



The

Highlands

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1118 SECOND AVE
MARLINTON WV 24954

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Published by the West Virginia Highlands Conservancy

Vol. 27, No. 1 - February 1994

Judge Rules LaRosa must treat water at Kittle Flats

or
JUDGE RULES LAROSA CAN'T BUY WAY OUT OF TREATING ACID WATER

by *Cindy Rank*

In a December 27, 1993 Decision, Administrative Law Judge David Torbett ruled that a deal cut by the state of W.V. in 1984 did not terminate the jurisdiction of the federal Office of Surface Mining (OSM) at a LaRosa Fuels' mine site at Kittle Flats; that the Cessation Order (CO) issued by OSM in 1992 was proper and binding, and consequently, LaRosa is required to treat water so that it meets effluent limits before discharging into Cassity Fork of the Middle Fork River in Randolph County.

WVHC Citizen Complaint

The Decision comes after two years of procedures resulting from a West Virginia Highlands Conservancy (WVHC) citizen complaint to OSM about acidic discharges from a LaRosa mine that drains into the Cassity Fork tributary of the Middle Fork River.

OSM responded to the WVHC complaint filed in December 1991 by sending the state of W.V. the required ten day notice to take action. Having already "settled" with LaRosa Fuels in 1984, the W.V. mining regulatory agency (now part of the Division of Environmental Protection - DEP, but in 1984, part of the Department of Natural Resources - DNR) chose not to take action, thus putting the complaint back in the hands of OSM.

On January 8, 1992 OSM inspectors made a site visit to Kittle Flats with representatives of WVHC. As a result of water sampling during that visit, observations and testing during the late '80's and further detailed technical investigations between January and March, OSM issued a Cessation Order (CO) on April 2, 1992 to LaRosa Fuels for failing to meet effluent limits and ordered the company to immediately install, operate and maintain adequate treatment facilities to treat the acid mine drainage emanating from its mine site to meet effluent limits.

LaRosa appealed the order and set in motion the lengthy administrative review that led to a four

day hearing in September of '92 in Morgantown, W.V. and eventually to Judge Torbett's decision dated December 27, 1993.

Over 90% of AMD in Middle Fork Comes From Cassity Fork

Once a fine trout fishery, and still a major player in the quality of the Tygart River and Tygart Lake, the Middle Fork has received intense scrutiny by federal and state agencies alike.

Several studies over the past few years have documented the detrimental impact mining has had on the Middle Fork River. One of the most concise of these reports was published in April 1992 by a federal and state cooperative effort to reduce the acid mine drainage (AMD) in the Middle Fork.

The report clearly shows that more than 90% of the acid drainage problem in the Middle Fork River is a result of untreated acid discharges entering Cassity Fork from minesites on Kittle and Whitman Flats.

The water supply for the town of Cassity has been destroyed and the lower 24 miles of the River are devoid of fish. The Middle Fork is dead as it flows into and through Audra State Park in Upshur and Barbour Counties and the water quality of the river adversely affects the ecosystem of Tygart Lake in Taylor County.

Despite AMD, W.V. Made a Deal With LaRosa in 1984

In September 1993 W.V. DNR refused to grant final bond release to LaRosa Fuels for its mines at Kittle Flats stating that there had been a disastrous deterioration in water quality. LaRosa appealed to the W.V. Reclamation Board of Review and a hearing was scheduled for May 10, 1984.

Cindy Rank, WVHC member and current President, travelled to Elkins W.V. for the hearing only to find that representatives of the company and the W.V. DNR had met the previous day, toured the mine site and were in negotiations even as the hearing was to begin. Shortly after that, the hearing was cancelled because an agreement had been reached.

In response to inquiries from Larry George, Commissioner of DOE (the mining regulatory agency in 1990), mine inspector Dan Lehmann wrote a letter that described what happened. The company "proposed to pay \$60,000... The state countered with the amount of \$250,000, which seemed appropriate to establish a water treatment facility." The negotiations that day took less than fifteen minutes. A formal written agreement, releasing LaRosa from all responsibility for Kittle Flats in exchange for \$115,000, was signed July 6, 1984.

In his letter to Commissioner George, Lehmann stated, "In retrospect, I have often questioned the appropriateness of the resolution prior to the presentation of all data to the Reclamation Board of Review."

L. Thomas Galloway and Walton Morris, lawyers for WVHC, wrote in the citizen complaint to OSM that the Kittle Flats agreement is "one of the most egregious enforcement failures which the agency (OSM) has confronted in its 14-year history."

Judge Says State Deal Doesn't Negate OSM Authority

Judge Torbett ruled that, at the time of the settlement, a finding by the state that LaRosa Fuels had fully complied with the requirements of state code "was not made because [LaRosa] had, in fact, met the requirements of state law, but was issued because the State feared the risk of losing its litigation with [LaRosa Fuel]. The fear of the State was apparently based on the possibility that the discharges from the site as a whole were equal to or better than the premined site."

He stated further that, "OSM has never accepted a test permitting toxic discharges from a site if they 'as a whole were equal to or better than premining' discharges. (see page 6)



Kumbrabow Cherries

Kumbrabow Update

There must be four feet of snow at the forest now. The court case is delayed again, with the new date set for March 3, 9:30 a.m. at the Judicial Annex of the Kanawha County Circuit Court, Judge King presiding. One interesting development is that the attorney (William Steele) representing the WVDOF has left the Attorney General's Office (at least through the Legislative session) and evidently won't be handling the case. Rumors have it he is working for Randolph County Delegate Joe "Mongold Lumber" Martin, developing bills to thwart our legal case.

Steele was also defending the state in the FOIA suit I instigated last August. I had requested from the Division of Parks the names and addresses of folks who stayed at Kumbrabow in the last two years. I had the idea of simply informing them of the impending timber sale, since the state was interested in letting no one know about it. Judge MacQueen, after much deliberation and delay told the state that they had to give me the names, which they failed to do. We sought another hearing with the Judge. The AG's office failed to have anyone show up. When contacted they said they weren't even aware of the suit, but wanted to work with us on this. The Judge signed an order to get me the names in 15 days or else. I'm waiting. I don't suppose the AG's office will be as confused when it comes to the Kumbrabow Timber Trial. As Always we need to pack the courtroom, if any of you can be in Charleston that day.

WVHC Spring Review

The date for the Spring Review has been set for April 22 and 23 at the Elk River Touring Center. See the next issue of the VOICE for all the tantalizing details. (I can't forget the blueberry pancakes and the hot tub, the caving trip, the fly fishing....)

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—from the heart of the mountains—

by Cindy Rank

**FIX THE FUND
DONT FUND THE FIX**

There's an echo in the land and it goes like this: "Fix the Fund... Fix the Fund... Fix the Fund."

It's been resounding in the halls of the W.V. state capitol and elsewhere for the past several years.

The slogan is simple, -- the solution obvious. There is not enough money in the special reclamation fund /bond pool to guarantee reclamation at forfeited mine sites. Some of those sites are pouring forth hundreds of gallons of poison acid water every day. More money from the operators and industry that profit from coal removal and stricter enforcement of the laws are needed to fix the problem.

But, as anyone familiar with the coalfields of appalachia knows, when it comes to coal, nothing is simple, the obvious is obscured and power politics reign supreme.

This time is no different. Neither industry nor regulatory agency is willing to accept its legal obligations and both are now offering another convoluted scheme to the state legislature.

Even the old DOE (Division of Energy) made an effort to expand the bond pool and encouraged the legislature in 1990 to increase the Special Reclamation assessment from one to three cents per ton of coal, and to include a recognition that some portion of the fund is to be used for water treatment.

Now that the tainted DOE has been transformed into the hallowed DEP (Division of Environmental Protection), the Director is quickly taking steps backward not only by refusing to admit the states' legal obligations and fighting federal insistance that the state fulfill those obligations, but also by performing a slight of hand and creating one illusion after another.

Instead of "fixing the fund" by increasing the assessment for the bond pool so that it can take care of land and water problems, DEP Director David Callaghan is asking the legislature to "fix the streams" by approving an assessment of five cents on each ton of coal mined to go to the newly created Stream Restoration Fund -- a fund which can be used for stream improvement where-ever, whenever, however, and for whatever purposes the Director sees fit without specific guidelines or any direct relation to forfeited mine sites or those portions of the law that govern activities at those sites.

As seductive as it sounds, the request "to fix the streams" is only subterfuge, a mere smokescreen to cloud the view of the problem, and to take attention away from the inadequacy of the Special Reclamation Fund and the unwillingness of DEP to accept its legal obligations with regard to that fund.

Indeed, such an increased assessment is needed, but it is needed to go to the Special Reclamation Fund, to be used for the legally defined purposes of reclaiming those mine sites that were abandoned after 1977.

In assuming primacy for the mining program, the state of W.V. (and David Callaghan as the head of the regulatory agency at that time) agreed to guarantee through the permitting and bonding system that any mine site after that time would be fully reclaimed so that the land and water would once again be at least as productive as it was before mining took place.

Part of the profits derived from coal removal were to go into a fund (bond pool/ Special Reclamation Fund) so that if and when mine operators skipped out before fully returning the earth and water to productive standards, monies would be available for the state to assume the responsibility it had entrusted to the operator.

The last fifteen years have been full of avoidance, delays and challenges to that agreement. Now in 1994, with the skills of David Copperfield, David Callaghan is dangling this latest bit of flimflam before our legislators in Charleston.

The Federal Surface Mine Act of 1977 set out standards and guidelines that clearly define coalfield accountability and responsibilities before during and after mining. The proposal currently before the W.V. legislature ignores those requirements and sets forth instead a sham public relations effort based on cleaning up someones favorite streams while ignoring others in less attention getting areas.

It is time to put an end to the deception and just do what is right:
-- FIX THE FUND !!!

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The Highlands Voice is published by the West Virginia Highlands Conservancy, P.O. Box 306, Charleston, WV 25321. Articles, letters to the editor and other information for publication should be sent to the editor. If possible, please send a floppy formatted for IBM. Save files as ASCII text.

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

Letters, Science and Timber Sales

from the AMC in NYC

Dear Director

The Appalachian Mountain Club (AMC) would like to get behind the important West Virginia issues, like Corridor H and Canaan Valley. The AMC has hundreds of members from Maine to Virginia. The AMC maintains travel lodges in National Forests, maintains trails, conserves land, air and water, and promotes outdoor education. The AMC would like to see Canaan Valley and adjacent wetlands such as the headwaters of Red Creek saved as a National Wildlife Refuge or National Forest addition. The Dobbins Slashings area and other National Forest additions should be added to the Wilderness Area. The AMC would like to see as much of the proposed land be added to the future Canaan Valley NWR. The AMC would like to work with the ski resort developers to minimize impacts on the refuge.

The AMC is also concerned about the integrity of Shavers Fork. We feel there is a

need to monitor the stream flow and water quality in Shavers and would like to work with Snowshoe resort in order to achieve a satisfying environmental balance.

The AMC feels the USFS should continue to add land to the Mon Forest from within the existing proclamation boundary. We need to work with local residents to create a stable economy while preserving the environment. I would further like to add that the AMC has a public policy of not opposing limited timbering in the National Forests as such.

Ms Mollie Beattie, the new director of the NWR system (USFWS), is from Vermont and will be very interested in eastern issues. The time to act is now. Please contact me on what the AMC can do to promote solutions to these issues, thanks!

Laurence Pitts
Appalachian Mountain Club
NY-NJ Chapter
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NY, NY 10021
212 628 3378

Absorbing abstracts

Flipping through the biology journals recently (and using the Ifotrac terminal at Marshall I came across these pertinent abstracts)

In the Journal of Wildlife Management (Oct. '90) A comparison of deer browse in Old Growth and recent clear cuts revealed that the browse in Old Growth was more succulent, had a greater percentage of leaves, and had a higher protein content. Tannin astringency was higher in clear cut browse. Because tannins decrease digestible protein, little protein was available to deer browsing in clear cuts.

In BioScience (Dec. '91) "White tailed deer populations in some parts of the eastern US are eight times what they were in the 1940's. research indicates that the deer's consumption of acorns in oak-hickory forests affects the ability of small mammals and birds to survive."

BioScience (Dec. '91) Sunflecks. These are brief random periods of radiation coming through the canopy. They are caused by the wind blowing leaves. Some of the understory plants appear to be adapted to optimal use of this sunlight.

Science August 27, 1993 The wolves of Isle Royale National Park, the subject of 35 years of study are dying out. Evidently inbreeding and a parvovirus have reduced the population to 13 (It numbered in the 40's at one time). Moose are at an all time high of 1900 and may do serious damage to the plant ecology.

Neotropical Migrants Need Help

Dear Bill;

There is concern about the disappearing "neotropical birds" that inhabit our yards and woods in summer. The Wood Thrush, whose familiar beautiful voice is perhaps most characteristic of the laurel thickets of our deepest woods, is one also.

We also need winter bird counts at our feeders. We can not get too records. You might just count numbers by species on any day at any hour for any interval. Keep a record then in the spring send it to DNR, Elkins, "Non-Game" program (PO Box 68 26241) Or write to them for a more valuable systematic way of counting and reporting.

Don Gaspar

Federal Affairs

Bryant Bill gets 81 Cosponsors

Also known as H.R. 1164, this is the bill that bans clearcutting in our National Forests. It also prohibits the building of new roads in roadless areas. The bill mandates managing the forests for Biological Diversity. The National Sierra Club and Audobon have endorsed the bill. Neither Mollohan, Wise, nor Rahall are sponsors at this point. The WVHC has not yet got around to endorsing it. Call or write your the board members and ask them to endorse it and request our representatives in the House to join on as co-sponsors.

Once again this is the fastest, easiest way to save the integrity of all our National Forests. If you only do one thing to repay your debt to the forests, than writing these letters would be the most effective.

Voice one ❖ Steenstra

The middle of the legislative session is not the most convenient time to pause and reflect. Following the legislature is all consuming but flashes of strategic insight sometimes can occur.

By strategic insight I mean - what is it that we really should be working on? What long range and long term issues we should be striving for? The legislative world so often gets mired in issues like sewage sludge, bonding requirements and parts per quadrillion. Trees instead of forests become the focus. Green details debated at the expense of Green values.

The funding of the DNR Nongame / Natural Heritage Programs is an issue that many groups are working on. It is one of those warm and fuzzy things that no constituency can easily rise up and oppose. The issue, in a sense is one of the most trivial that the environmental community is dealing with this session. Sophisticated grown up people groveling around the Capitol nearly begging for a million and a half dollars to fund a barebones program is not time well spent. Particularly when all indications are that the best we can expect is about half the requested amount. Working on the Non game funding issue is demeaning. It's a trivial pursuit.

The most important issue that the environmental community should be working (see page 8)

Elk

Dear Mr. Ragette'

Concerning Elk in the Eastern U.S., I enjoyed your recent article about them. However in 1978 I saw an elk family cross a farm yard in Elk County Pennsylvania, where you can hunt deer but not elk. I have been told they have never been hunted out of that county. Sincerely,
Norman Kilpatrick

Graphic credits
Photo - bill r
Map - US government
line drawings - Vince
Packard, once again. Thanks



Becky's Creek

Will Caperton OK another million plus board foot timber sale on state property?

Once again, the state government tries to sell large trees without any public input. Two directors of the Conservancy sent me copies of a newspaper notice that began appearing in Charleston and Morgantown papers on January 1 of this year. The notice called for a 'tour' of the timber on January 4 and a call for bids to be submitted by January 13. The was the only public notice of the pending timber cut.

The 'sale' consists 1.14 million board feet on 239 acres. The land surrounds Becky's Creek on WV State Farm Commission

property near Huttonsville, WV. The trees were marked by the WV DoF. According to the prospectus sent to me by David Lilly, WV Region 3 Forester, almost half the timber will be from sugar maple, beech and red oak. Other species offered in this 'sale' are black cherry, basswood, red maple, birch, white ash, hemlock, yellow poplar/cucumber (?), black locust, red spruce, elm, mountain magnolia and hickory.

Twenty of the maples and 38 of the red oaks are over 30" in diameter at chest height. Minimum acceptable bids range from \$5 per thousand board feet for beech and locust to \$450 per thousand for black cherry. The cut appears to be selective rather than a clearcut. The timber lies just off route US 219 at the end of County Route 43.

The Thornwood Gas Pipeline

I received two items on the development of the Thornwood/Horton oil and gas field on the border of West and East Virginia this month. One was from the Forest Service and the company that wants to build the gas line and one from an activist warning about the serious damage that the logical extension of the project might entail. First I'll review the infomercial that Thornwood Gas, Inc. (TGI) of Bradford PA is circulating. - bill r

The company has requested both the Monongahela National Forest (MNF) and the George Washington National Forest (GWNF) to authorize the construction and maintenance of 31.9 miles of a natural gas pipeline system in the West Virginia Counties of Pocahontas, Randolph and Pendleton and Highland County of Virginia. TGI leased the minerals and drilled six wells in Pocahontas County in the 1960's. The gas is owned by the US and managed by the Bureau of Land Management (BLM). The pipeline would connect these six wells to an existing pipeline in Randolph County near the junction of Gandy Creek and Taylor Run.

I enjoyed the four purposes the company listed for the 'proposed action'. "A.) Assuring a supply of natural gas from existing production wells while lessening the dependency on foreign imports of oils. B.) Providing modern pipeline system which would be designed, installed, operated and maintained in a safe, environmentally sound manner that complies with the Land and Resource Management Plan of the Monongahela and George Washington National Forests. C.) Providing a clean burning fuel to the consumers of the eastern United States. D.) Providing for a means to effectively manage the natural resources underlying the National Forests by developing the natural gas resources in a responsible manner. A pipeline to market the Federally owned natural gas would provide the opportunity for the public to derive benefits (natural gas for consumption and royalty return to the US. Treasury) from these existing wells, while providing a revenue for Thornwood." I glad they finally got around to mentioning that!

For the most part the gasline does follow existing forest service, county and state roads, cutting across currently undisturbed land for 4.4 miles. Supposedly, when the line follows one of these roads, they will lie right next to the road and will need be cleared for 10' from edge of the road. When the pipeline cuts through the woods, they will clear a 'temporary' path (road) 60' wide. Thereafter they propose to mow only a 10' wide maintenance corridor. Of course the pipeline is even more temporary than the opening. The gas fields are estimated to last fifty years or so; the temporary opening will not nearly regain its current state of growth till after that time.

The Route

The gas line starts at the well near Old House Run Picnic Area on US 250 east of Thornwood. It follows FS 812 up Old House Run to their second well and cuts north through the woods to just east of Buffalo Fork Lake. It follows FS 287 to the state border and takes FS 106 to State Routes 28 and 112 staying on the ridge and county borders to within a 1/4 mile of Spruce Lake. It takes FS 916 down into the Gandy watershed and follows St. Rt. 29 to the connection to the existing line.

The construction of the pipeline will necessitate 8 storage/work areas of about one acre each. Five of the sites are on supposedly existing 'disturbed' areas. It will also cause

some traffic delays. Each if the six wells would be connected to a production unit consisting of a skid mounted heater-separator, positive shut off drip, skid mounted flow measurement meter, fluid connection tank and a safety shut off valve. These wells have been capped since they were drilled almost thirty years ago. The company promises no herbicides will be used. They also state that there are no plans for future expansion of the proposed pipeline system.

The future

This warning about the future plans of Thornwood Inc. comes from Curtis Seltzer, a Virginia Forest Activist. Those of you who attended the WV Forest Activist Conference last August at the Woodlands Institute near Spruce Knob may remember him.

The GWNF has adopted a management plan for the 10,000 acre Laurel Fork Area in Highland County, VA. that points in the direction of managing it as a primitive, roadless area that emphasizes dispersed recreation and biological protection. There are some 30 threatened, endangered, and sensitive species (TES) in Laurel Fork, as well as native brook trout and beaver. Commercial logging and vehicular use is not permitted. (Laurel Fork is reminiscent of Otter Creek, an isolated, intact watershed with no or few roads. It is in the part of Virginia that juts into west Virginia where Pendleton and Pocahontas Counties meet. - ed. note)

The GWNF plan, unfortunately, continues to permit several uses that are incompatible with the low-impact, conservationist goals mentioned above. The most glaring of these incompatible uses is the development of a gas field. The GWNF argues that constructing a gas field in Laurel Fork can be harmonized with maintaining the area's unique biology and its primitive roadlessness. The GWNF takes this position because the alternative terminating the existing gas leases in Laurel Fork- is legally and politically difficult.

The GWNF's Environmental Impact Statement (EIS) concerning the GWNF's proposal to lease some 75,000 acres of the Allegheny Front region was so poorly done that the Forest Service issued a stay. Sooner or later the stay decision will be reviewed, and upheld, reversed or modified. The situation today is that no gas leasing will occur on these 75,000 acres.

Although Laurel Fork is part of the Allegheny Front, its gas leases are not affected by the stay order. The stay prohibits future leasing, but does not prohibit exploration or development on leases TGI currently holds. This creates the situation where the most biologically valuable part of the GWNF and the Allegheny Front can be turned into a gas field, but the less valuable areas cannot.

In the last year Thornwood Inc. has acquired ownership of all the dozen or so gas leases in the Thornwood-Horton gas field, which underlies Laurel Fork and the adjoining lands to the west in Pocahontas County, WV; that are within the MNF. Seltzer estimates the leases involve 15,000 acres, 9,700 under Laurel Fork.

The BLM leased the Thornwood-Horton field in the 50s and 60s to various companies and speculators. Six gas wells were drilled in the early sixties on the MNF (see above). These wells have always been capped and have never produced any commercial gas. Now TGI has applied to MNF National Forest

for a Special use permit to build the pipeline. This is the first step in a multi-step process the USFS/MNF has for approving or rejecting a project of this sort. The next step is for the MNF to issue a 'scoping notice', which will describe the project and invite public comment. (This is the document I received from the Forest Service. Comments are due back to them by FEBRUARY 10. Address comments and concerns to Forest Supervisor, 200 Sycamore Street, Elkins, WV 26241-3962 ed. note). An EIS must be prepared and reviewed by the public before the project can be approved. The forest Service anticipates making a decision by July 1 of this year.

After building the pipeline and producing gas from the six wells in the MNF, Curtis says TGI has plans to conduct tests in the wells to determine the likely presence and quantity of gas in adjoining leases, in the MNF and GWNF. TGI will also conduct exploratory work in the MNF and in Laurel Fork/GWNF, which can involve anything from low-impact tests to detonating five pounds of dynamite in drilled shot holes every 220 feet in lines 16,000 feet long, to excavating 2 acre pads for test drilling. The right test results might lead to developing producing wells in Laurel Fork and the Mon.

Because of Virginia's 640-acre-per-well requirement, no more than 15 producing wells can be located on Laurel Fork. The worst case scenario is 43 exploratory wells and 15 producing wells. Curt feels that both exploratory work and gas production will permanently alter the primitive, roadless character of Laurel Fork.

Exploratory Drill Sites and Producing Wells

The exploratory sites are 1 to 4 acres in size. A road capable of handling heavy equipment would have to be constructed. Drilling refuse, contaminated water, and various toxic wastes would be generated. Abandoned pads and roads will be reclaimed to some extent, but reclamation does not typically regrade to original contours and may leave Laurel Fork with a network of graded, grass seeded roads that are perfect for ATVs and other prohibited vehicles. Each producing well will sit on a similar sized pad, contain the well apparatus (the 'Christmas Tree'), large storage tanks, and excavated pits to contain fluids and spills. TGI's leases give the company the right to construct "all works, buildings, plants, waterways, roads, telegraph, or telephone lines, reservoirs, tanks, pumping stations, or other structures necessary to the full employment thereof." TGI may find it necessary to construct powerlines, compressor stations, and gas/water separators.

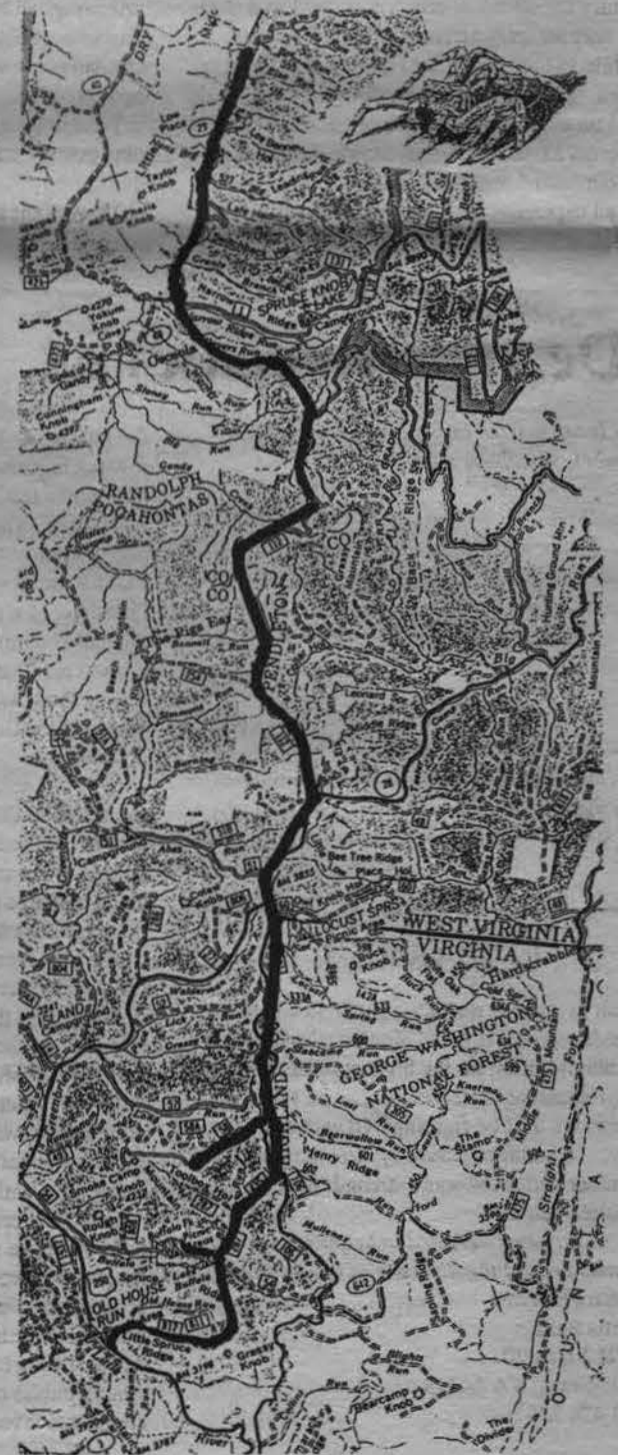
The roads that TGI would build into Laurel Fork would normally have a 14-foot traveled way, 16-foot roadbed, 30 foot construction limit, and would be surfaced with shale or similar materials. They would be surfaced, drained and maintained for all weather use. Producing wells must be accessed by their operators as

frequently as every one to three days to ensure the facilities are functioning properly.

A producing gas field can be expected to have significant impacts over the 20 to 30 years it operates until the gas is depleted. These impacts will affect game, TES species, beaver habitat, brook trout, water quality and wilderness quality. Of particular concern is 2,800 acres in Bearwallow and Slabcamp Hollers that the GWNF plan recommended as a Research Natural Area. This is the richest and most sensitive biological area in Laurel Fork. It is also square in the middle of the most likely gas deposit. It is difficult to understand why the GWNF would permit gas development in the proposed RNA, but that is the case.

Since all of the Thornwood-Horton gas field is currently leased, it can be assumed that the MNF will approve both TGI's proposal to build a pipeline and succeeding proposals to explore and develop Laurel Fork. Left to their own devices, I think it is unrealistic to assume that either the MNF or the GWNF will prohibit those activities.

It is even more likely that a determined resistance to TGI's plans will force the MNF and GWNF to impose certain environmental requirements that will (see next page)



Gypsy Moth National DEIS

I'm ashamed to admit it but I just found out about the new revision of the National Gypsy Moth Plan. The process is well along but there's still some time to get involved. We have passed the scoping stage, and the Forest Service Team is now working on the Environmental Impact Statement and hopes to have it available for comment by the summer. At first I was hopeful that the time had come for some long term planning and review of the long term effects of gypsy moth defoliation AND control efforts. But I'm afraid the Forest Service is not planning to review all options seriously and is gearing up for more chemical attacks without full understanding of the consequences under pressure from industry, both timber and chemical. Here's a review of the two bulletins Conservancy Member Glen Besa passed on to me. I'm also including one of Glen's comment letters to the team leader of this project, which covers most of my concerns as well. You can contact me or Glen if you are interested in getting more involved in this decision. - bill

The first bulletin is dated January 1993. It identifies the problem as 287 million acres of forest land at risk. The bulletin states that there are now two exotic species of Gypsy Moth now. The European moth has been in this country for over 120 years, and the Asian moth has only recently arrived on the West Coast. "While in the caterpillar form," the bulletin states, "immature gypsy moths feed voraciously (and messily) on the leaves of hundreds of different kinds of trees in forests, in parks, and in your yard." (emphasis added) "Gypsy moths are an expensive pest and an unattractive nuisance."

The bulletin states that it's time for a new program - "Conditions and information have changed." You may also note that since 1985, the year of the first Gypsy Moth Plan, 3 out of 4 insecticides then used for control have been discontinued from use in Federal programs (No mention of why).

The original EIS says that "1.) There will be Federal support for gypsy moth control projects, regardless of who owns the land; and 2.) Federal assistance will be available upon request for control measures that use an integrated pest management" -(IPM)- "approach." According to the bulletin, IPM is a process of evaluating a pest problem, deciding what is anything to do about it, and following. Two other terms we'll need before we go on are eradication and suppression. Here goes- 'eradication' completely wipes out new populations and 'suppression' reduces existing populations. Eradication is targeted for the Asian moth, hoping to beat it back entirely from our borders. What I want to know is how did the Dept. of Ag. let the pest in after all the trouble we had with the European moth? Is it possible to completely protect our borders from exotic pests?

Here are the 5 alternatives suggested in the original mailing in January 93. We will have to wait and see if the final range of alternatives is any different, after the public input process.

- "1.) Continuing the present national gypsy moth management program of suppression and eradication-related activities.
- "2.) Developing a new national gypsy moth management program consisting of eradication-

related activities only.

"3.) Developing a new national gypsy moth management program consisting of eradication-related activities and activities directed at slowing the natural spread of the European gypsy moth.

"4.) Developing a new national gypsy moth management program consisting of suppression and eradication related activities, with additional activities directed at slowing the natural spread of the European Gypsy moth.

"5.) having NO Forest Service or Animal and Plant Health Inspection Service gypsy moth management program. (This alternative also provides a basis for use in comparing all of the above alternatives.)" (NO emphasis added)

The last alternative is really no alternative at all, only a requirement of NEPA. As usual there are plenty of alternatives midway between any of the first four and the last that might be reasonable, and therefore better not considered.

The First Update

This was written in October 93. It updates us on what the response was to the scoping bulletin of January. We are informed that "over 800 people from 46 States, Canada and Guam answered the call for comments. Most people felt that the Asian gypsy moth is or could be a serious problem and favored eradication. Most of the comments addressing the European moth considered it a problem. (I wonder if anyone thought it was a blessing.) Businesses relying on oak forests were concerned about the economic aspects. Skin rashes caused by the caterpillar was a noted

concern. Hikers said that defoliation can spoil recreation. People did ask for an EIS that had more useful information on the moth and the environmental effects of the pest and control methods. The update states that most people showing a preference wanted alternative #4, the most extensive of all alternatives originally considered. There was an acknowledgment of the negative impacts of control measures on human health and on non target species (other moths, butterflies, and aquatic insects) and birds that depend on gypsy moth for food.

The update lumped all concerns into nine broad issues. 1- The program's effects on people. 2- The program's effects on biological diversity and environmental health 3- How would the program effect the spread of the moths? 4- How would the program be implemented, who does it, who pays? 5- Parts of the program???? 6- What would happen without a Federal Program? 7- What treatments would be recommended? 8- What research would be recommended to support a national gypsy moth management program? 9- Communications.

Now you are up to speed. Here's the address of the team leader if you want to keep up-to-date...

John W Hazel
EIS Team Leader
USDA forest Service
PO Box 6775
Radnor PA 19087-8775
215 975 4150

(something's wrong with the address, as the p.o. box and nine digit zip don't match, but this is the address they gave out.)

Dear Bureaucrat

this letter is from an long time Conservancy member, see above story for details

Glen Besa
Star Route, Box 95B
Flintstone MD 21530

John Hazel, etc.

Dear Mr. Hazel;

I have just been reading the October 1993 letter to Key Contacts, and I wish to offer this observation. I believe it is essential that you identify and classify public comments by the state of area form which they have originated.

Thornwood

(from last page) make the gas field somewhat less disastrous. It is my opinion (Curtis) that we should insist on the highest levels of environmental protection in Laurel Fork, which means we will be fighting TGI each step of the way. To be taken seriously, we must band together and show some strength now, at the pipeline stage.

Anyone interested in helping Curt and friends protect the diversity of Laurel Fork can contact him at
Curtis Seltzer
HCR 2 Box 20
Blue Grass, VA 24413
703 474 3297

Having read your summary of what the public has had to say so far, I have the distinct impression that most of the comments have come from the fringe areas of gypsy moth infestation. This would only be reasonable as people living in these areas are seeing defoliation for the first time and are rightly concerned. However, I believe that this honest concern is typically manipulated by pesticide manufacturers and applicators with a vested interest in selling their wares and by foresters who are narrowly focused on short term timber production.

It seems to me that two of the fundamental issues that should be addressed are (1) how successful have efforts been at halting or slowing Gypsy moth infestation along the edge of infestation, and (2) what is the typical control effort undertaken in areas where the Gypsy moth is now established? It is difficult for the public and for a forest manager to accept that there is no management solution that will eradicate the Gypsy moth, but realistically what do we have to show for the millions of dollars spent on mass spray programs in Maryland?

Finally, after our relatively recent experience with the Gypsy moth in the mid-Atlantic and central Appalachian regions, I hope you have some solid data on impacts to non-targeted species and the cost effectiveness of mass spray programs. While I favor the widest opportunity for public comment, in the end an EIS is to be based on science and not simply public opinion. If most of the public comments favoring aggressive pesticide use



originate in areas of early infestation, you should realize that the near hysteria resulting from initial defoliation and fomented by pesticide companies always dies down once the Gypsy moth is firmly established.

Thanks for the opportunity to comment. Please keep me on your mailing list.
Sincerely Glen Besa

Here I'll just append two paragraphs from another letter to John Hazel, namely mine.

My greatest fear about our current program of Gypsy Moth control is all the harm it may be doing in the long term. I hope the EIS looks at the long 100 yr+ picture. What will the chemical sprays cost in dollars over that time period? Will we eradicate the moth, will we wipe out other species? I am especially concerned over the microlepidoptera, that we be killed off with Dimlin as well as B.T. I

doubt that we know all the moths that are in our National Forests, much less which ones are at risk of extinction by various control strategies. I think the EIS should include as complete a survey of these species as possible. The EIS must review the literature to find out how much and what is known about this problem and the chances that species will be lost.

There are also economic considerations. The EIS must address the long range (annual costs) of control. Will there be an end to spraying? The EIS also needs to review all studies on the current value and condition of forest lands behind the front of new infestation. Are the forests of NJ, NY, Conn. still suffering? What is the species composition, and value of these timberlands? Has timbering come to a standstill? What is the rate of tree defoliation and death in areas that had the moth 50 to 100 years ago?
Sincerely Bill

WILL FLY ASH IN OUR DEEP MINES PREVENT ACID MINE DRAINAGE?

by Joan Sims

"This is exciting new technology, that will revolutionize the coal mining industry, by stopping acid mine drainage (AMD) from occurring within the deep mine itself! You just put the fly ash in, and no acid water can accumulate in the mine. Many acid producing coal seams can now be mined, using this new technology."

"But wait, how will you get all this fly ash into this deep mine void, any how do you know it will set up properly, once it is in there?"

"Of course these things will happen, we are sure that they will."

They may have used this technique out West, somewhere."

"How about if you at least use this flyash technique in a small section of the mine first, just to see if it will work as you say it will?"

"That would be too expensive for us to do. We can't do it."

"But how about if we also put fly ash into the Omega Mine workings in your watershed as we are doing this deep mine, to decrease the acid mine drainage that you and the State will have to deal with soon?"

"We like that idea, but we still oppose a new mine in our watershed, using a new, unproved and experimental technology."

And so on, and so on, and so on. The Mepco Mining Company wants a permit for a new mine in the watershed of Booth's Creek, a tributary of the Monongahela River, south of Morgantown. And we say, "Show us that this new technology works first." We have been negotiating with the DEP (the State Division of

Environmental Protection) on the terms of the issuance of this permit for several months now. They have told us that they intend to issue the permit, so we are only negotiating on the terms of its issuance.

The application has now been revised to read that fly ash will, rather than may be used to fill the mining void after the coal is removed. A few more, but not enough, details have been given us by Mepco about how this fly ash will be pumped into the mine by a slurry system. And a DEP geologist has agreed to go into the mine after each panel is filled, to be sure that it is filled completely, as is required in the permit application. The complete filling of the mine would block water from seeping into the mine, and the hope is that this would prevent the formation of acid mine drainage.

Also, Mepco has agreed to fill the workings of the Omega Mine with their fly ash concurrently with their Mepco mine operation. This may well help the State to effectively treat all of the AMD from that mine, that is also in our watershed, when it becomes their responsibility.

However, too many concerns about this Mepco Application remain unaddressed. Our hydrologist has told us that the AMD potential from this Mepco mine, even if fly ash were not used, would not be nearly as great as that of the older Omega Deep Mine, permitted in 1983, or the earlier Mepco mining application that we stopped in 1987, which would certainly have finished off our creek. But the AMD from this new mine could degrade the quality of our creek. And the DEP is too anxious, in our opinions, to issue the permit with this "revolutionary, new technology." The DEP and Mepco are not willing to have Mepco

required to prove that their fly ash technology can completely fill and set up in a smaller section of this mine, before proceeding with the mining operation.

In addition, fly ash contains small amounts of heavy metals such as lead and mercury, that can leach into the ground water and nearby streams. This is more likely to happen if the mine is not filled completely, and the AMD comes into contact with the fly ash. This is the other reason why it is so important to require the complete, rather than the partial filling of the mine with fly ash.

Another great concern about this mine is that the bond will be much too low. The DEP claims that State law allows them to require a bond for reclamation of the twenty surface acres to be disturbed. It does not allow them, they claim, to bond the 350 acres of deep mined area, or to create a water treatment assurance bond, even though acid mine drainage potential should be the main bonding consideration. How can the State DEP possibly claim to have implemented a satisfactory mining regulatory program under the Federal mandate when the bond cannot even begin to address the tremendous water treatment costs that could result from yet another bond forfeited deep mining operation in an acid producing coal seam?

So, what is our community, the 4-H Road Community Association, going to do about this Mepco application? One lesson we have learned is that as long as there is coal to be mined in our watershed, someone will keep trying to mine it. We could give up and leave our community for a suburban neighborhood, where rules and regulations carefully spell out what can and cannot be done. But this is where

we want to live. We have raised our children and planted trees here. We like to be able to have music parties that last all night, and build an unusual looking greenhouse without complaints from our neighbors.

So we will stay, and continue to work and persevere for what we believe in. Probably, Mepco will receive their permit, and the State will take steps to treat whatever polluted water still flows from the Omega Mine after it has been filled with fly ash. With constant and careful vigilance and help from the Federal Office of Surface Mining, we believe that we can prevent serious degradation of our creek from the Mepco Mine. And someday, we will be called "that eccentric old couple who live by Booth's Creek," which is fine with us. Even if fish don't begin to live in our creek again, at least we will be able to ski beside it and know that it is still clear and pretty because of our work. And maybe fish will live in it some day.

Joan Sims
Route 5, Box 310 1/2
Morgantown, WV 26505
(304) 296-8860



Kittle Flats (from page 1) Further, OSM has not approved that rule as part of the State of West Virginia program. Therefore a settlement based on the above purported rule is not acceptable. Consequently, OSM in its oversight capacity does not lose jurisdiction because of such a settlement and OSM's jurisdiction in this case was not terminated in 1984."

Judge Rejects Company's Assertion That No Damage Was Done

Judge Torbett further found unpersuasive the testimony of LaRosa's expert witness, geochemist Donald Streib, who asserted that the bulk of acidity generated at Kittle Flats emanated from older sites, that LaRosa's mining resulted in no decrease in water quality at Kittle Flats and that water quality at Kittle Flats appeared to have improved as a result of LaRosa's mining.

"[LaRosa's] evidence did not meet the burden of proving that other disturbances were the sole cause of the effluent violations in the site ponds and in Cassity Fork", wrote Judge Torbett. "And, while [LaRosa's] methods of planning and conducting coal mining may have been designed to minimize disturbances to the hydrologic balance, it did not use treatment methods to control water pollution."

Other reports and studies included in the WVHC complaint and appeal proceedings noted that although earlier mining done in the 50's and 60's had caused acid problems and periodic fish kills, the LaRosa permits, including the one subject to the April '92 enforcement action, tripled the size of the disturbed area and increased acid loads more than one hundred times over. (DNR reports indicate acid leaving Kittle Flats in 1968

measured 66 pounds of acid per day and over 7,000 pounds per day in 1983.)

"Therefore", Judge Torbett ruled, "the Cessation Order issued for violation of effluent limitations and failure to minimize disturbances was proper and is sustained."

Not Over, But Significant

Though further appeals are sure to be made by LaRosa Fuels, and problems at Kittle Flats are far from being resolved, the decision by Judge Torbett has significant implications for water quality in the Middle Fork River and for current efforts in and around Kittle Flats.

This decision makes it clear that LaRosa Fuels has a duty to treat the water to effluent limits. Further the requirement is to treat that drainage ON-SITE, before that water enters Cassity Fork.

If LaRosa complies with the order, bonding must be required in an amount adequate to guarantee treatment by someone else in the event that LaRosa is unable or unwilling to meet its responsibilities. If LaRosa refuses to comply, such action constitutes bond forfeiture and triggers all the repercussions of forfeiture. Other LaRosa permits granted since 1983 must be revoked; the permit block enforced banning the company from mining elsewhere, and the state of W. V., through its Special Reclamation Fund, must assume responsibility for maintaining effluent limits in discharges from the site.

In light of this decision, efforts by the new W.V. Stream Restoration Committee to resolve the acid problems in the Cassity area by constructing a dam and lime drum treatment station (similar to those on the Cranberry and Otter Creek) in the main stem of Middle Fork above Cassity must be reevaluated. This decision supports what environmental (see page 8)



Stream side vegetation protects water quality; saves soil

By Mary Pat Peck

"Riparian buffer zones" have become a hot topic of conversation recently among rural landowners in West Virginia.

Riparian zone is a fancy way of talking about the land alongside a stream or river and the plants and critters that live there. Depending on how streamside land is used and the kind of vegetation on it, the zone can protect the life of a river and the quality of its water, or it can be a major source of pollution.

Sediment (soil) is the single greatest pollutant of streams nationally. Muddy water kills fish and smothers their eggs, wiping out future generations.

Erosion is a natural phenomenon. It will continue as long as water flows and wind blows. Though inexorable, erosion is a gradual process -- in the absence of natural calamities or human activities that strip land of its vegetation. Poorly managed timber operations, building projects and highway construction can choke nearby streams with mud.

Agricultural land is the single largest source of sediment in streams. This is not surprising since some part of a farmer's livelihood generally depends on plowing the earth in preparation for a new crop. If there is no buffer between a farmer's plowed field and the stream, the farmer's greatest asset -- his soil -- is likely to wash downstream with the next hard rain. With the soil also goes the time and money invested in improving it. Overgrazed pastures and stream banks denuded and trampled by uncontrolled livestock access can add seriously to the problem.

The farmer's loss is no one's gain. Most often, the lost soil impoverishes downstream users. Water quality is diminished, towns and cities must increase their water treatment, and the additional costs get passed on to local residents. The soil eventually

settles on the bottom of the stream, increasing the potential for downstream flooding and provoking calls for costly and damaging river dredging.

But land disturbance does not have to result in stream degradation. Relatively narrow strips of vegetated land along rivers and streams can make a tremendous difference. They can filter out pollutants and allow soil to settle out before reaching the stream. According to the Maryland Cooperative Extension Service, a forested buffer as narrow as 50 feet can remove the majority of nutrients from surface and subsurface flow.

In addition to keeping soil on the land, buffer zone vegetation slows erosion and stabilizes the stream bank. It also provides shade needed to moderate water temperature. Without shade, stream temperatures are higher in the summer and lower in the winter making some streams unsuitable for fish.

While riparian buffers are good for aquatic life and improve wildlife habitat, agricultural researchers in Pennsylvania insist that farmers also benefit from restricting livestock access to streams and restoring vegetated streamside buffer zones. In addition to the obvious advantage of decreased soil erosion, the Penn State College of Agricultural Sciences cites increased risk of livestock leg injuries when livestock have free access to eroded, crumbling stream banks. Also, cows allowed into streams don't just reduce water quality for downstream users, according to Penn State Extension, the cows themselves risk increased contact with waterborne bacteria that may cause a variety of bovine ailments.

Streamside buffers ought to be about as controversial as brushing your teeth. Why aren't they? It's hard to tell. Some part of it may just be a natural resistance to doing things differently, since some farmers' livestock have

"always had access to the stream." Some worry about additional trouble or cost to watering herds, although a variety of programs are available to help with the cost of developing other livestock water sources and with fencing costs.

Others simply object to anyone telling them what they can do with their land, or have been frightened by dire predictions that buffer zones are the first step in taking their land from them. Frankly, some part of the controversy appears to be hype stirred by folks with some other agenda.

A recent Soil Conservation Service (SCS) "bank restoration" project near Elkins in Randolph County sparked a lot of rhetoric when state Water Resources officials asked for a 50-foot buffer zone as a requirement for approving the project's Clean Water Act permit.

The project aimed to stabilize the banks of a one-mile section of Files Creek damaged a few years ago during local flooding. Estimated cost was about \$120,000 to be totally paid by federal funds. No matching financial contribution was required from the landowners who would benefit from the project.

The West Virginia Farm Bureau, might reasonably be expected to encourage their members to institute buffer zones

themselves to protect the value of their own farm. Instead, Farm Bureau representatives raised the "property rights" flag, and insisted that Water Resources' buffer zone requirement on the Files Creek project amounted to "taking land without compensation."

Farm Bureau spokespeople ignored the reality that the program was totally voluntary -- those who objected to the buffer zone were not required to participate in restoration project. And, while some management restrictions apply in the 50-foot zone, landowners retain ownership and access to the land.

Finally, Farm Bureau officials apparently didn't count as "compensation," the approximately \$10,000 per acre taxpayers are paying to improve private land along Files Creek. It would be disappointing to discover that the Farm Bureau is just one more in a long line of groups who champion their members inalienable right to a free lunch.

On the state level, the Files Creek controversy has resulted in formation by Agricultural Commissioner Gus Douglass of a committee to study buffer zones. Hopefully the interaction there will provide a opportunities to lessen the rhetoric, improve understanding and move on to policies that protect both land and water. ♦

WVU Graduate to Head Forest Service

from Save America's Forests
4 Library Court, SE
Washington, DC 20003

On December 1, Jack Ward Thomas, a senior wildlife biologist, became the new Chief of the US Forest Service after 27 years with the agency. His appointment marked the first time since the founding of the FS, that a biologist rather than a forester has been chosen to fill the top spot. Thomas' appointment was surrounded by controversy as he became the first chief chosen through political appointment since the Taft administration. Historically, this position has been filled from the ranks of the Senior Executive Service, a roster of top career bureaucrats who have specialized qualifications, experience, and training.

Thomas authored a 1970's book, *Wildlife Habitats in Managed Forests* in which he countered the prevailing silvicultural lines that old growth forests are "biological deserts" and that heavy logging benefited wildlife. In 1976, Thomas played a role in the final development of the National Forest Management Act. He supported the diversity provision in the bill promoted by Hubert Humphrey that eventually won out over the stronger version proposed by Jennings Randolph. He felt that this provision would direct the Forest Service to manage for ecological values as well as timber output. The measure has proved to be weak and almost completely unenforceable.

Thomas is perhaps best known for his role in the recent spotted owl controversy. He was the leader of the "gang of four" that crafted the original spotted owl report in 1989. That report led to Judge Dwyer's spotted owl lawsuit ruling which withdrew timber sales on millions of acres of Ancient Forests. Thomas, however, is also responsible for the ultimate crafting of Option 9, a politically expedient and ecologically devastating proposal demanded by the Administration.

While former Chief F. Dale Robertson appeared to have no concern for our federal laws, one of Thomas' first memos to his 40,000 underlings instructed "Follow the law." We are pleased with the selection of a skilled biologist for the top post, yet we are concerned that Thomas's detailed knowledge of science and the current laws may lend further support to the new kind of political-legalistic expediency being practiced by another "environmentalist," Interior Secretary Bruce Babbitt.

Our current laws, even if followed, do not adequately direct our federal land managers to protect our nation's last wild and natural forests. Efforts by the Administration to "break the gridlock" by stretching environmental laws beyond credulity (such as the Option 9 forest proposal) will only result in the demise of forests. We hope that Thomas will act forcefully to protect forests not only to the level that weak laws and the worst judges allow, but to a much higher level that will insure their survival. ♦

Monongahela National Forest Hiking Guide Now Out

Edition 6 of *Monongahela National Forest Hiking Guide* is now available. This edition is bigger and better than ever, with 368 pages, 96 pages of maps, 49 photographs, 177 trails totalling 812 miles, and a new full color cover. West Virginia Highlands Conservancy is the publisher. Authors are Allen de Hart and Bruce Sundquist (same as edition 5). Allen has hiked all the trails of the Monongahela N.F. over the past few years. Bruce was the editor for the first four editions. The hiking community and the U.S. Forest Service provided trail reports and photographs. Edition 6, like edition 5, also provides information for ski-touring and backpacking.

The growing throngs of visitors and the public at large regard the Monongahela National Forest as a 'Special Place'. And indeed it is. The hiking, backpacking, and ski-touring opportunities it provides are among the best in the eastern U.S. The more outstanding areas are becoming known far and wide - Otter Creek Wilderness, Dolly Sods Wilderness, Flatrock Plains, Roaring Plains, Blackwater Canyon, Spruce Knob, North Fork Mountain, Shaver's Mountain, Laurel Fork Wilderness, Cranberry Back Country, Cranberry Wilderness, among others.

Profits from the sale of these guides support a wide variety of worthy environmental projects in the West Virginia Highlands Conservancy.

To order your copy of Edition 6 of *Monongahela National Forest Hiking Guide*, send \$11.45 (this includes \$1.50 shipping and handling) to

West Virginia Highlands Conservancy
PO Box 306
Charleston, WV 25321

West Virginia residents must add \$.60 sales tax. (total of \$12.05)

I have included a check or money order for the amount of \$ _____ to WVHC for _____ copies of the *Monongahela National Forest Hiking Guide*.

Name: _____

Address: _____

City, State, Zip: _____

Extirpated Species of the Month

Kittle Flats (from page 6) representatives on the restoration committee have said for the past year, i.e. that such efforts in the main stem are off-base, inappropriate and unacceptable.

Ongoing construction of passive treatment systems, i.e. Anoxic Limestone Drains (ADL) and wetlands, though possibly part of a solution at Kittle will not be sufficient unless they effectively maintain effluent limits in the drainage. To the extent that these systems don't treat all of the water and seeps, or don't treat to effluent limits, then additional chemical treatment must be incorporated.

Beyond the Middle Fork

As important as this decision is for addressing the AMD problems in the Middle Fork River, the implications reach far beyond the site specific impacts on one watershed.

In the ongoing state and federal level debates and discussions about regulation and policy governing mining in acid prone areas (requirements for permitting, inspection, bonding, forfeiture, treatment standards, etc., etc.), there is a painfully long and ever growing list of enforcement failures that can be attributed to each phase of the lax W.V. program. Kittle Flats now becomes one more of those glaring and depressing examples.

In the Tygart Valley River system alone the treatment costs are enormous. According to a 1990 study by Sturm Environmental Services, treatment at Kittle could be as much as \$325,000/year. On the Buckhannon River that enters the Tygart just downstream of the Middle Fork, there is an infamous couple mile stretch that is home to DLM where treatment costs by the state come close to \$1/2 Million each year, the Island Creek-Enoxy-Consol Tenmile complex where treatment costs by the company have been quoted at \$1 Million each year, and the somewhat quiet though equally acid producing Pittston Grand Badger deep mine and refuse impoundment. Closer to Tygart Lake, there is the more recent attention getter, F&M, that discharges into Sandy Creek and costs another \$480,000 a year to treat.

In addition to all the questions that revolve around acid related issues, the Torbett decision also speaks to at least one other general programmatic concern that WVHC and other groups have attempted to bring to light through individual complaints and legal actions such as the 1988 lawsuit against the state of W.V. for not complying with federal and state law, i.e. OSM "oversight".

Coal states, especially W.V., often argue that OSM has no right "interfering" in any state action if that state has received primacy (OSM approval) for its regulatory program. In this decision, Judge Torbett refers to the issue by

Canis Lupis The Eastern Timber Wolf

Wolves were once common in many parts of the state. There are records of bounties paid on wolves as early as 1788. In the beginning of the 19th century a typical bounty was \$3, but by the end of the century a full grown wolf was worth \$35. Hu Maxwell recorded the kills in Randolph County from 1787 to 1861... "44 in 1810, 51 in 1816, 56 in 1822, 51 in 1824, but only two in 1861." By the civil war the wolves were pretty much history in West Virginia, due mainly to the use of strychnine. The last known wolf to be killed in the state was in Randolph County in January 1900 by Steve Hamrick. Steve applied for and received a bounty from Webster County for it, but later this deceit resulted in a lawsuit. Evidently Randolph County had stopped paying bounties by this time. Some authors thought that as late as World War I, some wolves still roamed the spruce belt.

I have been reading "Wolves of Minong" during the incredible cold snap in January. The book is about the wolves and ecology of Island Royale and the scientists investigating this last protected pack. Most of their research was carried out during the winter via aerial surveys.

Before the wolves arrived across 15 miles of frozen Lake Superior in the winter of 1949, the moose population was exploding and vegetation around lakes and ponds on the island was wiped out. And most of the browse elsewhere was severely degraded. The humans were even capturing and shipping to the mainland a few dozen moose annually in an attempt to relieve the pressure. The condition of the moose was very poor for the most part. Evidently just killing the surplus was against the rules of the new National Park. There was even an attempt to set some zoo wolves loose, but due to their familiarity with humans they caused trouble with the few remaining human inhabitants (tearing clothes off the line).

citing a 1991 decision of the Interior Board of Land Appeals (IBLA) (Annaco, Inc. v. OSMRE, 19 IBLA 158) and affirms that "OSM is required to insure compliance with the law regardless of the actions or inactions of the state regulatory authority."

The Torbett decision is one of the bright lights in an oftentimes bleak landscape. WVHC should be proud to have played a role in the proceedings so far.



The moose population suffered an die-back in the early 50's, partly due to lack of food and partly due to the new wolf pack. For many years then the wolves kept the numbers of moose in balance with the island. Small restricted ecosystems like this are much more susceptible to population fluctuations, but for the most part the wolves brought the moose a much needed stabilization. To some the vicious attack and killing of the moose by the wolf is too savage and cruel, but when viewed in the larger contact this killing is a kind of mercy for the herd and individual alike. The wolves are opportunistic killers, which means for the most part they prey on weakened animals. There ability to judge an animals inner weaknesses is uncanny. Often researchers could see no defect in the chosen prey, but autopsies revealed arthritis, necrosis, or heavy parasitic infestation.

What impressed me more than anything about the wolves was their built in

population control measures. Being on top of the predator chain, they have no enemies. But in their genes and social structures lies patterns that preserve their numbers. Wolf packs will defend territories larger then their needs. This keeps their numbers down across the landscape. But what surprised me most was that only the dominant female of the whole pack has pups. The other pack females have a very short estrus. When the alpha female leaves the pack the other females resume normal heats. There is more wisdom in the instincts of wolves than there is in the mind of man.

In the whole time the researchers worked on the island, they were never bothered by the wolves (Although the were chased up trees a few times by enraged moose). I would consider men as wise as wolves if we could find a way to live with them in the misdt of our wildernesses.

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Steenstra (from page 3) on is Non Game funding. The merits of programs that are the fundamental tool for educating the general public on concepts like bio-diversity, ecosystem preservation and the compelling need to catalog our natural assets speak for themselves. Unfortunately, the DNR management, the Administration, the legislature and the public don't yet share my opinion. We have done a poor job of getting society to understand the very basic concepts that motivate our concerns and activism.

Professional organizers often say that the campaign is really more important than the winning of an issue. The educational efforts are really the most rewarding part of activism. The West Virginia Environmental Council made a mistake in defining the non-game issue as a short term, tactical goal. We spoke of the need of a permanent source of funding, we were wrong for defining the issue that way. If bio diversity and preservation of our natural heritage is so important to us we should have to fight for it each year. Each session the battle should be renewed and escalated. We cannot afford to get lazy on Non Game. The goal is to change societal values to an ever increasing awareness of the lessons learned in Biology 101.

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