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Haden's Ruling Overturned!

Fourth US Circuit Court of Appeals Claims the State Can't Be Sued in Federal Court

(This article is excerpted from the articles of Ken Ward, Jr. and a column by Dan Radmacher in recent issues of the Charleston Gazette)

The long-awaited decision from the 4th US Circuit Court of Appeals arrived on April 24th. The October 1999 ruling of US District Judge, Charles H Haden II was overturned.

The plaintiffs, the West Virginia Highlands Conservancy (WVHC) and some coal field residents, were overjoyed at the October 99 ruling as perhaps heralding a change from the strangle-hold that King Coal has held over the state of WV. They hoped that now there was a possibly ending a century of wanton exploitation and destruction of people and communities, of mountains, streams and the poisoning of groundwater.

The national publication, "In these Times" cited the West Virginia Highlands Conservancy as a "Green Hero" in its April 30 issue. This citation had to do with the Conservancy's dedication to trying to preserve southern West Virginia's mountains that are being destroyed to get the coal out from inside them. From the text of the citation, "A century's worth of mine-shafts fill in the hollows of Appalachia, but nothing compares to the eyesores of bald and broken mounds that now scar West Virginia. 'Mountaintop removal,' or the blowing up of entire peaks to harvest deep pockets of coal, now makes up one-third of the state's mining industry. But one local group [referring to the WVHC] is making some good headway in putting this practice to rest..."

Nine other groups or individuals were mentioned as "green heroes." Three others were from the US besides the WVHC, one of whom was Alison Cochran of Heartwood; two from Latin America; and one each from Russia, India and Kenya, respectively.

About a week after his ruling, Haden suspended an injunction that would have blocked the West Virginia Division of Environmental Protection (DEP) from issuing any new mining permits with valley fills in perennial and intermittent streams. While Judge Haden's ruling was stayed pending the outcome of the appeal, the pace of destruction continued unabated. Since then, coal companies have continued to receive new permits that included large valley fills, according to DEP records. West Virginia coal production has also remained steady. The US Department of Energy (DOE) reported that West Virginia produced 158 million tons of coal during the 12 months that ended April 21. That's an increase of 2 percent over the previous 12 months, according to DOE figures.

In spite of the belief of the plaintiffs that a provision of the Surface Mining Control and Reclamation Act (SMCRA) was being violated, the three panel US Circuit Court of Appeals judges claimed that the state couldn't be sued in federal court. Judge Paul V. Niemeyer writing for

the court said that the state's sovereign immunity – protected by the 11th Amendment of the US Constitution – barred Haden from hearing the case. Niemeyer was joined by Judges J. Michael Luttig and Karen J. Williams. The three are considered the most conservative judges on the 4th Circuit, which is among the most conservative appeals courts in the country.

The main issue – whether Haden was correct to use a stream buffer zone to limit the size of mountaintop removal's valley fills -- was not resolved. The 4th Circuit sent the case back to Haden, and instructed him to dismiss it so it could be filed in state court instead.

Lawyers for the WVHC and citizens alleged that the (DEP) and the US Army Corps of Engineers had been operating illegally in approving dozens of mountaintop removal permits. They said that the permits did not require companies to protect streams and properly reclaim mined land. Most of the claims in the suit were settled. But lawyers could not resolve a dispute

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Photo credit: Penny Loeb and US News and World Report

From the Western Slope of the Mountains

By Julian Martin
Guest Columnist

The Plight of Coal Miners

A couple of years ago, at the Putnam County Fair, a mountain top removal miner gladly signed the Save Blackwater Canyon petition I offered and then told me about his job. "At the end of the day I look at the destruction and feel like I am taking blood money," he told me. Another miner told me of arguing with fellow workers on a mountain top removal site about the destruction that four wheelers were doing to the woods. He told the other miners, "Look all around you, it is devastation for as far as you can see, how can four wheelers compare with this?" Still another miner, doing volunteer work for the Wildlife Federation, told me there were many miners who don't like destroying the mountains, but are trapped in a situation where the alternative is minimum wage jobs or unemployment or moving to dreaded North Carolina.

It is becoming obvious that people living near mountain top removal stripmines don't like them. At a hearing for a mountain top removal permit and then at a town meeting about coal sludge dams in the Whitesville and Marsh Fork area, on the border between Raleigh and Boone counties, there was a parade of testimony all opposed to the permit and all worried about the danger of the sludge ponds. One pond hovers right over a grade school there.

Not one person spoke in favor of the permit, none had kind words for the coal companies involved and all were worried about the sludge ponds failing like the one at Inez, Kentucky. Many of those testifying were former coal miners.

It is also becoming obvious that almost none of the miners live near the mountain top removal sites. Most of the miners are in the ironic position of being "outsiders." Some live two counties away from the mine sites. Some live in Kentucky. Most of the owners are clearly "outsiders," with headquarters in other states and other countries.

It would be interesting to witness a genuine dialogue between mountain top removal miners and people living near the mines. (There would be a worthwhile conference for someone to organize.)

These industrial atrocities against nature could be stopped if only the meaning of the phrase, "Must be done in an environmentally sound manner" had not been changed by industry, the so-called WV Division of Environmental Protection and the US Environmental Protection Agency. This change has made it possible to qualify as environmentally sound such hideous practices as taking the tops

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Dirty Water Bill Passed by Legislature

Industry, State Team Up to Write Bill – Enviro Excluded from Having Input
By Donald S. Garvin, Jr.

Saturday night, April 14, the clock on the wall of the House chamber struck midnight and the gavel came down on the regular session of the 2001 West Virginia Legislature. Earlier in the day the House approved an antidegradation bill that was a compromise negotiated between the Division of Environmental Protection (DEP) and industry's "Dirty Water Coalition."

So what did DEP and industry agree to? They agreed to a greatly watered down version of the DEP bill, with none of the agreed on changes being very good for trout or other critters (including human beings), and none of the changes doing what the Clean Water Act says antidegradation should do -- to keep our clean waters clean.

Before asking you to read any further, perhaps a brief antideg primer and history would be helpful. Antidegradation is the part of the federal Clean Water Act that mandates already clean waters from being polluted, at least without showing an overwhelming public need to do so (it is a sad but true fact that while the Clean Water Act does provide minimum water quality standards that states must meet, at its heart it is basically a system of granting licenses to pollute). Under the antidegradation concept, any permit to pollute (or discharge) into a stream or river is supposed to undergo a "socio-economic" review to determine if there is an overwhelming social or economic need to justify granting the permit. If there is none, the permit is to be denied.

West Virginia has had an antidegradation policy on the books for years, but no implementation plan to carry out that policy. So about a year and a half ago members of the West Virginians for Clean Water Campaign (including the West Virginia Highlands Conservancy) filed a notice of intent to sue the US Environmental Protection Agency (EPA) for not requiring West Virginia to have an implementation plan in place. The implementation plan passed by the legislature this session is a result of that threat of a lawsuit: EPA told the state that if it didn't pass a plan, EPA would step in and do so.

The newly passed antidegradation implementation plan retains the basic "tier" structure of levels of protection that were contained in West Virginia's current antidegradation policy. All waters of the state are supposed to meet the federal minimum designated uses of being "fishable and swimmable."

Waters that just barely meet the state water quality standards for "fishable and swimmable" are given the lowest level of antideg protection -- Tier 1. Streams and rivers whose water quality exceeds the minimum water quality standards are to receive additional antideg protection -- Tier 2, or "high quality" streams. The highest level of antideg protection -- Tier 3 is to be applied to streams characterized as "Outstanding National Resource Waters," which DEP limits to waters within our four federally designated wilderness areas.

West Virginia's existing antideg policy contains an additional category of streams -- Tier 2.5 -- known as "waters of special concern." Here's the official definition of this group of streams: "Waters of special concern may include, but are not limited to, naturally reproducing trout streams, federally designated rivers under the "Wild and Scenic Rivers Act," waters in state parks and forests, waters in National parks and forests, waters designated under the "National Parks and Recreation Act of 1978," and waters with unique or exceptional aesthetic, ecological, or recreational value."

Tier 2.5 streams are to receive almost, but not quite, the same level of antideg protection as Tier 3. The Tier 2.5 category originally was a compromise offered for industry in this state, so that these streams would not be listed under Tier 3.

Enough of the primer. So, again, what did the West Virginia legislature and DEP and industry agree to?

Basically, the compromise bill is a 66-page document of exemptions. All nonpoint source dischargers are totally exempt from antideg review, including agriculture, logging, oil and gas, and highways. New exemptions were included for wastewater treatment facilities. Coal, of course, was exempted from antideg review for their valleyfill permits. And every facility with an existing permit to discharge waste water is also exempt from antideg review unless there is a significant expansion or increase of their pollution (this is commonly referred to as "grandfathering").

In addition, the standards used to determine the amount of pollution allowed before the antideg review process is triggered have been changed for every tier (this is known as "deminimus" pollution to the regulators, but not perhaps to the trout). This will result in much higher levels of pollution being allowed even BEFORE antideg review occurs.

We were successful, however, in retaining the Tier 2.5, the level of special protection afforded to "waters of special concern," which is supposed to include all reproducing trout streams (the industry coalition, ironically enough, now really detests this Tier 2.5 compromise level -- apparently there are no waters in the state they feel deserve real protection). The proposed Tier 2.5 list of streams from DEP and the West Virginia Department of Natural Resources also remains intact, however it is now a "presumptive" but not final list -- the new bill creates a mechanism where every private landowner along a designated stream may appeal the designation during a one-year period after the effective date of the rule.

The DEP director will then make a decision. The director's decision is appealable to the Environmental Quality Board.

Any trout streams not on the list included in the bill will have to be nominated for Tier 2.5 level protection and approved by the legislature in subsequent years. And it remains to be seen how

the Tier 2.5 appeal process will work -- it could end up being a nightmare.

It's also too early to tell how high quality streams that are not on the Tier 2.5 list will fare under the protections afforded in Tier 2, which is the default level for these streams. Both Tier 2.5 and Tier 2 will allow a discharger to pollute up to a 10% "deminimus" level (this is the old "dilution is the solution to pollution" rubric). However, Tier 2 streams will also be allowed to be degraded up to a 20% cumulative cap. Will this truly protect these streams, or will the result be that we see many more streams added to the WV list of impaired waters? Only time will tell.

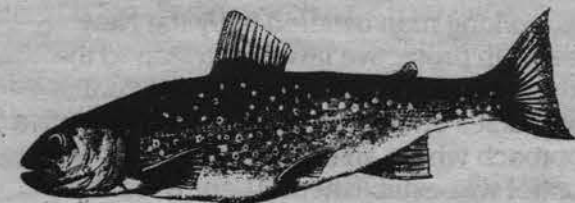
I want to make it clear to everyone reading this that those of us lobbying on behalf of the environmental community had no part in the negotiations that resulted in this compromise bill. DEP director Mike Callaghan and Office of Water Resources chief Allyn Turner did listen to our concerns and kept us updated on the changes they were suggesting. But when it came down to the negotiations, we were excluded from the room.

In a Charleston Gazette article last Friday, Callaghan (who, by the way, seems to be a really nice guy -- a much different kind of director than we are accustomed to seeing at DEP) conceded that negotiations between his agency and industry did not include any environmental group representatives.

"I excluded them, and I've apologized for that to everyone of them as best I can," Callaghan said. "I did not mean to do that. I'm new up here, and I've got a lot to learn," he added.

As for me, after dealing with this issue off and on for the last year and intensely for the last four months, I am just glad the session is over, and I beg each of you not to mention the word "antidegradation" to me any time soon!

Don Garvin, Jr., is President, Mountaineer Chapter Trout Unlimited; President and member of the "water lobby team" for the West Virginia Environmental Council. He also serves on the Board of the West Virginia Highlands Conservancy. ❖



"I've grown impatient with the kind of debate we used to have about whether optimists or the pessimists are right. Neither are right. There is too much bad news to justify complacency. There is too much good news to justify despair."

-- Donella Meadows

editorial

Plus ça change, plus c'est la même chose

Extractive industry, predominantly the mining and stripping of coal, has dominated West Virginia's economy, politics and, unfortunately, more and more its landscape since the out-of-state opportunists dreaming of financial empires first came here about 100 years ago. They came to wheedle away lands from the populace living here then to take over the incredible natural wealth that should have been the legacy of West Virginians.

I want to talk mostly about mountain top removal mining

I live in northwest Raleigh County way up in a "holler." The land has had a chance to recover somewhat from the earlier logging frenzy and misguided attempts to plant crops on steep slopes. It is very beautiful here with blooming dogwoods, the song of birds and the trees celebrating and reaffirming the natural world their with new raiment of green.

However, not far from my "backyard" are tracts of ugly reclaimed strip mine sites, a deep mine gone defunct except to spew out acid drainage, and valley fills – a little farther out, active mountain top removal sites. Every so often a blast goes off from one of those sites that shakes the foundations of my dwelling as well as my tranquillity.

There has been a dominant theme for the past century – the exploiters, read King Coal, and the politicians in tandem arrayed against ordinary citizens.

Back in the 20's the coal companies decided that it was better for profits to stop beating up on and shooting disgruntled miners (they would do this "legally" by having their hired thugs deputized, or getting the governor to bring in the militia). Part of the reason was that they couldn't get away with it any more – the leadership of persons like John L. Lewis and a new sympathy to the working man ushered in by the New Deal with protective laws put a stop to the extreme measures. Insidiously, the coal companies have used a much more effective approach where an atmosphere of thought control was established. There were three aspects to this; propaganda, putting the blame on others, and fear.

With the wealth to control the distribution of information, they contrived to ensure that every local institution in towns heavily dependent on coal – the newspapers, the Chambers of Commerce, the Boards of Education, local radio stations were able to perpetuate the myths that coal

mining brought jobs and prosperity, that without coal the whole region would be permanently in economic disarray, that to oppose coal was seen as being in some way unpatriotic, that the dangers of black lung and water pollution were overblown, that wells and springs drying up were caused by unknown factors, but certainly not by mining. In the case of mountain top removal that the mountains that had nourished those that lived in them were somehow ugly and useless, and flat land was much more desirable. Joseph Goebbels, Hitler's minister of propaganda, said that if you tell a lie often enough people will believe it.

They say jobs. Since the advent of mountain top removal strip mining jobs are disappearing at a phenomenal rate, especially union jobs. It is the corporation's drive to maximize profits that makes it desirable for them to eliminate as much payroll as they can. In the last decade mining jobs losses have dropped about 55% – largely because of unceasing mechanization, especially in strip mining. According to Larry Gibson, at the rate the mining jobs are being lost there won't be any in ten years.

Cecil Roberts as president of the UMWA is stuck in a dilemma – in the environmentalists' struggle to curb mountain top removal mining, he has opted to go for the support of the union's natural enemy, the coal companies. Those companies that still hire union miners are catering to the union to get their good will – using them for their ends just as they use everybody and everything they can for gain.

If the miners were having problems from layoffs due to being replaced by machines, it was easy to throw off the blame to someone else. Well, it's those outside agitators coming in to mind the business of West Virginians!

At first the outside "agitators" were union folks who ran a tough gauntlet in trying to bring truth to the mining communities. Now the "outsiders" are environmentalists. The coal folks have established another myth that those opposing mountain top removal mining are from out-of-state. Actually it is the owners of the mining companies that are from out of state in most instances.

Then the fear element is pervasive in keeping the coalfields residents from going against coal. The coal companies have achieved through their buildup of a pro-coal atmosphere in finding that a goodly number of aggressive folks will voluntarily do their

bidding by using threats and harassment to bring into line anyone with too many anti-coal complaints. It takes a lot of guts to oppose coal in the coal fields.

I don't know of anyone of my out-of-state friends who are not at least puzzled by the attitude they see of West Virginians allowing this horror to continue. So why don't you stop it? They have no idea how entrenched King Coal is in this state with most of the media more or less sympathetic to their plunder. They have no idea of the intimidation visited on those who would dare defy coal. When the law enforcement is allied with Big Coal, who can get any protection from those who would use threats of violence to get disgruntled citizens to keep quiet.

Now we have a new governor. And yes, guess what – he, too, has taken to heart the coal bible which has been handed down from every other governor of this state, and from this he's got the coal religion. (No matter that Big Coal gave handsomely to his campaign).

Gov. Bob Wise a few days ago offered a vigorous defense of mountaintop removal coal mining and praised the rejection of federal court-ordered limits on valley fill size. The governor said that he recently visited a mountaintop removal site and stood at the toe of a large valley fill.

"The water coming out at the end into a small pond was the same quality or better quality than it was before," Wise said. "And, there was flat land that was available for housing or for development or for other activities."

That is the standard mantra without even a new twist to it. As uncreative as a lead pipe.

With the new life being bred into coal and with new technologies that can mine out the thin seams, my insecurity here in the hollow increases by the day. I can envision no southern West Virginia mountains left if the supposedly 200 years supply of coal is fully mined out – it will all be leveled and "reclaimed."

Plus ça change, plus c'est la même chose. The more things change the more they stay the same. ✦



HOLY EARTH!*By Michael Hasty***Good News and Bad News**

What a difference a hundred days makes. After a hundred-plus days of Bush the Sequel; and in the wake of our new governor's mighty struggles with the West Virginia legislature in the first legislative session of his term; and following the appeals court's ruling on the Haden decision on mountaintop removal, the environmental picture is a lot clearer now. There's both good news and bad.

The best news is that environmental issues, having been relegated to the back of the bus throughout last year's election campaign, have taken a front seat again, thanks to the good sense of the American people. As they've indicated to any number of pollsters in recent months, the public cares more about clean air and water than the corporate enablers in the White House do.

The Bush team's boneheaded decisions to break a campaign promise to restrict carbon dioxide from power plants; to destroy a pristine wilderness area with oil drilling in the Arctic; and especially, to scrap a long-considered decision to reduce the level of arsenic in drinking water, revealed Bush's environmental Achilles heel when his approval ratings plummeted. The corporate media, ever sensitive to every quiver of opinion in their advertisers' customer base, has been shocked ... shocked to discover that the candidate whose environmental record went virtually undiscussed during the campaign turned out to be just as polluter-friendly a president as he was as governor of Texas.

Some polls are showing that, by as much as a seven-to-one ratio, the American public believes that Bush is more interested in paying off corporate contributors with favorable policies than in protecting the environment. There are strong majorities concerned about global warming and supportive of the Kyoto treaty, and opposed to drilling for oil in the Arctic National Wildlife Refuge. Nor do they want to drink arsenic.

Yet the indications are that Bush (whom Ralph Nader still accurately refers to as "a corporation disguised as a person") sees the people's rejection of his environmental policies as a public relations and "communications" problem, rather than an indictment of any wrongheadedness on his

part. The energy plan sketched out early this month by Vice President "Oilman Dick" Cheney (the administration's actual CEO) gave a big thumbs-up to fossil fuels (and even resurrected nuclear power from the grave as an example of "safe" energy -- no greenhouse emissions!) while pooh-pooing conservation as "inadequate," and dismissing alternatives like solar, hydrogen and wind power as "years down the road."

Exactly how many years Cheney didn't specify. Certainly more than it would have been if the administration's first budget didn't propose to cut the funding for alternative energy research in half, as it does. But in fact, the Republican party's assault on alternative energy development and research -- as well as on energy conservation programs -- goes back to the early years of the Reagan administration. That's why the GOP gets the lion's share of campaign contributions from oil, coal and mining interests, the industries most threatened by "green" energy.

Here in West Virginia, the state that defied tradition and gave Bush the presidency, we know all about "threatened industries." They're the ones who have been running this state and dictating government policy here for over a century. We got a good indication of how little changed that situation is -- despite the turnover in the governor's mansion -- in the legislative session just passed. Despite some token nods to the environment from new Democratic governor Bob Wise, the scenario that played out looked not much different from "business-as-usual."

The clearest (or more precisely, dirtiest) example of the new boss being the same as the old boss was the anti-degradation bill, which ultimately passed in a form just shy of the "dirty water" bill that a coalition of industry groups proposed at the beginning of the session. Just about every step of the legislative process moved the state regulations, intended to implement the federal Clean Water Act here, farther away from the compromise legislation developed over a year of stakeholder meetings and public hearings, and farther away from meaningful protection of West Virginia's rivers and streams.

There were a couple of turning points that significantly undercut environmentalists negotiating the terms of the bill. The change

in administration at the federal level resulted in a change in the position of the Environmental Protection Agency with regard to state anti-degradation policy. The Bush EPA is more inclined to let states set their own policies on environmental regulation (with Texas as a prime example of the disasters that can result); and the federal pressure which had given environmentalists some extra leverage in their negotiations was let up toward the end of the session.

Perhaps more significant, particularly as an indication of attitudes in the Wise administration, was the exclusion of environmentalists from a meeting in the last week of the legislative session between the state Division of Environmental Protection and industry lobbyists. It was at this secret meeting that the final compromises were made that further weakened the DEP's already watered-down version of the bill. DEP chief Michael Callaghan apologized for the enviros' exclusion with the excuse that he's new to the job, and insisted that the governor had wanted them included at the meeting.

But frankly, this is a little hard to swallow, given the history of this legislation and the realities of politics in Charleston. At this point, it seems likely the anti-degradation bill will end up in court.

This is not a hopeful development, especially in the wake of the Fourth Circuit Court of Appeals ruling with regard to the Haden decision on mountaintop removal. The court said that citizen lawsuits filed in federal court, challenging a state's implementation of federal policies, violate the 11th Amendment of the US Constitution. Granted, this was a ruling issued by three of the most conservative judges on what is considered the most conservative appeals court in the nation. But this decision is already being invoked by the WVDEP to challenge lawsuits on other environmental issues.

And what is truly chilling is that the Bush administration is gearing up to pack the federal courts with judges even more right-wing and industry-oriented than the crop currently on the bench. When you consider that some of the most important environmental victories in recent years have

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Establishing a Shrub Forest

By Jon Weems

If lessons learned the hard way are lessons well learned, two decades of experience should have taught me something about establishing a shrub forest. This article is offered in the hope of helping someone else learn from my experiences at West Virginia University's Core Arboretum.

My efforts began in the early 1980's. The area under the 23 kv power line that runs down the hill through the heart of the Arboretum was a major eyesore, a dense, thorny tangle of misshapen trees and shrubs stitched together by grapevines, multiflora rose, and Japanese honeysuckle. The power company that owned the right-of-way (but not the land) would let this nightmarish forest grow for about ten years, then send crews in with chain saws to cut everything more substantial than grass.

The clearcutting disrupted nesting birds and other wildlife. Subsequent regrowth brought back the ugly tangle. The power company wanted to replace the chain saw crews with aerial spraying of herbicides.

None of these conditions seemed appropriate for the middle of an arboretum. Then I heard of work in Connecticut that showed it was possible to establish a semi-stable shrub forest in a surprisingly small number of years. After hesitating because of the steepness and aggressive grape vines of the Arboretum, conditions which I knew would make things difficult, I decided to give it a shot.

I decided I could make room on my calendar to selectively clear the right-of-way after completing the annual chore of hazard tree removal. Working in the dormant season of February and early March would help me see what I was doing, and there would be no yellowjackets.

The Plan. The idea was to clear the right-of-way selectively, leaving the native shrub and small tree species, ignoring the blackberry and raspberry canes, and removing the more arborescent species (those that would become large trees) and invasive exotics. I knew I would also have to cut grapevines, which are native but a hindrance to shrub forest management. A WVU



Hillbillies Duped Again, this Time by the Shrub.

— One of the campaign ads that helped George Bush stage his remarkable win last year in West Virginia, until then historically a Democratic state, pledged that Bush would support disability payments to coal miners injured by black lung. Republican campaign ads accused the Clinton administration of trying to trim black lung benefits, which are financed by the coal industry but regulated by the Labor Department. In fact, one of Clinton's last minute executive orders streamlined a lengthy and complex diagnostic procedure for black lung. The old system was favored by the coal industry because it kept injured miners from receiving benefits during years of appeals, until many of them died. Now that the Shrub is in office there has been a rollback of Clinton's order hastening black lung award benefits. --

Washington Spectator ✦

faculty member recommended stump treatment with a certain herbicide to reduce sprouting of unwanted species.

I knew the first years would be tedious. I would have to look closely to identify shrub seedlings and sprouts by twig and bud traits. Invasive exotics suppressed include ailanthus, multiflora rose, shrubby honeysuckles, Japanese honeysuckle (vine), privets, barberries, and winged euonymus.

Twenty Years Later. It's been a struggle.

Maintenance is only now beginning to get easier, with some of the more established shrubs shading out most competing tree seedlings. Invasive exotics are mostly under control. Large gaps between shrubs remain, though, so the right-of-way is still far from a "semi-stable shrub forest." Some tree sprouts still grow vigorously in the gaps, more than half the right-of-way area.

One problem is that I have never found time to cover the entire area in a single season. Trees and tree sprouts have managed to become well established. Also, the herbicide used on freshly cut stumps proved only partially effective during the dormant season. Maples, grapes, and even slippery elm sometimes had enough sap pressure to rinse off the herbicide, which proved entirely ineffective against black locust in any season. Because of these disappointing results and the fact that pausing to find and treat stumps greatly slowed the clearing process, the herbicide was abandoned after using up the first gallon of concentrate.

On the plus side, progress has been made. The cycle of clearcut and regrowth has ended. Even at its worst, the right-of-way is now much more attractive (or less unattractive) than it used to be. Arborescent sprouts in areas that have received frequent attention are much less numerous and vigorous than they were in 1981. There has been no aerial spraying of herbicides.

Twenty species of native shrubs and small trees have become established. The most common ones are hawthorn, spicebush, staghorn sumac, nannyberry, black haw, silky cornel, arrowwood, American hazelnut, flowering dogwood, and redbud. Many individual plants have developed into attractive specimens, and dense thickets have developed in spots.

What I Should Have Done. I can't undo the errors I've made, but I can make some suggestions for anyone who might consider a similar undertaking.

- * Get more information up front. Instead of plunging into a major project based on hearsay about work in Connecticut, I should have aggressively tracked down published information about that work and paid close attention to its methodology and results.
- * Choose the right herbicide. My herbicide recommendation came from a faculty member in Plant and Soil Sciences. I should have at least sought a second opinion from somebody in the Division of Forestry. If there is no herbicide that will both be effective and satisfy your environmental concerns, it's best to use no herbicide at all.
- * Plant desirable species. Some parts of the right-of-way are still understocked 20 years into the process. I should have augmented the natural stand with purchased stock. Tree tubes would have helped these plants become established and made them easy to spot during selective clearing.

- * Use the right tools. I have used many tools over the years, including chain saws, weed-whackers, bank blades, mattocks, rock picks, lawn mowers, pruning saws, lopping shears, hand pruners, hand-held sprayers, backpack sprayers, drip bottles, and flagging tape. Most of these have been useful at times, but I no longer use weed-whackers or bank blades. I prefer the rock pick for uprooting invasive exotics such as barberries and shrubby honeysuckles. Lopping shears are best for selective clearing where desirable and undesirable species grow closely together. I sometimes use a lawn mower where the ground is not too steep, but only after carefully marking seedlings and small saplings of desirable species with flagging tape, to help me see and avoid mowing them.

More Tips.

- * Learn to recognize the desirable species that grow in your area. When clearing, leave anything small you're unsure about. If it keeps growing straight, fast, and up after passing ten feet in height, it's probably inappropriate for a power line right-of-way.
- * Don't use a lawn mower or weed-whacker on the same ground in consecutive years unless the area is already fully stocked with shrubs. First year seedlings of desirable species are very hard to spot, so mowing is likely to set them back as much as the plants you're trying to suppress. Also, raspberries and blackberries bear fruit on second year canes, so don't mow if you want to harvest wild berries.
- * Always work safely and carefully. You're bound to cut a few desirable stems by mistake now and then. Try to minimize this, but don't worry about it. Be more concerned about your own safety, especially when using power equipment.
- * Never use any herbicide without first reading the label and following its personal and environmental safety suggestions. Be conservative if you use herbicides. Remember that heavy use can overwhelm the soil's ability to break herbicides down into more benign substances. Keep herbicides well away from bodies of water. It's entirely possible to establish a shrub forest without using any herbicides at all.
- * Cutting sprouts back during the growing season reduces vigor more than cutting during the dormant season. If you can safely and repeatedly get at undesirable sprouts during the growing season, you can prevent root systems from getting enough energy (in the form of sugars produced by leaves) to carry on. It's possible to kill root systems this way in just a few years, without using herbicides.

Converting a power line right-of-way to a shrub forest can be a long process. It doesn't yield instant gratification. Patience and persistence are essential. In most years, I spend close to 100 hours working on the right-of-way. This is a lot of time, but it's much less on an annual basis than I spend mowing a few acres of lawn, and the right-of-way gets a little more attractive each year.

I hope this hasn't sounded too discouraging. Establishing a shrub forest can be very satisfying -- it's just that the satisfaction can be a long time coming.

Jon Weems is Arboretum Specialist for the Core Arboretum at West Virginia University. ✦



RULING from page 1

over a rule that requires 100-foot buffer zones between mining activities and streams. Citizen group lawyers argued that the buffer zone rule outlawed valley fills in perennial and intermittent streams. Perennial streams flow all year. Intermittent streams flow part of the year. Citizen lawyers said that the buffer zone rule allowed fills only in smaller, ephemeral streams, which flow only when it rains.

In this ruling the panel interjected some ambiguity by effectively overturning -- with no explanation -- the 4th Circuit's own opinion in a 1997 case called *Molinary vs. Powell*. In that case, a three-judge panel ruled that state rules that comprise a federally approved strip-mine regulatory program are "issued pursuant" to federal law. Under that ruling citizens could take lawsuits over lax strip mine enforcement to federal court. But this time the panel said that state mining rules aren't federal law after all. Niemeyer was on that panel that decided the *Molinary* case.

The panel agreed that there was a steep environmental impact. "The disruption to the immediate environment created by mountaintop mining is considerable and has provoked sharp differences of opinion between environmentalists and industry players," the panel's opinion said.

In its own rules, the 4th Circuit says that only the full court -- not a three-judge panel -- may overturn a previous panel decision. Only the full court, in a proceeding called an *en banc* rehearing, can overturn a previous panel decision. (*En banc* is a French term, and means "on the bench," or in full court.)

In the wake of the 4th Circuit ruling, lawyers for the WVHC are debating amongst themselves whether to ask for an *en banc* rehearing or try to go directly to the US Supreme Court. Jim Hecker, a lawyer with the Washington, D.C., group Trial Lawyers for Public Justice, said that some sort of appeal will be filed. Hecker noted that, in 1977, Congress rejected two amendments that would have specifically outlawed citizen suits in federal court against state regulators.

And from our politicians -- Sen. Robert C. Byrd and Rep. Nick J. Rahall said Wednesday that they were pleased that a federal court ruling to limit mountaintop removal was overturned. But both West Virginia Democrats said they had hoped the case would be decided on its substance -- instead of on a technicality about court jurisdiction.

Gov. Bob Wise offered a vigorous defense of mountaintop removal coal mining and praised the rejection of federal court-ordered limits on valley fill size. At one point in 1998, Wise called for a moratorium on new mountaintop removal permits. At the time, he said the state's permit reviews were so lax that no new mines should be authorized until reforms were made. But since then, Wise has become a strong supporter of what the governor calls "responsible mountaintop mining."

United Mine Workers President Cecil

Roberts said that he hopes an appeals court ruling on mountaintop removal will help put 400 laid-off miners in Logan County back to work.

"It is also the UMWA's strong hope that a comprehensive resolution will be forthcoming with regard to the practice of mountaintop mining in West Virginia -- and that it can be achieved in a constructive -- not a contentious manner," Roberts said. "UMWA members have always been willing to mine the coal. It is up to the industry, the state and the people of West Virginia to decide what law will dictate how they mine it."

Coal industry officials had attacked Haden's ruling, saying it would put these jobs at risk. Industry lobbyists and former Gov. Cecil Underwood had argued that the ruling would end all coal mining in West Virginia. In court documents, they provided little proof of this claim.

Bill Raney, president of the West Virginia Coal Association, said he thought the ruling would give state regulators more confidence that they've been doing things the right way. However, this decision does not say that state regulators have been doing things the right way. It did not rule on any of the legal decisions Haden made in his ruling, except for whether he had jurisdiction to decide the issue. The three-judge panel ignored the plain wording of the 11th Amendment to the Constitution and the plain wording of the federal Surface Mining Control and Reclamation Act to decide that Haden did not have jurisdiction.

The ruling leaves the real issue unanswered: Has the state of West Virginia illegally allowed coal companies to bury hundreds of miles of streams with dirt and rubble from mountaintop removal mining operations?

Federal regulators have abdicated their responsibility to force the state to follow the law. Citizens chose the one recourse they had left: federal court. Now the 4th Circuit is telling them that avenue is also shut off to them.

Statewide, coal companies have proposed new valley fills that would bury more than 100 more miles of streams, according to permit applications on file with the DEP. That's on top of the more than 775 miles of streams already approved to be filled with waste rock and dirt from strip mines. Should these fills be allowed? Does a strip-mine stream buffer zone prohibit them? Should coal companies be permitted to bury hundreds of miles of creeks and streams across the Southern West Virginia coalfields?

Coal industry officials and the state government still contend that valley fills are perfectly legal.

"Nothing has changed about our belief that the law says that you can't do these big fills in perennial and intermittent streams," said Cindy Rank, the WVHC's mining chairwoman. "But the political pressure to permit these big fills is going to be huge."

"We need DEP to have a backbone that heretofore it has not had, and we need our new governor to show the wisdom to limit the size of these fills." ❖

MARTIN from page 2

off beautiful mountains and dumping them in the hollows. This "environmentally sound manner" is Arch Coal's plan for the mountains all around and the hollow across the creek from Jim Weakley's home. It has made the ridges disappear all around Larry Gibson's homeplace, and has brought a sludge dam high above the school of Judy Bond's grandchildren.

More than one friend has asked me if I think we can win these environmental battles. They point out the incredible odds, the mountains of cash put into destroying our mountains, buying our politicians and the false twists and spins that industry executives and public relations companies put on the facts.

My answer to the question can we win in the struggle to save our environment is that I don't know if we can win or not. I know that I am going to die but I don't quit living. I also know that we could lose out on some of our efforts to preserve nature (ourselves included) but that doesn't mean we should stop trying. We have to speak the truth whether it prevails or not. It would be bad enough to lose but still worse to lose without speaking the truth.

Julian Martin is a Director of the West Virginia Highlands Conservancy

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HASTY from page 5

been in the judicial system, "ominous" doesn't seem too strong a description for this turn of events.

But yet ... when you rack up the good news/bad news ratio in this column, it may feel weighted toward the latter, in that our entire political system looks like it's lining up against us. But on the question of the environment, the people are solidly on our side. So what can we do about it?

That will be the subject of next month's column.

Michael Hasty marches to his own drumbeat in the Eastern Panhandle. He is a regular columnist for the Hampshire Review. You can access his weekly column on the Internet at <www.hampshirereview.com>. ❖

MOUNTAIN ODYSSEY 2001



Outings, Education and Beyond

WEST VIRGINIA HIGHLANDS CONSERVANCY MOUNTAIN ODYSSEY 2001 SCHEDULE

Almost Anytime. Visit Kayford Mountain south of Charleston to see mountain top removal (MTR) up close and hear Larry Gibson's story about how he saved his mountain, now almost totally surrounded by MTR. Bring a lunch -- there is a picnic area on Larry's mountain. Just call Larry or Julian Martin. Leaders: Julian Martin, (304) 342-8989, <Martinjul@aol.com>; and Larry Gibson, (304) 586-3287 or (304) 549-3287 cellular.

May 19-20 (Sat-Sun) Seneca Creek Backcountry backpack trip. Leader: Peter Shoenfeld, (301) 587-6197, <peter@cais.net>

June 2-3 (Sat-Sun) Northern Canaan Valley overnight. Leader: Dave Saville, (304) 284-9548, <daves@labyrinth.net>

June 9 (Sat) Cacapon State Park to Paw Paw-- a "good long day hike." Leader: Rich McGervey, <mcgervey@hotmail.com>, (304) 235-0541 (Mon.-Fri.)

June 9 (Sat) EarthWalk outdoor educational activity based upon Hugh and Ruth Blackwell Rogers' beautiful Four Worlds So Far program and scroll. We will round the day off with a picnic, campfire, and music. This outing is designed as a family experience. Children should be 10 years old and above. Limited to 15 people. Leaders: Ruth Blackwell Rogers, (304) 636-2662, <ruthbr@wvhighlands.org>, and Jack Slocomb, Home (301) 777-8810, Work (301) 777-1084, <JSLOCOMB@prodigy.net>

June 9-11 (Sat-Mon) Roaring-Flatrock-Red Creek Plains backpack with *Mon. Forest Hiking Guide* author Bruce Sundquist. Approximately 15 miles. Prior backpacking experience required. See article on page 10. Leader: Bruce Sundquist, (724) 327-8737, <bsundquist1@juno.com>

June 23 (Sat.) Simultaneous Summit Celebration. Several day hikes of varying difficulty on prominent peaks in the highlands. All the hiking groups will unite in spirit to celebrate these high points, and by extension the entire highland region, with flags, horns, rattles, songs, and flowers! Leader, Ruth Blackwell Rogers, (304) 636-2662, <ruthbr@wvhighlands.org>

June 29-July 1 (Fri-Sun) Enjoy a backpacking trip along the Otter Creek Trail during the rhododendron season. Group limit 7. Leader, Susan Bly, (304) 876-5177 day or (304)258-3319 evening, <sbly@shepherd.edu>

July 15 (Sun) Sinks of Gandy. Follow Gandy Creek 3/4 mile underground through the Sinks of Gandy cave. Safe for beginners. Leader, Barnes Nugent, (304) 284-9548, <barnes@geosrv.wvnet.edu>

July 21 (Sat) Easy 4 hr. Buckhannon River flatwater canoe trip above town through the 5-mile reservoir pool. Meet at Sheetz off Corridor H (US 33) at the Buckhannon-Phillipi exit at 11 AM. Leader: Don Gasper, (304) 472-3704.

July 27-29 (Fri.-Sun) Dolly Sods Stem to Stern Backpack. Leader: Jack Slocomb, Home (301) 777-8810, Work (301) 777-1084, <JSLOCOMB@prodigy.net>

August 3-5 (Fri.-Mon) Car camping trip to Dolly Sods to do stream hiking along Red Creek and Big Stonecoal Creek. Unlike x-stream hiking (normal trails) this type of hiking involves travel in the stream, using hiking poles and beach shoes. Leader: Susan Bly, (304) 876-5177 day or (304)258-3319 evening, <sbly@shepherd.edu>

August 4 (Sat) Easy 5 hr. day hike on Spruce Mountain Meet at Spruce Knob parking lot 11 AM. Leader: Don Gasper, (304) 472-3704.

August 11(Sat) Northern Canaan Valley day hike. Leader: Linda Cooper, (304) 296-0565, <cooper@hsc.wvu.edu>

August 12 (Sun) EarthWalk environmental education experience at Bear Rocks (Dolly Sods North). Leader: Jack Slocomb, Home (301) 777-8810, Work (301) 777-1084, <JSLOCOMB@prodigy.net>

August 25 (Sat) Otter Creek Wilderness (downstream half) and tour of the USFS Fernow Experimental Forest. The tour is by car to the trail head. The hike is an easy 7 miles to the mouth, but involves a moderate stream crossing. Meet at Sheetz in Parsons at 11 AM. Leader: Don Gasper, (304) 472-3704.

September 1-3 (Sat-Sun/Mon) North Fork Mountain backpack Sat-Sun with *Mon. Forest Hiking Guide* author Bruce Sundquist. Prior backpacking experience required, carry your own water, 12 miles total. An optional third day will be spent exploring Dolly Sods North. Leader: Bruce Sundquist, (724) 327-8737, <bsundquist1@juno.com>

September 7-9 (Fri-Sun) Enjoy early fall hiking in the Shavers Fork area. We'll follow the West Fork trail and visit the High Falls of the Cheat. Car camping is available at the Laurel Fork campground. For more information contact Susan Bly at (304) 876-5177 day or (304) 258-3319 evening, <sbly@shepherd.edu>

September 29 (Sat) Bickle Knob, Bear Heaven Rocks, Stewart Park, Bowden Cave, Bowden Trout Hatchery. Meet at Hatchery at 11 AM. Bring a flashlight if you care to cave for 1 hour. Caving is pretty easy and very safe, and as it can be a little muddy, it will be the last activity of the day. This is mostly a tour with short walks. 6 hours. Leader: Don Gasper, (304) 472-3704.

Oct. 5-8 (Fri-Mon) Otter Creek wilderness backpack trip. Group limited to 6. Leader: Nathan Anderson, <stgmnobpf@yahoo.com>, or call Peter Shoenfeld at (301) 587-6197.

Oct. 12-14 (Fri-Sun) WVHC Fall Review. Outings will be planned. †

April Fool's Snow Foils Spruce-a-thon!

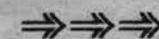
By Peter Shoenfeld

The planned Sunday, April 1, Mountain Odyssey event was a hike on Spruce Mountain's Huckleberry Trail with the extra purpose of scouting this trail for the forthcoming trail maintenance volunteer project. Heading toward the Highlands Saturday, I noticed that spring had apparently un-sprung -- the mountains had fresh white spots on them! Intending to reconnoiter the hike route, I drove

up FS112 [Forest Service Road] in my gas-guzzling, snow-qualified Trooper. High up on Spruce Mountain, the snow was about eight inches deep in the road and 24 inches deep at the sides of the road-- apparently it had been plowed, but not since the last snow. At the top of the mountain, where the road to Spruce Knob Tower comes in, a car had been abandoned in the middle of the road. Seeing this, I gave up, turned around, and decided to reschedule the event. You can't scout the trail unless you can see the trail, and you can't do that through a foot of snow, I concluded. Besides, there was no way a non-snow-qualified vehicle could get within three miles of the

trailhead. What's more, the weather forecast was for rain!

I went on up to my North Fork Mountain cabin a few miles away and was pleased and surprised to discover less snow there. Pleased because I'd had to hike up through deep snow on the last trip, and surprised because the last storm had come from the east, causing me to expect more snow there. I called Tom Rodd to tell him the trip was off. He seemed so disappointed that I switched to Plan B -- we would meet at Judy Gap and hike on North Fork Mountain instead! I called the





Gus Drum, Bryanna and Bryan Moore gathering seedlings



"Bringing Back the Spruce" outing on the upper Shavers Fork

Photos by Ruth Blackwell Rogers

The Trees Were In Charge

By Ruth Blackwell Rogers

It didn't take long to figure out that nobody was in charge here. The trees were in charge. The railroad facilitated. The rest of us went along for the ride and did what we could to help the trees and the railroad and the river.

Just after 8 a.m. on Saturday, April 21st, as I drove to Cheat Bridge for a Mountain Odyssey outing called "Bringing Back the Spruce," it began to rain. The day before, five of us had met at a tributary of the upper Shavers Fork to gather several hundred red spruce seedlings from an old roadbed the Forest Service plans to reclaim. I had slept peacefully that night in a rhododendron thicket beside First Fork, then picked up the seedlings we had stowed behind bushes. However, as I arrived at the railroad siding I saw many more cars than I had expected and the railbus, the Cheat Mountain Salamander, was leaving.

What?! I'm supposed to be the outing leader, I have the trees, and the railbus, completely full, is leaving fifteen minutes early without me. Two carloads of participants are just driving up and someone is shouting, "Those people are cutting trees while you all are planting trees!" The track inspector puts the seedlings in a yellow Bronco mounted on the rails. He tells me to get in with my pack and

shovel and tells the others he'll come back for them. I still don't know what's going on, but it is clear I am not in charge.

A year ago another tree-planting outing was held during the West Virginia Highlands Conservancy's Spring Review. This was done in collaboration with Trout Unlimited and the Shavers Fork Coalition. TU "adopted" the upper Shavers Fork several years ago and set out to help restore the river by planting spruce to stabilize the banks and shade the water. Outings have been held every April and October for the past two years, at sites accessible by car and foot. This time we wanted to plant in a less accessible stretch of river about 14 miles upstream from Cheat Bridge.

John Smith, Operator of the West Virginia Central Railroad, generously offered to transport the group. John and his company want to keep the upper Shavers Fork "as it is or better." As the rail-Bronco makes its way upstream, Keith, the inspector, tells me that in addition to our tree-planters the Salamander is carrying some rail enthusiasts who are planning a trip that will cater to photographers. Their contract with John Smith called for cutting brush to clean up photo vistas.

Before we catch up with our group above Second Fork, we see the Salamander returning. The Bronco backs a couple of miles to a siding and stops. Fifteen people swarm out

of the railbus and begin whacking weeds and clipping brush. Earlier, this crew cut more than brush: lots of rhododendron and one six-inch diameter tree were dropped right into the river. At this very spot a year or so ago, someone cut a small copse of eight-inch spruces on the lip of a steep bank in order to take a better photograph. Now that bank is visibly eroding. Today, John has to forcefully restrain the rail buffs from cutting more trees. I can see that John and his wife Kathy are going to have their hands full on the day-long trip down to Bowden and back to Cheat Bridge.

So our day of tree-planting begins with alarm and confusion. The pushy rail buff leader insisted the Salamander take off early, and the tree-planters, several of whom knew no one else on the railbus, began to wonder if they had found the right outing. Chainsaws? Fortunately, Bryan Moore of TU had everyone introduce themselves and told them where and how to plant. Snowshoe Mountain Resort had delivered many bags of seedlings as a contribution to the restoration effort. By the time I arrived, the eighteen participants had spread along the streambank and were busily planting trees. The trees had taken control. Everyone was intent on helping restore a balance in this beautiful place by planting the sturdy green spruce seedlings where they could help stabilize banks and bars. During the next five or six hours, we worked

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other hikers with the new plan. One was already in route, but the message was successfully relayed.

A group of seven met Sunday Morning and drove up the old Circleville Pike to the Nature Conservancy's beautiful Pike Knob Preserve. This is the southern-most bastion for native Red Pine trees, and home to a number of other rare species as well. We walked up to the knob and checked out the foundation of the old fire tower; the tower itself moved on a few years ago. There is some interesting signage explaining what's here, erected by a Dave Saville-directed volunteer crew after TNC bought the land and the fire tower left. We

continued downslope to the north toward Nelson Sods, from where on a clear day (not this one), you can see Cabin Mountain to the northwest. At this point we were in deep, fresh snow and made our way by using each other's footprints. It rained some, we rested, got cold, and started back up to the knob and back down the old road. The other hikers headed home, I went back to the cabin, and the rain changed back to more April Fool's Day snow!

The North Fork Mountain is east of Allegheny Front in the Potomac drainage, between the North Fork and South Branch Rivers. It is about 40 miles long, higher than

most in the Mon [Monongahela National Forest], but much dryer. Long ago, the entire ridge was pushed over and folded from the east, producing steep cliffs all along the west face, with spectacular views. Seneca Rocks is the most famous of these. The portion of the mountain north of US Route 33 includes one of the Mon Forest's best known long distance hiking trails. Most of the mountain south of Route 33 is on private lands, including several tracts owned by The Nature Conservancy. Their Pike Knob Preserve is open to the public for hiking. On May 6, we will hike another portion of southern North Fork Mountain. ♣



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upstream for most of a mile on the west side of the river.

We paused for lunch in the shelter of a couple of spreading hemlocks. After one o'clock the rain stopped, the sun came out, raincoats and sweatshirts were shed. The Bronco, which had been shuttling trees and people, took a few participants back to Cheat Bridge. The rest of us continued to work, even planting some trees on steep banks close to the rails "for the rail photographers to cut!" Their outrageous attitude was still on our minds. And we were startled to see two four-wheelers speeding up the tracks. Surely they knew it was illegal to use ORV's in that part of the National Forest.

When he returned, the rail inspector told us he had seen the four-wheelers and had asked the riders to leave. After he had gone on to Cheat Bridge, the riders had placed rocks and spikes and old ties on the rails as their way of thumbing their noses at the railroad. This mischief occurs often at certain places along the line. The rail inspector has to clear the tracks before each train can make its run. Two excursion trains and various freight trains operate on the 122-mile West Virginia Central line.

While we focused on the harmony that could help the river restore itself, we were reminded that there are forces still at work in the opposite direction. Most of the upper Shavers Fork has come into public ownership only in the last decade. The long-term effects of catastrophic logging, road building, mining, acid precipitation, and other human activities have severely degraded the river and fragmented the montane spruce forests. The river is beginning to recover, and the area is among the state's most popular for a wide variety of outdoor recreation, but the watershed needs help to bring it to its potential as a native brook trout fishery. The landscape supports a wealth of plants and animals including large concentrations of globally rare species. Eventually, the Shavers Fork can remind us how it was in the pristine, high elevation watersheds that once defined the Allegheny Mountains.

In the spring of 2000, a diverse group of partners came together and found ways to cooperate in that endeavor. Eighteen private corporations, government agencies, and non-profit organizations, including the West Virginia Highlands Conservancy, signed the "Healing the Headwaters" vision statement and

A Visit to the "Plains" of the Highlands

By Bruce Sundquist

The purpose of this article is to make you more familiar with one of the more outstanding regions of West Virginia's Highlands -- the Red Creek Plains-Roaring Plains-Flatrock Plains area -- and then to announce a West Virginia Highlands Conservancy Odyssey 2001 June backpacking outing to the "Plains."

Don't let names fool you. Nothing is flat about the large region of Monongahela National Forest (MNF) just south of Dolly Sods labeled on maps as "Red Creek Plains," "Flatrock Plains" and "Roaring Plains." If you look at a relief map of the entire West Virginia Highlands from a distance and point to what appears to be the most rugged topography of the entire region, you will probably discover you are pointing to the "Plains."

Visits to the 18 square miles of the "Plains" are usually unforgettable experiences. Vegetation is reminiscent of eastern Canada due to the high elevation (up to 4770 ft. on Mt. Porte Crayon), severe climate and lower temperatures (about 10+ degrees lower than surrounding urban areas). Dense red spruce forests are punctuated by rhododendron thickets, spectacular views, blueberry heath speckled with azaleas, laurel and scattered red spruce, plus fascinating high-elevation bogs and clear streams. Azaleas brighten up the area from late May into mid-June. Near their peak, azalea fragrance is so strong that many parts of the Plains give the feeling of being in a heavily perfumed room. Mountain laurel add lots of color in the middle few weeks in June. Pink lady's slipper orchids are frequently seen when azaleas bloom. Rhododendron bloom in mid-July. Blueberries are ripe from mid-July through mid-September.

Allegheny Front

The Plains are atop and just west of Allegheny Front, backbone ridge of the Appalachians, and the eastern continental divide in this part of the country. Clouds, rising to get over Allegheny Front, are cooled, causing precipitation to be well above average, and vegetation to be lush and dense. Areas east of the plains (e.g. North Fork Mountain) are drier than areas to the west due to the effect of Allegheny Front on weather

patterns. You can get a dramatic feel for the effect of Allegheny Front on climate by climbing east on a pipeline swath to the top of Allegheny Front on Roaring Plains. Within a quarter-mile from the top you go from dense, moist red spruce forest to stunted, scattered shrubs in a grass/blueberry heath on the broad ridgetop where the climate is severest. A short distance down the east side is a drier climate with open hardwoods sheltered by the ridgetop.

Views

Broad views and scenery in this area rival anything else the MNF has to offer. One portion of the rim of Allegheny Front in Roaring Plains has a huge, spectacular, fascinating meadow. From a campsite right on the rim in this meadow, one can see nearly the entire 24-mile length of North Fork Mountain, Seneca Rocks, both sets of Fore Knobs, Germany Valley, Smith Mountain and an endless series of ridges to the east, including the Shenandoah Mountains on a clear day (30 air-miles away). About 3000 vertical feet below you are glimpses of the North Fork of the South Branch of the Potomac River. It is doubtful that there are many, if any, other 3000-foot views anywhere in the West Virginia Highlands. This rim campsite is probably the most spectacular campsite on the MNF.

From a bald high-point on Allegheny Front near the junction of Roaring Plains Trail and Flatrock Run Trail is a view looking down onto the southern half of Dolly Sods Wilderness, including Cabin Mountain on its west rim, Allegheny Front on its east rim, plus parts of Canaan Valley and the Valley of the North Fork of the South Branch of the Potomac River -- all in one breath-taking panorama. Even the same basic view from Boar's Nest Trail much lower in elevation is spectacular. Nearby, Flatrock Run Trail begins its steep 2200-foot drop to Laneville. No other trail on the MNF offers such an extreme elevation change.

If you are thinking of views from nearby Mt. Porte Crayon, forget it. Most people fail to

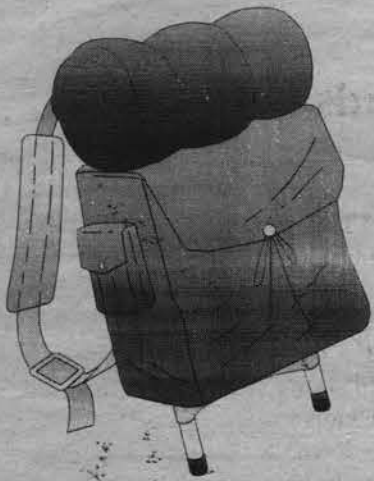
PLAINS concluded on next page

pledged their commitment to restoration and conservation on the 70,000-acre Upper Shavers Fork watershed. These partners will work to further broaden support for recovery by increasing public understanding and appreciation.

Our "Bringing Back the Spruce" outing demonstrated what can happen when a diverse group of well-intentioned people come together for a simple task. The energy of the 13 adults and five children shifted into a deep caring for the whole place.

Alerted to signs of recent water flows, they learned just where to put trees to best stabilize the banks for high water. They

carefully spread the roots in the holes they had dug and covered them firmly but gently, wishing them well. Perhaps working with children is the most important thing we accomplished on this outing. Seven-year-old Bryanna Moore, still energetic after five hours in the field, held up a seedling to me and said, "Isn't this the sweetest little baby spruce? I'm going to bring my grandchildren to see this when it's a TALL spruce!" The trees kept Bryanna going. We were keeping the trees going. We must see to it that the children grow up to keep the trees so that the trees will help keep the river and creatures and companion plants and our children's children going. ♣



PLAINS from preceding page

make the ascent, and those who succeed find a dark spruce forest, a USGS survey marker, faint remains of an old wood structure and little else. However, not far away, along Roaring Plains Trail, is a popular campsite on the north rim of Long Run with spectacular views of this deep, steep-walled, densely forested valley and of Haystack Knob. At night this campsite is often visited by the "roaring winds" after which Roaring Plains was named. The rim of Long Run is also right on the eastern continental divide and should be considered part of Allegheny Front. There are countless other views from the Plains. Many are visible from the pipeline swath bisecting the area. As the spruce forest grows taller, some of these views are shrinking even as the area grows more scenic.

Comparisons

Those of us who have visited the White Mountains of northern New Hampshire see a lot of similarities with the Plains. The "Whites" have mainly black spruce and the Plains mostly red spruce. But bird life is similar. In both places, birds perch at the tops of spruce and sing long, shrill, melodious songs -- to be answered by birds on distant spruce. This probably represents an adaptation to the sound-deadening properties of spruce forests which force birds to develop good strong, shrill voices to communicate. In the "Whites," hiking and backpacking are big business with lodges and shuttle services everywhere. This probably reflects the large amount of land above tree-line -- something the Plains have little or none of.

Threats

Spruce are being killed throughout the eastern US due, most likely, to air-pollution (acid rain?). Fortunately, so far, only spruce above 5000 feet are being killed, and the Plains have nothing over 4770 feet. If air pollution gets worse however, problems could develop.

There are also rumors of a ski resort. The potential location is easy to spot -- Flatrock Run with its spectacular scenery (as those who have driven state route 45 can attest), north-facing slopes, a high top (4600 feet) and a long (2,200-vertical-foot) drop. Add another 170 feet to the maximum elevation and drop if Mt. Porte Crayon is included. Such a resort could outclass anything else in the middle-Atlantic states, so the USFS could encounter heavy pressure to sell or

lease the land. We should keep eyes and ears alert. The USFS would need lots of help in resisting these pressures. Seeing Laneville being turned into another Aspen is a sickening thought indeed.

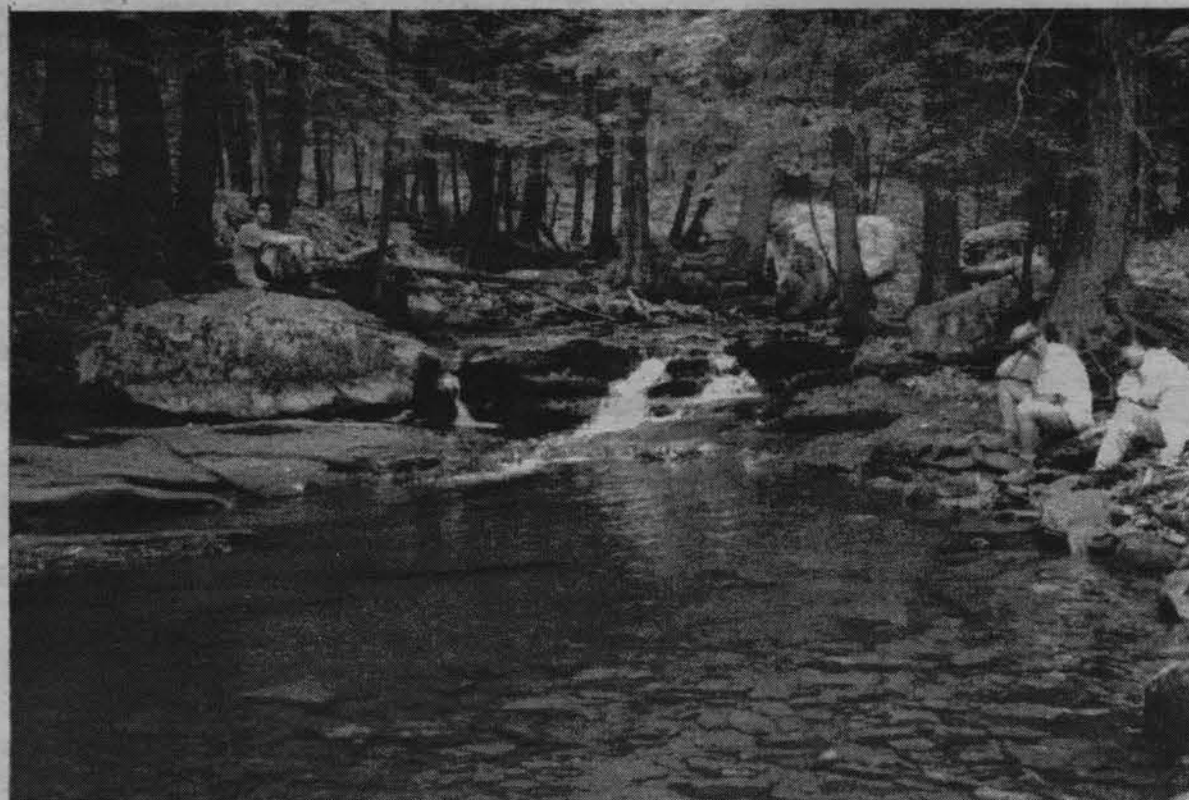
A few decades ago, when we were working on Wilderness status for Dolly Sods, people in Potomac Ranger District of the USFS speculated that ultimately much of the District would become a national park. They are probably right. But if that happens, the Plains would become one of the crown jewels of the park and lose a lot of its wildness and related qualities. On balance, a national park could be a linchpin to a lot of crucial and otherwise impossible land protection in West Virginia. But there would probably be cable cars from Seneca Rocks area to the tops of North Fork Mountain and Roaring Plains and related facilities to accommodate the extra millions.

An Outing to the Plains

An Odyssey 2001 backpack outing to the Plains is scheduled for June 9-11. This is typically the peak weekend, permitting us to catch the mountain laurel, azaleas, pink ladyslipper orchids and other colors of late spring. The Plains are not for first-time backpackers since the area is remote, and some trails are steep and rocky in spots. The Plains are a backpacker's heaven, less-visited than Dolly Sods just to the north, but still very popular. The US Forest Service did a lot of work in early 1999 getting foot trails into excellent shape. Group size is limited to 10 people -- no pets. The trip is not planned to be tough -- only 16 miles over 3 days. But there is so much to see and do on the Plains that it tends to be a very busy trip. If interested, contact Bruce Sundquist at (724) 327-8737 or e-mail <bsundquist1@juno.com>



South Prong Trail on Red Creek Plains
Photo: Steve Swingenstein



Flatrock Run on Flatrock Plains
Photo: Monika Vucic

Maxey's Maxims

from Archives of the Charleston Gazette

Published on January 28, 2000

Mountaintop Removal Hurts State's Past and its Future -- Man on the Moonscape

William's words as follows:

As director of West Virginia's Division of Forestry, it was 1996 before I fully realized the magnitude and permanent elimination of West Virginia's forestland in the southern and central coalfields by mountaintop removal of coal. A helicopter tour of these areas and the results of an updated forest inventory disclosed not only the size and rate of deforestation, but the loss of West Virginia's mountain culture.

Since the federal Surface Mining Act of 1977 was enacted, all of West Virginia's governors and legislators of both parties have been very supportive of the illegal variances in this law that allowed mountaintop removal of coal. I served at the pleasure of governors of both parties from 1993 to 1998. I wish to make it clear that while I was head of the Forestry Division I attempted to work within the system to encourage the West Virginia Mining and Reclamation Association and the West Virginia Department of Environmental Protection to prevent further devastation. The only concession was to make my professional proposals an option, as opposed to mandatory.

Mountaintop removal has already caused long-term problems and until Judge Charles Haden's II ruling, the rate was increasing. I resigned as a matter of principle, for I did not want to share in the blame nor guilt for the loss of West Virginia's heritage through the loss of our forested mountains.

In West Virginia, from 1977 to 1997, 300,000 acres were made into a moonscape by the decapitation of our mountains. Vast areas of our Mountain State are made uninhabitable for our citizens.

The rate of decapitation of our mountains had increased to 30,000 acres annually. It will take 150 to 200 years before trees would become re-established following such a drastic mining practice. All native plant and animals are practically eliminated (not to mention the impact on threatened & endangered species). The headwaters of hundreds of miles of our streams are filled with millions of tons of mountaintops (overburden.) This irresponsible excavation of coal makes the landscape so unsightly that it ruins tourism. (I can't envision tourists coming to see these barren wastelands!) Isn't tourism supposed to be our growth industry?

The timber and wood products industry employs some 30,000 in West Virginia. Prior to mountaintop removal, all of West Virginia's 11 million acres of forests were producing substantial volumes of high-value timber. Trees are our only renewable natural resource.

There are about 17,000 jobs in coal mining. The mining industry projects the coal reserves to be depleted within 20 years.

Mountaintop removal of coal employs just a few hundred of these workers. It is a sad irony that mountaintop removal actually destroys more coal mining jobs than it creates; union miners are expediently replaced by relatively few heavy-equipment operators. +

Excerpts from the Nov 1, 1998 article by Associated Press reporter, Jennifer Bundy Forestry Chief Resigns over Mining

Division of Forestry Director Bill Maxey says he is retiring because the Underwood administration tried to stifle his opposition to mountaintop removal strip mining, which he calls a blight akin to AIDS...

"I think mountaintop removal is analogous to serious disease, like AIDS," says Maxey, who has been an opponent of surface mining since before the Federal Surface Mining Control and Reclamation Act of 1977. He spoke against the act to a congressional subcommittee while he was a tenured associate professor of forest management at West Virginia University, where he taught for 11 years...

Although the law requires mined land to be reclaimed for an equal or greater use than its pre-mining use, most becomes grassland, not a timber-rich forest, Maxey says. And procedures that could make the land good for trees are not being widely used, he says...

Timber is the only renewable natural resource and the industry employs more than 30,000 people, Maxey says. By comparison, the coal industry employs about 18,000, including about 4,400 at surface mines, according to the West Virginia Coal Association...

Maxey also says he was pressured by the state DEP and the federal OSM to approve a phrase Maxey says would justify leveling mountains. The agencies wanted the phrase to be included in specifications written by the Division of Forestry for voluntary reclamation of mines into woodlands. The phrase, which is in 1997 state surface mining regulations, says flat or gently rolling land on a site reclaimed to woodland is "essential for the operation of mechanical harvesting equipment"...

Maxey says the idea that timber can be cut only on flat land is ridiculous because loggers have used automated equipment on West Virginia's hills for decades...

Maxey says few mines are reclaimed to their "approximate original contour." Also, most mines strip topsoil and do not replace it, Maxey says. The soil that is returned is covered with lime and hydroseeded with grasses, which makes the ground too alkaline for trees. "In other words, our valuable hardwood forest is lost for the next 150 to 200 years," Maxey says...

Coal companies also compact the soil. "Then you are trying to plant a tree in concrete. It

doesn't work," Maxey says. If coal companies returned the topsoil, including several feet of weathered sandstone that was not compacted or leveled, the land would immediately be ready for seedlings, Maxey says.

"If we can't get it stopped, this is the next best thing, a last resort. We need to stop mountaintop removal," Maxey says. +

Coalition of Responsible Logging Makes Progress at the Legislature By John McFerrin

Although still a long way from its goal, the Coalition for Responsible Logging made great progress in the legislature during the 2001 session.

The Coalition (of which the West Virginia Highlands Conservancy is a member) had prepared a bill which, had it been enacted into law, would have improved the way the timbering industry is regulated. Under present law, there are standards which timber companies in theory have to meet. The enforcement system is so flawed, however, that in actual practice the standards are voluntary. Companies are free to follow them if they wish; if they don't wish to it is unlikely that anything will happen to them.

The bill would have changed the enforcement system so that there were built in incentives such as fines to comply. It would also have addressed the problem of timber theft by requiring notification of adjoining landowners. The bill did not make dramatic changes in the performance standards a timber company would have to meet. A responsible company could continue doing substantially what it was doing under present law. The bill would have forced the entire logging industry to move toward the practices now used by only its most responsible members.

At least in part because of the bill's cautious approach, it received substantial support in the state senate where it was introduced. When it became clear that the votes were not there to pass it (at least not this year) there was talk of a resolution to study the issue during the summer interim sessions. While no formal resolution passed to require the study of the issue, the Coalition is confident that the topic will be on the agenda for the interim sessions.

In the world we live in, this is progress. Two years ago there was no timbering initiative. Last year a bill was introduced near the end of the session and made little progress. This year a bill was introduced and widely talked about, including being talked about by Senators who are not our traditional allies.

In a world where much of our energy is spent trying to prevent the law from getting worse, for something a coalition of conservation groups initiated to make this slow but steady progress is encouraging. +

HEARTWOOD 11th Annual Forest Council "Beyond the Borders"

May 25-28, 2001: Wesley Woods in Northwestern Pennsylvania. Co-hosted by the Allegheny Defense Project

Heartwood's Forest Council is an annual event that seeks to bring together forest activists from throughout the eastern United States to share skills, learn about forest issues, and to support local forest protection efforts. Each year, the Forest Council is hosted by a different local forest protection group. The theme of this year's Forest Council recognizes the importance of all forests-public and private -- and realizes that in order to truly maintain biodiversity of plants and animals we must have healthy contiguous forests, regardless of their classification.

The Forest Council will focus on how we can strengthen our work of protecting these forests and will offer practical training, as participants of various workshops will be able to visit the National, Private, and State Forests of Pennsylvania.

The weekend will feature hands-on "In the Woods" workshops and panel discussions on topics such as watersheds, federal lands monitoring, ATVs, state lands, and more. These sessions will be complemented by strategy sessions on restoration, sustainable private lands forestry, biomass, the chip industry, forest watch, and more, as well as skills workshops on activist self-care.

The Allegheny region has a long and varied history, from oil boom towns to logging camps, to the Kinzua Dam. This dam, built in the 1960's, submerged a third of the Seneca Reservation, just over the New York border, as well as one of the most beautiful stretches of the Allegheny River. Our keynote speaker, a Seneca elder, will address the building of this dam and its effects on his community and the river's life.

General Information: what to bring- bedding, towels, and camping gear rain gear and clothing (spring can get cool in PA) items and \$\$ for our silent auction musical instruments, swimsuit (there is a lake nearby) information and merchandise from your organization; what not to bring - dogs (sorry, but our canine friends can get problematic when we gather in such large numbers) - the camp has a no alcohol policy

Work exchange for registration fees are available at the rate of \$7.50 per hour, but requests must be made in advance to qualify. Contact the ADP office at (814) 223-4996.

Schedule

Friday, May 25

6:00 Dinner

7:00 Welcome and introduction to Heartwood, Keynote Speaker Elder from Seneca Nation

9:00 Informal music

Saturday, May 26

8:00-9:00 Breakfast

9:00-10:00 Heartwood Circle Introductions

10:00-11:00 Issues panel (State, Federal Lands and Certification)

11:15 | 12:15 Oil and Gas, Watershed, ATVs

12:30 | 2:00 Lunch

2:00-5:30 Field workshops: (Conducted at various field sites) - Certification, State Lands, ATVs Issues and Monitoring, Oil and Gas, Watershed Issues, Forest Watch on National Forests

6:00-7:30 Dinner

7:30 Auction

9:00 Music and Dancing

Sunday, May 27

8:00-9:30 Breakfast

9:30-10:45 Taking Care of Ourselves: Yoga, Herbal Healing, Dances of Universal Peace, Massage

11:00-12:15 Issue Workshops: Restoration, Sustainable Private Land Forestry, Chip mills and chip products, Biomass, Current Legislation

12:30-2:00 Lunch

2:00-5:30 Field workshops: (Conducted at various field sites) - Certification, State Lands, ATVs Issues and Monitoring, Oil and Gas, Watershed Issues, Forest Watch on National Forests

5:45-6:30 Closing circle

6:30 Dinner

8:00 Video of the dam, Heartwood music session

Monday, May 28

Public Outreach Event - Please plan to stay and help us draw attention to the outrageous Eastside Timber Sale, the largest timber sale on a National Forest in the Eastern United States. Please note that the schedule may be subject to change.

Keynote Speaker

Our keynote speaker, George D. Heron, is the former two-term president of the Seneca Nation of Indians during the Kinzua Dam controversy. The keynote address will be focused on the history of the dam in respect to its relationship to and impacts on the people of the Seneca Nation. George Heron has lectured in colleges and universities throughout Pennsylvania and New York on the issue.

About the camp: Wesley Woods is a camp situated northeast of the town of Titusville, less than 10 miles from the beautiful Allegheny National Forest. The camp is a short drive from two Wilderness Areas, and a patch of remnant old growth forest, as well as the Wild and Scenic Allegheny River. Find out more and see a map for directions at: <http://www.wesleywoods.com/>

Registration: Registration includes lodging-either in bunkhouse cabins (first-come, first-served basis), or at campsites. On-site registration will be an additional \$10. Please help us plan for the weekend by pre-registering by May 5, 2001. Non-members @ \$35; Members @ \$25; Single-day registration @ \$15 Full meal package (Friday dinner-Monday breakfast) @ \$28; Individual meal tickets @ \$4 per meal. (Meal tickets will be available on-site for \$5, but please note that they cannot be guaranteed for those who do not pre-register) ♣

West Virginia's natural world is under increasing pressure from exploitation. Powerful interests (mostly from out of state) have no qualms about destroying our beautiful state to increase their wealth. To save as much as we can of West Virginia, we need your help. Won't you become a member of the West Virginia Highlands Conservancy and do YOUR part to help us? Please take time right now to write your membership check and put it in the mail.

Category	Individual	Family	Organizational
Senior/Student	\$12	-	-
Regular	15	\$25	\$50
Associate	30	50	100
Sustaining	50	100	200
Patron	100	200	400
Mountaineer	200	300	600

Name: _____

Address: _____

City/ State/ Zip: _____

Make checks payable to: the West Virginia Highlands Conservancy. Mail to: P. O. Box 306, Charleston, WV 25321

Membership Benefits

- ★ The Highlands Voice each month
- ★ Special weekend programs held around the state -- days filled with field trips, hikes, workshops and just plain fun.
- ★ Representation through WVHC efforts to monitor legislative and agency activity
- ★ A chance to make new friends with values you share.
- ★ Knowing you are doing your part to protect West Virginia's natural heritage.

West Virginia Highlands Conservancy

Working since 1967 to protect our lands, our waters and the rich natural heritage of West Virginia.

Report Reveals Eastern Forests Damaged by Unsustainable Logging, Air Pollution and Numerous Other Threats *Logging in the East Exceeds All Logging in the West -- Conservationists Call for Protection and Restoration of Eastern Forests*

CONTACTS: Kristen Sykes, Eastern Forest Advocate, 202/547-9134

Steve Holmer, Campaign Coordinator, 202/547-9105

American Lands has released "A Vision For Protecting and Restoring Eastern Forests" to highlight the unique values found in Eastern Forests, discuss the threats they face and to offer fresh ideas on how to solve these problems. Eastern Forests have abundant diversity of plants, fish and wildlife with many species that live nowhere else on Earth. Regretfully, air pollution, invasive species, off-road vehicles, coal mining, roadbuilding and logging are combining to undermine the recovery of Eastern Forests and threaten this unique biodiversity.

"Eastern forests have begun to recover from the destructive past logging, but now the timber industry has shifted its attention back to this region," said Kristen Sykes, Eastern Forest Advocate for American Lands. "New statistics now show that logging east of the Mississippi is at unsustainable levels and now exceeds logging in the West." According to Forest Service data, logging currently exceed growth for softwoods and if current trends continue the same will be true for hardwoods by the end of the decade.

"This vision can only be accomplished by halting threats to the forests and by investing resources into ecological restoration," said Sykes. "There is tremendous potential to create jobs restoring eastern forests which have been heavily damaged by logging, roadbuilding, energy development and invasive species."

The backlog for road maintenance alone on National Forests is \$8.4 billion and tens of

thousands of miles of road have been identified in the Forest Planning process for decommissioning. "We estimate it could take decades of work to restore functioning forest ecosystems in the East by fixing the road system and rehabilitation degraded watersheds," said Sykes.

Other important opportunities may be lost if the Bush Administration continues to promote resource extraction and environmental rollbacks over the health of our children and the protection of the environment.

"The National Forest roadless area protection policy protects important areas of biodiversity in the East that have the potential to become Wilderness," said Sykes. "The Bush Administration recently failed to defend the roadless policy in court and is likely to abolish the Plan with an out of court settlement in favor of the timber industry. The President should reverse course and support what has been the most popular land protection initiative in a hundred years since the National Forests were created in the first place."

"In response to the 'energy crisis' eastern forests are threatened by renewed development of oil, gas and coal," said Jim Kleissler, Allegheny Defense Project. "National Forests in the East are also threatened by new drilling and mining projects because in most cases, the government does not own the subsurface rights and cannot prevent harmful new developments on public lands."

"There is both a federal rule making and

legislation to reduce air pollution that is harming human health and high-elevation eastern forest due to acid rain deposition and ozone," said Harvard Ayers, Ph.D., of Appalachian Voices. "Like many other proposed regulations to protect the environment and public health, the Haze rule under consideration by the Environmental Protection Agency is at risk of being overturned by the Bush Administration."

Other critical problems such as the invasion of harmful pests and the growing use of off-road vehicles have barely begun to be responsibly addressed.

"Numerous invasive species in eastern forests are threatening trees including elm, dogwood, hemlock and maples, which are being weakened by air pollution and made much more susceptible to these pests," said Faith Campbell, director of American Lands Invasive Species Program. "The American Chestnut once dominated eastern forests, but it has been completely extirpated due to the invasive chestnut blight."

"Dirt bikes and other off-road vehicles are running rampant and harming eastern forests and streams due to a lack of law enforcement on the National Forests," said Alix Davidson recreation campaigner for American Lands. "Without stronger measures to enforce existing regulations and monitor the impacts, user conflicts and environmental harm from off-road vehicles will only increase in the future." ❖

EMERGENCY ALERT FROM STEVE HOLMER!

Bush Trying to Scuttle Roadless Policy

President Bush has ordered the Justice Department to determine how to scuttle the roadless area protection policy, according to today's [April 26] Washington Post.

"The White House seeks to set aside the rule until the Administration can produce either a less restrictive proposal or eliminate the rule entirely.

"This puts the fate of America's last pristine National Forests at risk from logging, roadbuilding, oil & gas drilling and mining for years to come."

This decision is a slap in the face to the millions of Americans who participated in the roadless debate over the past two decades and to the overwhelming majority of citizens who support protecting our nation's forest heritage. Only overwhelming public condemnation of the President's decision can turn this around.

Please contact your Representative and Senators at 202/224-3121 and urge them to support the roadless area protection policy.

Let them know how disappointed you are

that the Bush Administration is trying to undermine this public process with a backroom, out-of-court settlement.

If your Rep. or Senator is a Republican, please ask him/her to immediately contact President Bush and urge him to support the policy.

Please go to <<http://www.ourforests.org>> to send a free FAX to President Bush or call 202/456-1414 today, and tell him to conserve our precious last wild forests for future generations.

Tell him how disappointed you are and urge him to reverse course and to support the Roadless Area Conservation Rule.

Please write a letter to the editor in support of the roadless area protection plan.

Here are some talking points to consider for your letters and much more is available at <<http://www.americanlands.org/forestweb/timber.htm>>

1. The U.S. Forest Service issued the popular forest conservation plan, known as the Roadless Area Conservation Rule following three years of review and analysis and twenty years of controversy over how to manage these lands.

The roadless policy was the result of the most extensive public participation in a rulemaking process in history, including more than 600 public meetings, 1.6 million public comments, and two years of public debate.

2. This forest conservation policy would protect the last 58 million acres of unspoiled National Forest lands from logging, mining, and drilling, which are already allowed on most National Forest lands.

3. Until recently, the U.S. Forest Service had been functioning largely as the servant of the timber industry, carrying out a program of taxpayer-subsidized logging. Protecting the last 30% of our National Forest lands is an enlightened policy that recognizes that our forests have multiple uses, and that we have a responsibility to conserve these precious resources for future generations.

4. The Bush Administration seems more interested in listening to the special interests and large corporate contributors that want to exploit these lands than to the millions of Americans who cherish these lands and want to see them protected for future generations.

Please act now.

Thanks for all your efforts.

Steve Holmer, Campaign Coordinator
American Lands
726 7th Street SE; Washington, D.C. 20003
202/547-9105 202/547-9213 fax
e-mail:<wafcdc@americanlands.org>
<<http://www.americanlands.org>> ❖

Calendar

May 12 - New River Alliance of Climbers annual meeting and party starting at 6 PM. Contacts: Leslie Riehl, <leslieriehl@hotmail.com> or Gene Kistler, 574-2021.

May 19 & 20 - An eighteen-hour class in Wilderness First Aid will be conducted at Davis & Elkins College, Elkins, WV. The course includes classroom study, hands-on practice, and results in a two-year certification. The cost is \$140.

Registration is on a first-come, first-served basis. For additional information phone (703) 836-8905 or visit <http://wfa.net>.

May 25 thru 28 - Heartwood Forest Council, hosted by Allegheny Defense Project. Theme: "Beyond the Borders." See details on page 13.

June 23 & 24 - Wilderness Safety Council training in wilderness first aid. Davis & Elkins College. See May 19 & 20 above.

June 23 - The Wheeling Environmentalists conduct a tour of the Raven Rocks Community. This is a group of Ohioans, who have dedicated their lives to preserve approximately 1000 acres of forest and ravine land while living sustainably. They are strongly committed to sparing God's Creations through growing and preserving much of their own food organically, making use of passive solar mechanisms, using composting toilets and eco-friendly products. Solar and wind energy are being

produced, and there are underground construction sites. There will be demonstrations of the most energy efficient appliances. As they are beginning a fuel cell project, one may observe some of the fuel cell principles and hear explanations of how these exciting technologies work. The tour will begin at 9 AM and end at noon for a bag lunch and discussion (please plan to bring your own bag lunch). Raven Rocks is located about 40 minutes from Wheeling in Belmont County, Ohio very near Beallsville. Carpooling from Wheeling can be arranged. For further information and directions, contact Dianne Burnham at <BurnhamD@cs.com> or 304-232-0590 (evening and weekend). Maps will be sent upon request.

July 14 (Sat.) - Summer 2001 WVHC board meeting.

July 27 thru 29 - 2nd annual Sustainability Fair, "Think Green." WV Wesleyan College, Buckhannon. Contact Denise at <deniseap@earthlink.net> for further info.

September 22 - Shaver's Fork Coalition benefit concert. Spelunker's Camp, East Dailey, WV, south of Elkins. For information call 637-3911 or <gene-o@meer.net>

October 12 thru 14 - Fall Review (Board meeting on the 14th).

"2001- An Outdoor Odyssey" - see outings schedule on page 8. ✦

Trout Streams

By Don Gasper

A watershed is an aquatic continuum. Rain enters the forest and the watershed, then flows in varied patterns and rhythms to tiny rivulets that gather to form streams. Soil, timber and water are not separate products of geology and climate, but are inextricably linked parts of a single watershed.

The physical nature of the stream (steepness, pool quality and occurrence, width, boulder size, etc., is set by its geology and the water workings in its streambed. Generally these physical dimensions are what we think of when we recall a stream - though we might remember also its setting and how clear it was.

The chemical nature of clear, pure mountain trout streams is unseen. Its make up is generally set by the time it leaves the soil. The flow is simply conveyed, with little alteration, by stream channels. You can go to a small steep stream and all the water above that point will have flowed past by the next day. But the next day the stream continues to flow, and its pools are filled with water that was in the soil a day earlier.

During lower flows the soil does determine the chemical richness of a stream. This is the richer "base flow" in which soil elements cause some neutralization of the now acid rain. At higher flows there is also some flow that has reached the channel without long contact time or distance with the soil. It is little neutralized acid rain. Rain or snowmelt that flows over land, or over already saturated soil, is not being altered much at all. This is in fact called "quick flow."

Atmospheric acid (Acid Rain) can then enter stream channels turning them acid. Soils are saturated more often and to a greater degree in the springtime, so this would be when our streams are most acid. Unfortunately this is when trout are most sensitive to acid. This does great harm to the trout populations of our purest streams. West Virginia has suffered "fish loss," and one-fourth of its trout streams are so pure they are endangered by acid rain. We need a prompt and thorough

Let's Work for Safe Drinking Water

By Nathan Fetty

The next big clean water issue is coming up much sooner than we'd like. It deals with the state's drinking water standard (known as Category A), and industry's attempts to weaken it before the Environmental Quality Board (EQB). On May 16, the EQB will take up the drinking water standard a last time before sending it out for public comment. Then, you'll have four to six weeks to comment on the rule.

If possible, it would be great for you to stop by this meeting! We need to make a strong showing as the Board deliberates this crucial drinking water protection. We haven't seen an agenda yet, but will send it to you once we do, along with start time and directions. The meeting likely will start at 9 AM.

Here's the background on drinking water: The state has historically designated all surface waters as drinking water supplies. (Category A

means that the water, with conventional treatment, can be used for drinking.) Industry thinks it's too restrictive to apply the standard to all surface waters, and that it should apply only to waters near municipal intakes.

We've contended that the standard should continue to apply to all waters because: 1) West Virginia is fortunate to have so many surface waters that are fit to be used as drinking water supplies, and we shouldn't toss them aside, 2) applying the standard only to municipal intakes doesn't account for the individual households and small communities that use surface waters for drinking water (and they're out there!), and 3) anyone concerned with future development ought to make sure there are plenty of good drinking water sources available for future communities and growth.

Drinking water is shaping up to be a big issue in the 2002 legislative session, especially if EQB doesn't give industry its way. Please come out to the EQB meeting on the 16th, if possible, and after that's over, gear up for making a good showing during the public comment period.

If you have questions about anti-deg or Category A drinking water, please contact Nathan Fetty at (304) 637-7201, or e-mail <nfetty@neumedia.net>

Nathan Fetty is the Conservation Director at the West Virginia Rivers Coalition. ✦



reduction of sulfur and nitrogen emissions to protect our purest trout stream fishing heritage from permanent loss.

Don Gasper is a retired fish biologist and sits on the West Virginia Highlands Conservancy Board of Directors. ✦

"I believe we must restore the sense of individual responsibility and involvement, and get away from the idea that conservation is the responsibility of someone else - the federal government, the state, the corporations, the rich. We need to look at our patterns of consumption and behavior and shed those practices that contribute to the destruction of nature. This is incredibly difficult to do in a society oriented toward consumption, material enrichment and waste." - Ray Dasmann in "Whole Earth Review," Spring 2001

Announcement from Kim Kotcon

Tell EPA Administrator Whitman to Control Mercury Emissions!

Write a Free fax to EPA Administrator Christine Todd Whitman and urge her to stand strong against industry challenges to regulate mercury emissions from coal-fired power plants. Mercury is a toxin that can cause serious problems in children. Depending on the dose, effects can include subtle losses of sensory or cognitive ability, delays in developmental milestones like walking and talking, birth defects, tremors and even death. Industry representatives are lobbying hard to block EPA from moving forward on creating strong regulations that would protect the public.

According to one industry official, after meeting with EPA and other administration officials "how the new administration intends to proceed on mercury is still something of an open issue." [Scripps Howard News Service, 4/10/01].

Your input can really make a difference!

To write your free fax, visit:

<http://cta.policy.net/grassroots>

After you have sent your message, please forward this e-mail to all of your friends and family who are concerned about the environment.

Visit <http://cta.policy.net> to take action

now! ✚

Titbits. Holiday lights primarily Christmas lights use up a lot of energy. The estimated pollutants generated from last year's lights amounted to 4800 TONS of acid rain producing sulfur dioxide, 2800 TONS of other pollutants and 885,000 TONS of carbon dioxide. ... General Motors expects SUV's to outsell every other car and light trucks in the US by the year 2005.

From Greenbiz News <www.greenbiz.com/news/>

Jonathan Jessup writes Peter Shoenfeld, our Webmaster:

I have been hiking and backpacking in the Monongahela National forest area for ten years. I have put some of the photos I've taken on the site: <<http://www.geocities.com/jonathanjessup/>>

I hope you like them. Would you post a link on your website to the site, please? I still get "The Highlands Voice" every month in the mail, and would greatly appreciate a short blurb (with url) in there too!

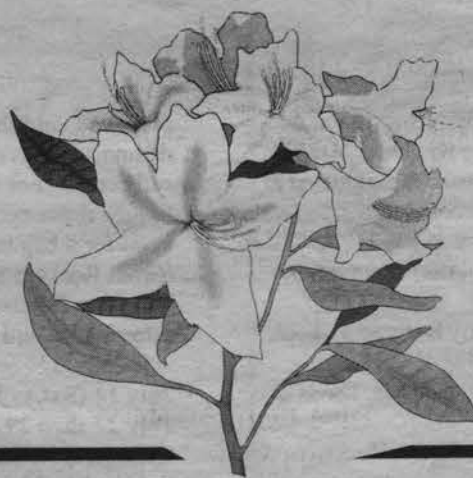
Thanks so much for everything you do!
Jonathan ✚

From a reader:

Bill,

Thanks for running some pictures of people in the outdoors, and pictures of the outdoors, in The Highlands Voice. For the past few years it seemed that all the photos in the newsletter were of people in meetings, offices or wearing business suits.

A Grateful Reader,
Jim Zulkoski ✚



Appalachian Spring (pay water bills here)

in this occupied territory
made war upon,
terrorists set blasts
making mole hills out of mountains -

six-weeks-till-frost
And Jack-in-the-Pulpit
Supplanted by *Sericera lespedeza*.

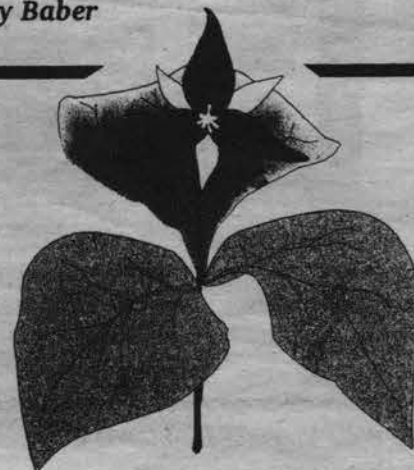
Stripped of recourse the rivers succumb
surrender rags hung from flood
till dogwood bloom -

For every kickback, a kick.

Blood splashes on bark
mark the lines of demarcation-
the back size of glazed gob pile
no buffer of trees can mask
looming ever ready
to bequest its over burdened truth
next rain -

peaks above
falling prey to dozers
driven by kin
against their wills.

- Bob Henry Baber



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"What is generally regarded as success - acquisition of wealth, the capture of power or social prestige - I consider the most dismal failures. I hold when it is said of a man that he has arrived, it means he is finished - his development has stopped at that point."

- Emma Goldman

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