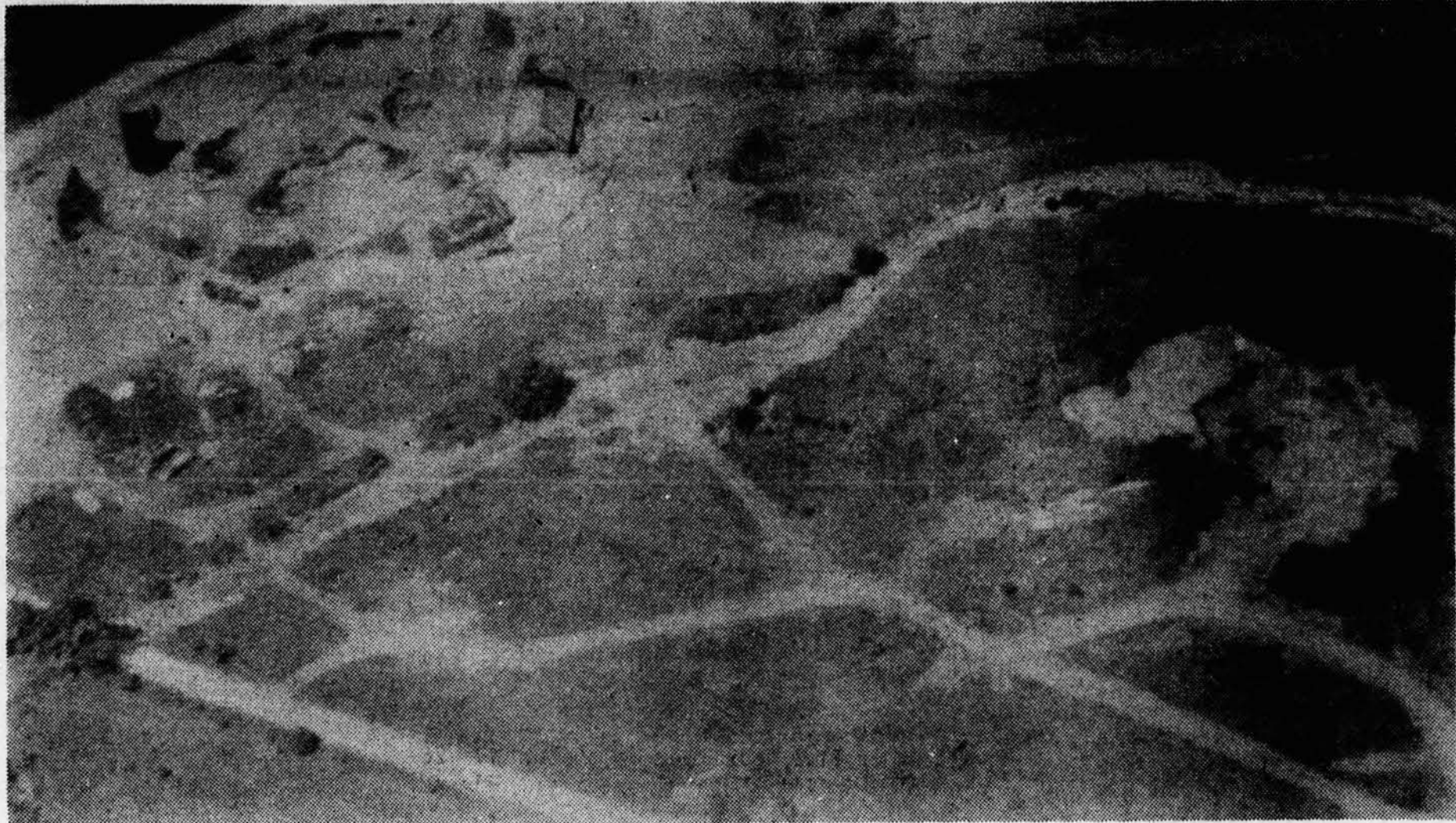
"There is a disagreement on the degree of impact, since we have worked with the river and reservoirs all these years, we feel our assessment of the impacts are correct," said Rawson.

In addition the greater retention of storm waters was not adequately or correctly addressed by Noah, according to Rawson, who says the retention will cause increased silt deposition in the reservoir, which will cause a longer period of turbid discharge -- and you can't fish in muddy water.

SNOWSHOE

# Mudshoe

## TURBID WATERS IN SHAVERS FORK LINKED TO SNOWSHOE



"Two major sources of turbidity in the Shavers Fork are access roads above Cheat Bridge on Mower land that are not used for hauling coal over them so they are not bonded, and Snowshoe," said Don Phares, a cold-water fisheries biologist for the Department of Natural Resources. "There is no doubt the situation is damaging to the people's interest," said Phares, "but there is no law on the books that defines what is too turbid."

"There are no specific standards for turbid water," said Phares, adding, "And if you think the Shavers Fork has problems, you should take a look at the Elk River whose tributaries are Cup Run and Big Spring Run off of the same mountain."

Officials at Snowshoe say they have little hope of reseeding the new ski runs at Snowshoe this year. "We listen to what our agronomist tells us, when he says grass will grow, we plant it,"

said one official, adding, "I doubt the slopes will be finished in time to plant seed this year, but we have plenty of hay to catch the runoff."

Phares spoke of ski resorts in Vermont, saying, "Grass acts as an insulator, holding snow off the ground and causing more man-made snow to be needed. You'll find very few ski resorts that plant grass on their slopes, they usually mulch them with sawdust or chips."

Phares concluded, saying, "As far as Shavers Fork is concerned, everybody is guilty -- the stream is too acid, warm, turbid -- and everybody that uses it contributes to its condition. Even a road that meets quality standards can affect the condition of the Fork. And there's no way to treat it like we can treat a stream that has only a few tributaries, because the Fork has too many waters feeding it."

ELKINS

# Gas In The Ground, Mud In The Streams

ONE TENTH OF AMERICA'S NATURAL GAS RESERVES IN W V - NINETY PERCENT OF STATE UNDER LEASE FOR OIL AND GAS NOW

BY SALLY KEENEY

Repeating the old saying, "Once stung, twice shy," West Virginia Governor Jay Rockefeller said in a Sept. 1 interview that "increased activity in the area of oil and gas drilling will soon make the people aware of the problems associated with leasing."

Saying, "More legislation will be introduced in the next session in this area," the Governor would not commit himself to pushing for the rights of surface owners as he is now pushing for the tax limitation bill.

Rockefeller, referring to the 400 percent increase from 1980 - 81 when drilling permits rose from 1,000 to 4,000, said there has been a "leveling off or a downward trend in the past six to eight months."

"The state would have to see if the oil and gas drillers are going to sustain their growth rate before we would increase the size of the Office of Oil and Gas of the Department of Mines," said Rockefeller.

"The state has no plans now to increase the number of oil and gas inspectors," said Rockefeller, adding later, "It is the responsibility of the land and mineral owners, working with state agencies, to make sure the terms of the lease are carried out clean and well," he said.

The Office of Oil and Gas was divided this year into two parts: shallow - directed by Ted Streit (wells to 6,000 feet) and deep - directed by Tom Huzzey (any well deeper than 6,000 feet).

There are only 12 inspectors for the entire state for shallow wells, which comprise over 90 percent of the state's drilling according to oil and gas inspector Robert Stewart who serves a 12-county area.

"Barbour and Upshur counties had over 500 new drillings in the last five years, and Randolph has had over 400," said Stewart, adding, "If you buy the surface and not the minerals, you can expect to have somebody come and drill a hole in your backyard and cry because there is nothing you can do about it except sue for damages."

"And even then it's hard because the gas companies say, 'We got a lawyer we can pay 12 months out of the year and we'll just law you til you quit trying,'" said Stewart who worked for gas companies 25 years before he became an inspector for the Office of Oil and Gas.

All inspectors must have worked for a private company in

their field for at least 10 years according to Stewart, who "started out with a contractor when he was just old enough to leave home."

Stewart says he feels that 90 percent of the people who have gas wells on their property are happy, because they get free gas; and 75 percent of the wells are out of sight of homes. "Only about 2 percent of the people are unhappy -- a lot of the calls I get are from people whose land is near a well, and their only recourse is to sue for damages," said Stewart.

Stewart, who has made 50-100 findings of violations on 8-10 different companies over the past five years, says the biggest problem is getting people to reclaim the land.

"Most of the time a company will react to a finding within a week," said Stewart, who added that steep land is more likely to cause a wash from a pit (sediment pond used to hold refuse from drilling operations).

"The refuse is just biodegradable detergent mixed with water, dirt and air, because gas is lighter than air it rises and doesn't stay in the water," said Stewart who claims that even "after a spill the water in those streams is usually running clear the next day."

Talking about the problems Sandy Creek residents have incurred due to drilling (see August issue of the Voice) Stewart said, "Honestly, those people have nothing to worry about -- just a couple of little spills five miles above Rodd's house and seven miles above Haggarty's." Tom Rodd and Dave Haggarty have been spokesmen for a group of Sandy Creek residents, who live on the Barbour-Preston County line, upset by the drilling activity in their area.

"It amounts to mud in the stream, which could just as easily be caused by three inches of rain coming down off the mountain," said Stewart.

Dave and Donna Haggarty don't see it the same way as Stewart. "The detergent may be biodegradable, but that doesn't stop it from washing essential oils off of the beavers and other animals in Sandy Creek," said Ms. Haggarty.

"The DNR has set beavers all across this creek to repopulate the watershed, and the beavers depend on the oil on their hair to shed water to keep them from getting cold and sick. When the detergent is released it washes the oils off their hair, making them more susceptible to disease," said Ms. Haggarty.

"I'm not against drilling, who could be? -- there is a com-

pany drilling on land we are part owners of -- but I want them to do it right," said Ms. Haggarty, adding, "I am not against people making money, but we can't keep sacrificing our environment for money."

"The best news we've had in the last 10 months is that the company drilling on our land did not find enough gas to keep the well open -- it will simply be capped and reclaimed," said Mr. Haggarty, who has made daily visits to the well site on his land since drilling began, forcing the company to put in a second pit when the retaining wall on the first one was in danger of collapsing.

The Haggartys and other Sandy Creek residents are presently involved in litigation to get the Preston County Court to issue an injunction against the drilling companies to make them stop polluting.

"Over the past 10 months there have been 15-20 wells drilled within a two square mile area of Sandy Creek," said Haggarty, explaining, "Six of those wells were in a quarter mile radius -- of those six, four have had spills -- ponds have collapsed putting slurry into the creek that everybody waters their cattle out of and swims in," says Haggarty.

"We will pursue this litigation, because that's the name of the game. You see we had the police out here. They fined the companies, who paid hundreds of dollars in fines. But the companies don't care about a \$500 fine, because that is cheaper than doing the job right. I work for Massey Ferguson, and I know how much it costs to pay for a bulldozer and dozer operator. It is cheaper for them to do it wrong and pay the fine, than to pay for the big machinery and the operators' salaries to do it right," explained Haggarty.

"So far, all that our calling and water monitoring and fines has done is to make the companies just a little bit paranoid," said Haggarty, "but if we can get an injunction from the judge to make them stop if they are polluting, then if they violate the judge's order we can sue them for enough money to make them do it right."

"Water is a very forgiving medium, but it cannot handle what these companies want to dump in," said Ms. Haggarty.

Inspector Stewart maintains that "one of our biggest interests is water. Water control requires us to make sure roads built by the drillers are ditched as well as insuring that surface waters do not go into the pits and checking surface

pipes." (At a certain level in the drilling operation, they have to stop and put in a surface pipe to protect the coal seams and fresh water zones, explained Stewart.)

Yet the Haggartys were surprised to find the head of Eastern Overthrust (gas drilling) Company walk in with Stewart at a January meeting of Sandy Creek residents. "Stewart is being paid by our tax dollars to protect and support us," said the Haggartys, "he should be writing fines against this guy, yet he comes into the meeting practically holding his hand."

In addition to feeling that the oil and gas inspectors are pro-company, the Haggartys feel the oil and gas inspectors are against the Department of Natural Resources.

"If you can get the Department of Natural Resources to agree there has been a finding of pollution, the oil and gas inspectors might testify to the contrary," said the Haggartys citing a Taylor County case involving Fox Drilling in which they say inspector William Blosser testified contrary to DNR inspector Sam Perris's testimony about the water quality in the Valley Falls watershed.

In addition to the lack of responsibility and the poor techniques used by drillers, the Haggartys see the inequality of payments as another point of contention. "Shallow gas wells pump out of a 200 acre area, many times adjacent land owners to a drilling site get nothing for the gas that must be being pumped out from under their property," said the Haggartys.

Using their own case as an example, the Haggartys explained that if their well had produced, adjacent land owner Waldo Phillips would have been paid nothing for the gas that they say would surely have been pumped from beneath his land, since the well site was only a little over 500 feet from the property line.

Another problem with payments was noted by Brad Talbott the owner of three gas wells on the Talbott Road in Barbour County. "I think most of the gas companies are pretty straight with ya', but there's no way to tell if they are cheating," said Talbott, who reads his well meters weekly to see how much gas the company is pumping out of his wells.

"I can tell you one thing, if I was going to lease again I would do things different," said Talbott, explaining, "You can drill a well every 1,500 feet -- if I was doing it again I would

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section off my acres into plots and have four times the number of wells."

Talbott, who says he doesn't have a gripe with any well drillers," exclaims, "There should be a law passed that makes every surface owner with a well on his property get free gas."

The well that supplies Talbott with free gas is on land whose surface rights are owned by Talbott's brother. "I thought when I signed the lease that my brother would get free gas, but I was wrong," said Talbott, adding, "You should talk to my brother, if you want to talk to someone who has a gripe with the oil and gas companies."

Instead I talked with C. L. Moss, a Randolph County resident who said in advertisements in local newspapers that his rights as a surface property owner have "been totally ignored by J and J Enterprises and S.W. Jack Drilling Co.; property including timber have been destroyed against my protests; and numerous promises from these companies but no action to date."

Moss, who had to buy the right to "free" gas from the mineral owner, had two wells drilled on his property by J and J since 1980.

"Within a very short time after the ads came out in the papers, the company had a lawyer up here, and I told him I wanted an apology from the company in writing and a payment for the damages they had done to my property," said Moss, whose problems are now being rectified by the company. "They haven't finished yet," said Moss, "but I have every faith that they will do what that lawyer told me they would, and I'm sure I'll get my apology in writing."

"I won't say anymore about it in the newspapers since the company is settling up, but I will tell any land owner in detail all the problems that I have had with this drilling company," said Moss, who has dealt with other drilling companies "with satisfaction."

Department of Natural Resources Director Dave Callaghan says the DNR has several cases pending in the courts, but many contentions are concluded with just an intent to suit.

"There are water quality problems associated with drilling throughout the state," said Callaghan, who sees "no reason why the land can't be revegetated and reclaimed within days or a couple to three weeks after the drilling operation."

"The heaviest drilling is in the central portion of the state in Barbour, Upshur, Braxton and Clay counties," said Callaghan, who also states that "drilling is tapering off right now -- for economic reasons I don't fully understand there is not the level of drilling there's been over the past two years."

Legislative representative for the Independent Oil and Gas Association, Thomas R. Goodwin, explains some of the economic factors, "There has been a softening of the price in crude oil, which has put number six crude oil in competition with gas. At the same time, gas suppliers are locked into old "take or pay" contracts (i.e., if they don't take the production, they have to pay for it anyway) making it economically impossible for them to buy from local drillers. I think this will be a short lived softening, though."

Goodwin spoke of the phenomenal growth rate of the gas industry in the state. "Production has quadrupled in the last four years with state Business and Occupation (B & O) taxes rising from less than \$10 million in 1978 to \$41.7 million in fiscal year '82."

"If that kind of growth continues by the late 1980s the gas industry could go over \$100 million in direct taxes paid for production. The gas price is going up, and the B & O tax rate on gas is the highest in the state at 8.76 percent."

Goodwin says there has never been an effort by the industry to lower the B & O tax rate.

Goodwin also spoke of the "growing pains" of the industry. "There are certain operators, who are not responsible, that our group is as opposed to as the environmentalists."

"The number of inspectors available to police or enforce the environmental laws are the same today as there were when the industry was just getting started," said Goodwin, adding, "Here we have an industry in the state with phenomenal growth, representing an annual investment in excess of a billion dollars, but there has been no like increase in the budget for staffing of oil and gas division."

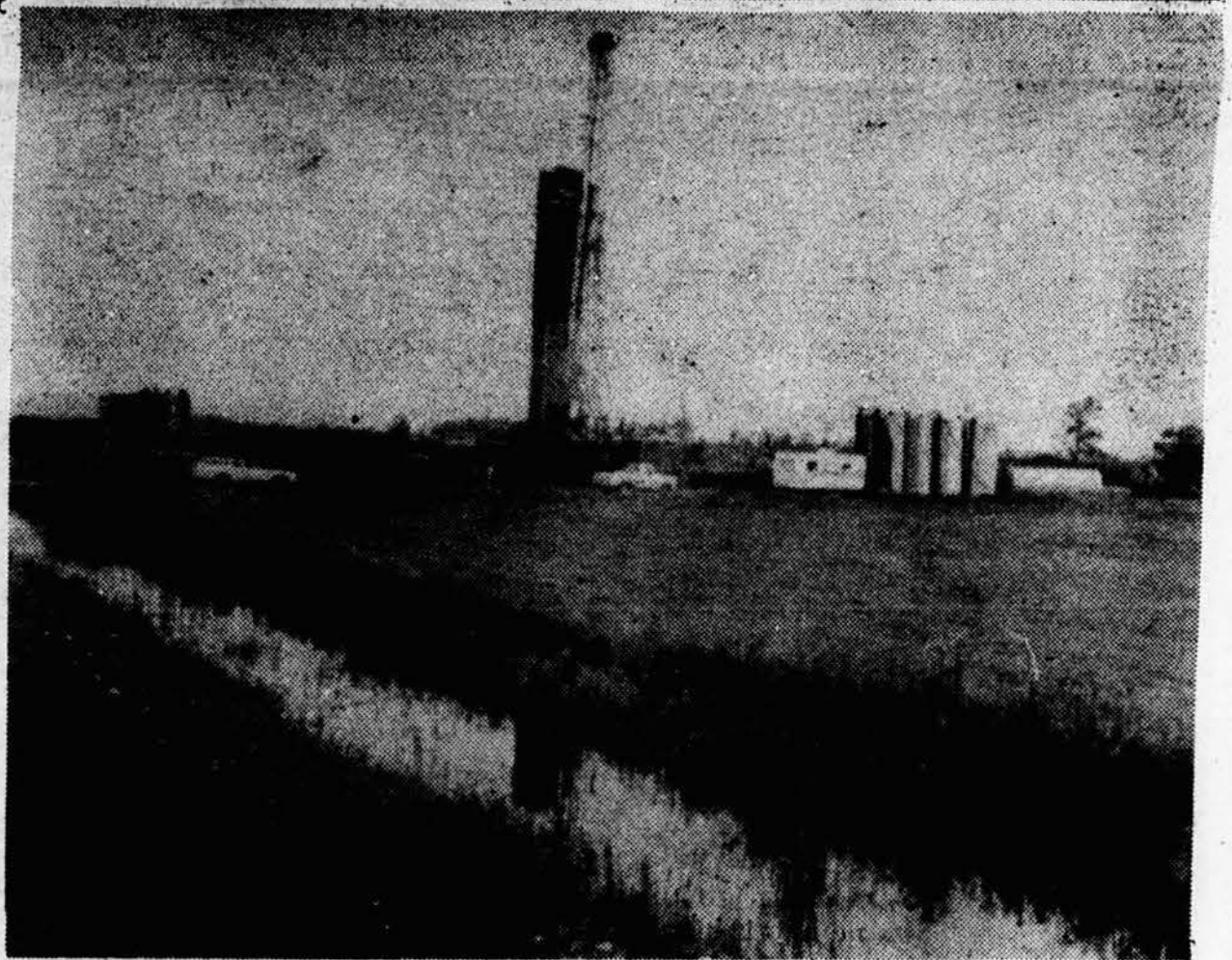
"They are greatly understaffed. With the same number of people doing their job, in the past several years it has become an extremely difficult job," said Goodwin.

According to Perry Bryant, an environmental and legislative co-ordinator for the Citizens Action Group based in Charleston, last year's legislation didn't deal with enforcement of the laws, but with enacting more stringent laws for surface owners and insuring a one-eighth royalty payment for mineral owners. Only the latter passed both houses to become law.

"The surface owners wanted three things, basically," said Bryant, "Notification of when a permit was being applied for on their property; administrative standing allowing them a part in the planning process of permit issuance; and a simpler mechanism for damages." Though this legislation passed the senate, it was remanded to committees in the house so many times that it failed to be voted on by House members.

"Under the present law oil and gas developers can do whatever is 'fairly necessary' to recover their minerals; and a surface owner has to prove negligence in order to get compensation for lost agricultural properties," said Bryant, explaining why new laws are

needed. "I want to make it clear, also, that the surface owners never wanted the ability to object to the issuing of a permit, itself; they only wanted a part in the planning process to assure that drillers located their roads in acceptable places on the surface owners' lands."



Cable tool drilling popular in the early 1920s has been replaced by rotary drilling as can be witnessed on almost any road in West Virginia (Talbott Road - top photo) and even from the golf course of Canaan Valley State park (bottom photo). One of the concessions acceptable to surface owners pushing for new W. Va. laws last year dealt with compensation to surface owners from drillers using the rotary method which causes more surface disturbance, particularly road building, than the old cable tool method.

"A surface owner who signed a lease prior to 1960 was to be compensated for damages resulting from rotary drilling; while those signing a lease after 1960 would receive no compensation because it would be assumed that they knew that rotary drilling would be used and that compensation would be built into the lease," said Citizens Action Group co-ordinator Perry Bryant, who was vocal in the 1981 surface rights legislation, which died in the house rules committee last session.

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ELKINS

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New  Renewal

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Address \_\_\_\_\_  
City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
Organization you represent(if any) \_\_\_\_\_

Membership category (see descriptions opposite)

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|--|--|
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WASHINGTON

# "Disaster"

INDUSTRY OFFICIALS ENCOURAGED, BUT ENVIRONMENT MAY SUFFER

Recent news reports that coal industry officials are "encouraged" by the Office of Surface Mining's (OSM) proposed changes in its regulations does not surprise members of the Highlands Conservancy.

In keeping with other regulatory revisions devised under Interior Secretary James Watt's direction, these proposed OSM rule changes represent what Conservancy member Rick Webb calls "a calculated attempt to override our basic environmental policy and disregard long-term values in favor of short-term economic interests."

According to John Purbaugh, Mining Committee Chairperson for the Conservancy, "The proposed revisions to OSMS's permanent program regulations are, quite frankly, a disaster from the perspective of conserving the unique and valuable surface areas within the Monongahela National Forest which lay atop privately owned coal reserves."

Purbaugh stated the mining committee's concerns in comments to OSM regarding the inadequacy of the agency's draft EIS analysis of the possible impacts the proposed revisions would have on "the lands unsuitable for mining" regulations.

His comments specifically addressed the proposed broadening of the definitions of "valid existing rights" (VER) to allow mining on land otherwise unsuitable for mining.

Under one of the proposals, it would no longer be necessary for a coal company to apply for permits prior to enactment of the federal law in order to meet the VER criteria.

Purbaugh contends that "the single most important point to be made regarding the EIS analysis of proposed revisions expanding the definition of VER is that it utterly fails to examine the potential impacts on wilderness, study, special use and recreation areas in the national forest to be effected."

Without this kind of in-depth study, he argues, the EIS's conclusions are unsupported and not in accord with the required guideline for EIS analysis.

The EIS takes a faulty analytical approach to the significance of lands affected by the proposed revisions, failing to consider the effects that will occur on lands described as containing "unique or highly valuable resources such as rare wildlife or unusual scenic views."

The EIS does not establish through a proper analysis that the environmental impacts of the proposed OSM regs can be categorized as only "speculative" or

"locally significant."

Purbaugh points out 270,000 acres of privately held minerals (mostly coal) in the Monongahela National Forest. "The current surface uses of much of this acreage most certainly can be classified as containing 'unique or highly valuable resources such as rare wildlife or unusual scenic views.' Included are the Otter Creek Wilderness Area; the Cranberry Backcountry and Laurel Fork Wilderness Study Area; Gaudineer, Falls of Hills Creek; Fisher Spring Run, Blister Swamp; a black bear sanctuary in the Cranberry area; the entire range of the Cheat Mountain salamander; Summit Lake and the Fernow Experimental Forest.

"All of the above examples, Purbaugh explains, "can be observed from in-office examinations of a forest map, the current forest plan, and a generalized coal seam map of West Virginia. OSM failed to conduct "even this superficial analysis" of the possible impacts.

Under the proposed OSM rule changes, a substantial relaxation will occur in almost every aspect of the Federal Surface Mining Control and

Reclamation Act.

The following outline of concerns is excerpted from comments submitted to OSM on behalf of the Mountain Stream Monitors Project. MSM relied upon and endorsed the comments on the full range of the proposed revisions by the Environmental Policy Institute.

The proposed rule changes would weaken requirements designed to isolate coal processing wastes (gob) from surface water runoff; a step that is necessary to avoid residual acid drainage. Three changes cited include a reduction of the required size of perimeter diversion ditches (while leaving unanswered questions about long-term upkeep); waiver of the requirement of compaction to 90% of dry density; and reduction of the required covering of the gob from four feet of non-toxic material to sufficient cover for revegetation which can be 12" or less (see Gob Forest in the August Voice).

A second area mentioned by MSM is the proposed limitation of the right to petition for designation of lands unsuitable for mining to those persons who

have a property interest affected by mining. Further, OSM proposes to exempt owners from this designation if the owner can demonstrate that there is no "reasonable" use of the property other than mining.

The third point of MSM includes two matters affecting the review of permits. The proposal to allow companies to make changes in permit applications after the public comment period has begun would make effective public review very difficult. The proposal to limit public access to coal seam data would impair study of acid-forming potential and potential for subsidence and hydrologic disruption.

The final area mentioned in the MSM reply is the proposal to eliminate the requirements for monitoring and protecting "marginal" aquifers. The reply charges that "OSM has ignored the critical contribution that 'marginal' aquifers make to the quality and quantity of the water in our streams. At low flow, and in periods of extended drought, the small but steady flow from 'marginal' aquifers may be the only water available to the stream.

WASHINGTON

## Let's Make A Deal

W. VA. SITES INCLUDED IN BIG FEDERAL LAND SALE

Time magazine calls it the 'Land Sale of the Century,' in their August 23 edition. Officials at the Army Corps of Engineers (COE) and the Department of Natural Resources call it Executive Order 12348 -- but whatever the name the result is the same -- some 60,000 acres of federal lands determined excess by the Property Review Board of the Reagan administration is proposed to be sold next year.

This includes 85 acres of West Virginia land around the Ohio River and 33 acres at the river's Belleville Locks, according to Conrad Ripley, a public affairs employee of the Huntington office of the Army Corps of Engineers, which manages 34 federal projects in West Virginia and four surrounding states.

The price for these properties has not yet been determined by the Property Review Board, which gave the Army Corp of Engineers 30 days to list all of their projects in an 11 category review sheet.

"I could tell you the price we valued the property at," said Ripley, "but it would be misleading because there wasn't much time given to the field offices to accumulate the data required

by the Reagan administration's Property Review Board (PRB).

"The prices the Corps gave to the PRB were not appraisals, but estimates of people trying to make a deadline -- the values the Corps gave were their best estimates -- they were not developed according to estimate appraisal procedures," said Jim Cayce, an attorney for the Directorate of Real Estate in the Chief of Engineers Office of the Army COE in Washington, D.C.

"The PRB did not give any procedure as to how the figures were to be arrived at," said Cayce, who added, "the review of the COE lands is a yearly function, but that isn't to say the administration couldn't ask for another review tomorrow -- it's really up to them."

When asked if some 38,000 acres surrounding West Virginia Beech Fork, East Lynn and Burnsville reservoirs, which are presently classified as "Corps Operated, Fish and Wildlife," could be considered excess or unneeded Cayce replied that though those properties had to be listed by the COE, they were not considered for sale at this time.

When asked if a sale of

lands termed excess by the PRB could be stopped by the state taking over the management of such lands by means of a no-cost lease agreement between the Corp and a state agency such as the DNR which has similar license-lease agreements on similar lands, Cayce replied, "It is the administration's policy to dispose of unneeded lands -- we wouldn't go out and lease lands for no purpose, just as a subterfuge to keep the lands on our account."

"But if the state had a requirement for lands in accordance with Congressionally authorized COE project purposes, it is conceivable that we would enter into a leasing agreement for lands that weren't considered excess," said Cayce who contends along with other COE officials that they know nothing of plans to sell or dispose of properties around East Lynn, Beech Fork and Burnsville lake reservoirs. The COE says those properties were listed in the 7th, 8th and 9th categories; and only properties in the 11th category fit the PRB's definition of excess or unneeded.

But a series of late March (Please turn to page 6)