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# The Highlands Voice

The Monthly Publication of the West Virginia Highlands Conservancy

**Volume 40, Number 4, April, 2007**

**The World Turned Upside Down**

# CORPS OF ENGINEERS NOT DOING ITS DUTY ON MOUNTAINTOP REMOVAL SITES

By Cindy Rank

On Friday, March 23, 2007 Judge Robert "Chuck" Chambers rescinded fill permits for four mountaintop removal mining operations, and directed the Army Corps of Engineers to reevaluate each of them consistent with the details set out in the 89 page Court Opinion.

In 2005 the West Virginia Highlands Conservancy, the Ohio Valley Environmental Coalition and Coal River Mountain Watch challenged these permits, claiming they violated the Clean Water Act (CWA) and the National Environmental Policy Act (NEPA). Although this ruling directly applies only to these four specific permits, dozens of similar applications are now being reviewed by the Corps and will likely be impacted by this ruling as well.

With apologies to the experts, our lawyers and the court who wrote thousands of pages of legal briefs and expert testimony with great clarity and detail, I offer the following all too brief and simplified overview of several highlights of Judge Chambers' ruling. For the brave of heart and those intensely interested in understanding the fascinating and intricate interweaving of science and the law, links to the ruling and additional articles and interviews can be found on the Highlands Conservancy website: www.wvhighlands.org.

Photo by Vivian Stockman

THE HEART OF THE MATTER

The case centers on the mountain streams and stream valleys that will be filled if permits are granted. The ideas expressed in the decision are not new – especially to the scientific community, or even to regular readers of the VOICE, but seeing the concepts confirmed – and so clearly elaborated on— in official Court documents is encouraging.

- Headwater streams are unique.
- These first and second order streams may be tiny, but they play a disproportionately important role in the overall stream ecology and health of ownstream resources.
- These small streams don't exist in a vacuum. They interact with the forests that sur-

**(Continued on p. 7)**

**What's Inside:**



**Visit us on the web at www.wvhighlands.org**

## From the Heart of the Highlands

by Hugh Rogers

### At It Again

Born: Feb. 2, 2007. Weight: 8 lb., 1 oz. Length: 854 pages.

The multiparous West Virginia Department of Transportation has produced another Corridor H document. This, the youngest and possibly last of its brood, was named "Parsons-to-Davis Supplemental Final Environmental Impact Statement" (SFEIS, for short). It was seven years in the making. Comments are due by April 27.

In February 2000, the Department of Transportation (DOT), the Federal Highway Administration, and fourteen plaintiffs including the Highlands Conservancy filed a court-monitored Settlement Agreement that put Corridor H back on the drawing board. The main obstacles in the Kerens-to-Parsons and Parsons-to-Davis sections were two historic districts: Corricks Ford Battlefield, on the Shavers Fork just south of Parsons, and Blackwater Industrial Complex, on the North Fork of the Blackwater just south of Thomas.

The SFEIS for Kerens-to-Parsons (2002) designated a new alignment well away from the protected site. They called that document "Battlefield Avoidance".

Not so for Parsons-to-Davis. Here, DOT declares its reason for reverting to a slightly modified original route: it's shorter. Therefore it costs less, has the smallest footprint and the least "waste," i.e., excess earth to be disposed of, and impacts the least amount of National Forest land. Moreover, the squirrels preferred it—or so said their representatives from the Fish and Wildlife Service.

The encounter between the DOT and the West Virginia Northern Flying Squirrel, a federally protected endangered species that turned up in the highway's path, is a major theme of this document. No doubt the encounter played a role in the recent decision to consider delisting the squirrel. But this isn't the right space to tell that story.

The most egregious failure of the Parsons-to-Davis SFEIS is that it doesn't solve the original problem. Instead, it attempts to finesse the impact of a 1200-foot-long double bridge across the Blackwater historic district.

Early on, DOT described it as a "discontiguous" district. They pledged to avoid individual structures along the railroad grade and in Coketon, the site of 300 beehive-shaped coke ovens and foundations for several other buildings. The Forest Service, which owns most of the property, disagreed with that analysis. In their opinion, the Blackwater Industrial Complex was a "seamless" district in which the railroad grade served as a unifying element joining many contributing features. In the summer of 2001, the Keeper of the National Register of Historic Places came to Coketon to referee the dispute. She sided with the Forest Service.

While conceding the change of definition, the DOT still tries to have it the old way: "The [bridge] will be designed with piers located in the historic boundary; however, those piers will be designed so that property/structures that are individually eligible (e.g., railway grade) will not be directly impacted by the project nor will property be used that contributes to the factors that make the district historic (i.e., contributing resources)."

Can Corridor H tiptoe through the district? The answer is on the facing page: "It must be noted generally that properties within the bounds of an historic district are assumed to contribute, unless it is otherwise stated or they are determined not to be." (Quoting the Federal Highway Administration's policy paper on Section 4(f) of the federal transportation law.) Since no part of the district has been explic-

**(Continued on p. 21)**

## Roster of Officers, Board Members and Committee Chairs

# SAY IT AIN'T SO, DAVE!

After nine years in the position, Dave Saville has resigned his position as the Administrative Assistant of the West Virginia Highlands Conservancy. He will begin working full time with the West Virginia Wilderness Coalition, beginning in mid-April.

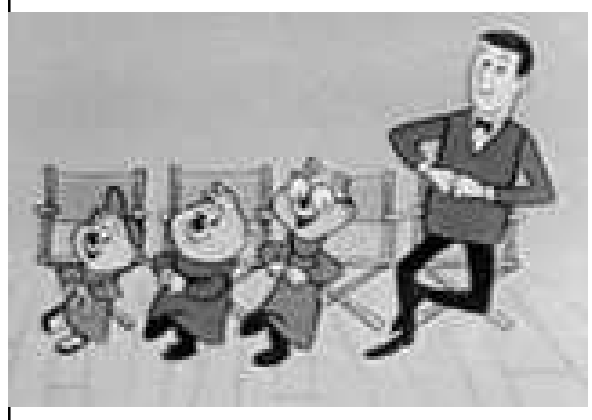
During Dave's tenure with the Conservancy, he has made an invaluable contribution. Through his tireless promotion of the organization, the Conservancy is a larger, more vibrant organization than it was when he began. Although he certainly does not deserve all the credit, he does deserve a chunk of it. He will be missed.

## LOOKING FOR A REPLACEMENT

THE WEST VIRGINIA HIGHLANDS CONSERVANCY, the state's oldest and largest environmental advocacy organization, is seeking an Administrator with strong organizational skills and a passion for the environment. Primary responsibilities include membership contact and development, membership database management, public relations, coordination with board members, biannual meeting support, publication order fulfillment, and record keeping. Please visit www.wvhighlands.org for more information, and send your resume and cover letter to hugh.rogers@gmail.com

## CLARIFICATION

The recently resigned Administrative Assistant of the West Virginia Highlands Conservancy is not the same Dave Saville who first came to fame as the manager of Alvin and the Chipmunks in the 1960's. The Highlands Voice regrets any misunderstanding that may have resulted from this coincidence,



**Dave Saville (with Chipmunks)**

**Dave Saville**

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The West Virginia Highlands Conservancy web page is www.wvhighlands.org.

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

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

**Whose Eggs Got Scrambled This Year**

# HOW THE ENVIRONMENT FARED IN THE W.Va. LEGISLATURE

By Donald S. Garvin, Jr. Legislative Coordinator, West Virginia Environmental Council

The Regular Session of the 78th West Virginia Legislature ended at midnight on March 10 and most political pundits I know agreed that this was the best session for the environment in many years.

All in all, there were more victories than losses on environmental legislation, with one major policy issue remaining up in the air. The "green" side won out this year on a variety of fronts, including garbage, global warming, protection of public lands, groundwater contamination in the coalfields, and possibly even on water quality and stream protections.

Each year lawmakers consider a variety of rules, regulations and proposals that can impact the state's environment. Just tracking all the proposed legislation keeps the West Virginia Environmental Council lobby team busy. That was certainly the case again this session. And when all was said and done, this Legislature passed some good bills, rejected some good bills, and killed some very bad bills. Here is a rundown:

**Good Bills That Passed**

The Legislature passed **SCR 15**, a resolution requiring the Department of Environmental Protection to study the contents of coal slurry and the impacts on groundwater from disposing of it by injection into abandoned coal mine seams. As amended, the resolution also requires the Bureau of Public Health to consult with DEP on the design of the study, and to review the results for the potential of impacting the health of coalfield residents. This is a great outcome for an issue that WVEC and the Sludge Safety Project guided through several months of Interim Committee meetings.

The Legislature also passed: **SB 337,** DEP's greenhouse gas inventory bill; **SB 460,** a bill that provides further protections in State Forests from oil and gas drilling operations; **SB 177,** that creates a Division of Energy for developing a comprehensive energy plan for the state; and **SB 441,** that made the tax treatment for commercial wind power projects more responsible.

Of particular interest to Voice readers, the Legislature also approved **HCR 48 t**hat authorizes an Interim Study on funding for land conservation in the state. This resolution originated as a proposal from the West Virginia Nature Conservancy. It recognizes that "the State of West Virginia's rural character, natural wonders, scenic beauty, and recreational opportunities combine to create an exceptional quality of life for its citizens," and resolves that the Legislature "study potential funding mechanisms and sustainable sources of revenue to protect and conserve West Virginia's most important unique, natural, and rural lands to ensure the quality of life and economic well-being of present and future West Virginians." This will be an important issue to follow during the 2007 Legislative Interim meetings.

**Sometimes It's Good To "Kill" a Bill**

Early in the session the WVEC lobby team had to help kill **SCR 29,** a truly terrible anti-wilderness resolution that is introduced annually by Senator Karen Facemyer (R-Jackson). The resolution was never brought up in committee.

WVEC, along with activists from the early "Garbage Wars" days and WV Citizen Action Group, also helped kill two terrible solid waste bills: **SB 629** that would have authorized a huge mega-landfill in McDowell County; and S**B 701** that would have abolished the state Solid Waste Management Board and county Solid Waste Control Authorities, and would have consolidated that control of solid waste management into the hands of the DEP.

Other bills that died deserving deaths included **SB 450**, a DEP proposal to divert money from the coal Special Reclamation Fund for watershed improvement projects; **SB 469**, a bad Chamber of Commerce proposal to streamline the construction of new power plants before they receive the necessary air pollution control permits; **SB 552**, another bad DEP idea that would have changed the way water pollution permits for coal and oil and gas activities are approved; and **SB 683** that would have allowed drilling new oil and gas wells in state parks (a proposal that was originated by West Virginia Land and Mineral Owners Association executive director Larry George).

**Sometime It's Good To Amend a Bill**

WVEC worked with legislative staff and DNR officials to improve the language in **SB 396,** so that the bill protects rare, threatened, and endangered species from collectors and poachers, while still allowing researchers and concerned conservation groups to continue to have access to site-specific data necessary for protection of those species. The amended bill was approved by both Houses.

**Good Bills That Died**

Unfortunately, two of the best ideas for the environment to come along in recent years failed to advance again this year.

**SB 118**, the WV Public Campaign Financing Act, was once again killed in the Senate Finance Committee when the chairman of the committee, Senator Walt Helmick (D-Pocahontas), refused to allow the committee to consider the legislation. The House bill, **HB 2371**, was also never advanced in committee. Campaign finance reform is the one reform that makes all other reforms possible.

Likewise, the "Bottle Bill" **(SB 370 and HB 2773)** was never taken up for consideration by committee in either house for yet another year. This legislation would establish a deposit and refund program for beverage containers. Apparently, legislators cannot find enough gumption to buck the powerful lobbies from the beer and soft drink bottling industries even to run this bill.

WVEC's own proposal for the Bureau of Public Health to conduct a "Public Health Impact Assessment" whenever DEP proposes changes in air and water pollution standards **(SB 558 and HB 3150**) also did not advance through committee. However, we did succeed this year in getting the bill introduced in both the Senate and the House.

Other good ideas that did not see the light of day included: **SB 401**, requiring the Public Service Commission to promulgate additional regulations for wind power projects; **SB 509,** that would have banned all-terrain vehicles from all paved roads – Senate President Earl Ray Tomblin (D-Logan) personally killed this one; **SB 678** that would have eliminated the tax credit for coalbed methane gas; **HB 3104** that would have imposed an additional severance tax on surface mined coal; and **HB 3154** that would have increased timber severance taxes.

Well, that about covers the ground for the 2007 session of the Legislature – except for the one major policy issue that remains up in the air. For that discussion please see the article on Page 5 concerning the DEP water rules.

### Leave a Legacy of Hope

Remember the Highlands Conservancy in your will. Plan now to provide a wild and wonderful future for your children and future generations. Bequests keep our organization strong and will allow your voice to continue to be heard. Your thoughtful planning now will allow us to continue our work to protect wilderness, wildlife, clean air and water and our way of life.

**Good News for the Fish, or Maybe Not**

# WATER RULES IN FLUX

By Donald S. Garvin, Jr. Legislative Coordinator, West Virginia Environmental Council

Perhaps the most controversial environmental issue of the legislative session – how many West Virginia rivers and streams would be placed on two protective stream lists – is still up in the air.

Because of the heated battle waged by a loose coalition of industry groups in opposition to the two water quality rules, none – I repeat, **none** – of the more than 20 various agency rules proposed by the Department of Environmental Protection were approved by the Legislature this year.

They weren't disapproved either.

They were simply not acted on.

They were not acted on because of the very real possibility that the protective stream lists contained in the two water quality rules would be gutted by amendments proposed by industry lobbyists and offered by their friendly Delegates on the House floor.

The controversy revolved around two sets of rules proposed by DEP that would have significantly impacted clean water – for the better – in West Virginia if enacted by the Legislature.

The first of these is the water quality standards rule package, which contains the Category B2 trout stream list. DEP's rule proposed adding more than 300 streams to the B2 list. Industry folks – particularly the WV Coal Association – hate this water quality category because it preserves fishing as an "existing use" and gives trout streams higher protections than drinking water standards.

The second is the antidegradation rule, which protects the state's highest quality rivers and streams and contains the Tier 2.5 stream list. DEP's rule proposed adding 309 streams to the Tier 2.5 list. Industry folks – particularly the WV Farm Bureau and the WV Forestry Association – hate the Tier 2.5 designation because it limits their ability to degrade the state's most pristine waters.

Oil and gas industry lobbyists and the good folks at the WV Chamber of Commerce and WV Manufacturer's Association also climbed on to the opposition bandwagon, apparently detesting both of these rules equally.

Industry's lobbying efforts against these rules centered primarily on the antidegradation rule, with attempts to reduce the number of Tier 2.5 streams from the proposed 309 streams down to just 38 streams.

During the last two weeks of the session, Speaker of the House Richard Thompson (D-Wayne) and House Judiciary Committee chairperson Carrie Webster (D-Kanawha), convened a series of meetings between the various stakeholders in an effort to reach a compromise on the number of streams on the Tier 2.5 stream list.

The major compromise that was offered came from DEP Cabinet Secretary Stephanie Timmermeyer and it would have reduced the number of Tier 2.5 streams from 309 down to 156, a number that retained most of the native brook trout streams on the list that were located on public lands.

However, the industry lobbyists refused to budge. Therefore, facing the very real possibility that the stream list would be gutted by amendments proposed by industry lobbyists on the House floor, House leaders and DEP Secretary Timmermeyer ultimately decided not to advance the rule bundle to the floor for a vote.

In all my years as a lobbyist for the West Virginia Environmental Council, I have never seen anything like it. One long-time committee staff person told me that she had never seen a year when legislative leadership actually chose not to act on an agency's proposed rules.

So here's the situation as it now stands: DEP filed the proposed rules with the Secretary of State last year. If the Legislature does not act on the rules (which they did not), according to state law the rules filed by the agency with the Secretary of State will go into effect.

And even though last year the Legislature passed a bill requiring the Tier 2.5 stream list to be approved by the full Legislature, Secretary Timmermeyer believes that legislation is unconstitutional based on separation of power issues.

In press reports, Secretary Timmermeyer has indicated that since the Legislature did not act there are now 309 new streams on the Tier 2.5 list and that DEP will manage those streams and issue permits on that basis. She is essentially telling industry that if they don't like it, they can take the agency to court. Representatives from the Governor's office have made similar comments to the press.

Obviously, it may be quite some time before we finally know just how many streams will receive Tier 2.5 protection status. And that number may be decided by the courts, not by the Legislature.

**Flying Squirrel About to be Kicked Off the Endangered Species List**

# SPEAK NOW, OR FOREVER HOLD YOUR PEACE

The United States Fish and Wildlife Service has proposed taking the Northern Flying Squirrel off the list of animals protected as endangered species under the Endangered Species Act. For the last twenty one years the squirrel has enjoyed the added protection of being a listed endangered species. In addition to some added protection, this listing authorizes the Fish and Wildlife Service to make a recovery plan.

Even though the Service never made a proper recovery plan, it now believes that the squirrel is no longer endangered and wants to kick it off the list, a process known as delisting.

If you have an opinion about the delisting, the time to comment is NOW. The **deadline** for comments is **April 23.**

Directions for commenting:

1. You may submit written comments and information to the Assistant Chief, Division of Endangered and Threatened Species, U.S. Fish and Wildlife Service, Northeast Regional Office, 300 Westgate Center Drive, Hadley, MA 01035.
2. You may hand-deliver written comments to the Northeast Regional Office, at the above address.
3. You may fax your comments to 413-253-8482.
4. You may e-mail your comments to wvnfscomments@fws.gov
5. You may use the Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.
6. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the Northeast Regional Office.

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# ALLEGHENY POWER LINES
# SIGNS OF PROGRESS OR ANCHORS TO THE PAST?

By Lew McDaniel

In 1989, planned strip mining threatened Laurel Run, a 5 mile trout quality stream running from Halleck in Monongalia County to Three Fork Creek at Victoria in Preston County. Thanks to Laurel Run Community Watershed Association protests, those plans were squelched.

Today, Allegheny Energy's development of their Trans-Allegheny Interstate Line (TrAIL) threatens this area and others with 12 to 15 story tall towers carrying 500kV lines along its 200-plus mile route from near Pittsburgh through West Virginia and Maryland to northern Virginia. A similar line is in the works to serve New Jersey from the John Amos power plant at Winfield. According to AEP, these lines are necessary to prevent near term brownouts in the target areas and future growth.

Local residents do not want the towers and their right of way marching across this area. Concerns include potential harm to the stream, loss of property value, view shed destruction, line noise, tourism issues, and possible future EMF health issues. TrAIL makes it possible to shift these issues from the densely populated, expensive urban locations where the electricity will be used to less expensive rural areas where the line will be located. Rural residents feel AEP's forced use of land against the wishes of those who own it is nothing more than urban development at the expense of those who live in the county.

Simply stringing more power lines to solve the country's energy problems is a 20th Century economic expediency for power companies. This method fails to reflect sound review of practices needed for this century, such as reducing the nation's continued reliance on coal, better demand side management, and increased use of other power sources.

Allegheny Energy wants TrAIL and the line from John Amos designated as National Interest Electric Transmission Corridors (NIETC) by the Department of Energy. Among other things, this designation allows the Federal Energy Regulatory Commission (FERC) to grant permits for a line if a state regulatory agency, such as the WV Public Service Commission, does not do so within a year of initial application. Eminent domain powers are included in FERC's power. These powers have not been tested, however.

FERC's power is derived from the Energy Policy Act of 2005 enacted to enable better management of the nation's energy in the wake of the 2003 northeastern power problems and 9/11. West Virginia's entire Congressional delegation voted for the act and Governor Manchin in October, 2006 supported the NIETC concept via letter to the Department of Energy secretary when American Electric put the Wyoming County to Jacksons Ferry line into operation.

The Pennsylvania Public Service Commission in August 2006 protested FERC's 2005 Energy Policy Act eminent domain powers. The West Virginia Public Service Commission's (WVPSC) executive secretary, in response to a query about the power line, wrote: "contrary to the assertion found in some letters received by the Commission, this Commission's initial jurisdiction over such transmission line construction and siting has not been removed by any provision of the Energy Policy Act of 2005. While "initial jurisdiction" is important, final jurisdiction seems more so.

Northern Virginia residents along TrAIL's route have been successful in getting it moved several miles away from the original path. The Piedmont Environmental Council, local residents, and city, county, and state officials protested long, loud, and vigorously. Having seen their area of farms and historical sites threatened in the past by theme park developers, they do not want to see a power line. However, area residents where the line is now routed are not pleased and are likely to mount their own protests.

The Laurel Run Community Watershed Association has protested to TrAIL and FERC and will formally protest to the WV PSC. Letters have been sent to local legislators with minimum results. Despite material sent to them, the local newspaper appears content to publish press releases from AEP. The Monongalia County Commission has close ties to the Longview Power Plant being built and the Albright Power Plant lies in the Preston County Commission's jurisdiction. Consequently, neither is felt likely to protest TrAIL.

The association approached AEP's power line siting director, thinking an on site visit might be helpful. He declined, stating his crew was collecting information. He suggested waiting until routes were actually selected, requesting we email questions to him. He has responded to such queries.

We have searched the web extensively for power line protest information and found similar cases in New York, Wisconsin, Florida, Minnesota, California, Virginia, and North Carolina. With sufficient clout, a line is occasionally rerouted, a limited section placed underground here and there, or special colored towers used to blend in with the surroundings as much as possible.

But "the line" marches ever onward for what is supposed to be the greater good. Those of us in its wake are supposed to profit through lower electric bills or through coal extracted to generate power that will result in state taxes when it is sold across the line to some distant place. Those of us who cherish what few unsullied acres we enjoy or own find it difficult to accept that there is any greater good worth a power line skunk stripe through our woods. Euripedes asked "What greater grief than the loss of one's native land". We suggest that scarring of land we worked so hard to gain for our own uses causes grief that is just as heartfelt.

On February 28, Jackson Kelly filed the mandatory 30 day notice with the WV PSC that Trans-Allegheny Interstate Line Company ("TrAILCo") intends to file an
application for a certificate of public convenience and necessity. The clock is ticking.

Related web sites of note:

Capon Valley Coalition – this group is vigorously protesting TrAIL and has rallied significant support in area communities and met with officials in Washington and Charleston. See: http://caponvalleycoalition.com

Map of proposed trail routes - http://www.aptrailinfo.com/index.php?page=proposed-line-route-map

National Congestion Study and comments: http://www.oe.energy.gov/epa_sec1221.htm

Piedmont Environmental Council: http://www.pecva.org/landuse/energy/powerlines/links.php

Laurel Run Community Watershed Association: http://www.laurelrunwatershed.org

WV Public Service Commission. The case identifier for TrAIL documents is NOIE Trans-Allegheny 07A http://www.psc.state.wv.us/

Governor Machin's letter to the DOE Secretary: http://web.ead.anl.gov/1221a/act_displayfile.cfm?filename=Manchin_III_Governor_Joe.pdf

# MOUNTAINTOP REMOVAL RESTRICTED (Continued from p. 1)

round them and the groundwater that sustains them.

- What happens as they tumble over rocky creekbeds and cascade down the steep hillsides along the way is a unique process - that is critical in that absorbs life from its surroundings, gives life back and in its own unique fashion transforms and transmits it downstream…

- These functions only occur in headwater streams and cannot be reproduced in larger perennial waters.

- When headwaters are buried, and their forested valleys filled, these functions are lost.

- Both the Clean Water Act and the National Environmental Policy Act require in-depth evaluation of the character and function of these streams, and the impacts that will be caused by burying them, including the impacts to the upland resources.

- Both laws prohibit the destruction of these streams without good cause and without reliable and effective mitigation or replacement.

BACKGROUND

Mountaintop removal mining operations tear apart whole mountains sometimes 1,000 feet deep, to extract 6, 10 – or more, seams of coal that lie within the mountain like frosting in a layer cake. Once the rock between the coal is blasted apart it swells and not all of it can be piled safely back where it came from.

Mining and water discharge permits for these operations are governed by the Surface Mine Act and Section 402 of the Clean Water Act and administered by the WV Department of Environmental Protection.

A different section of the Clean Water Act (Section 404) currently affords the U.S. Army Corps of Engineers the legal authority to permit dumping leftover waste rock from these mining operations into adjacent stream valleys. But to do so, the Corps must first fulfill the requirements of the Clean Water Act and the National Environmental Policy Act, carefully review the proposal and assure there will be adequate mitigation to replace the streams and the services they provide for the larger ecosystem.

The goal of the Clean Water Act is "…to restore and maintain the chemical, physical and biological integrity of the Nation's waters….". Regulations know as the 404(b)(1) guidelines govern the Corps' actions in reviewing these permits. The underlying intent behind these guidelines is to prohibit fill material to be discharged if it will result in an unacceptable adverse impact on the aquatic ecosystem.

The National Environmental Policy Act of 1970 is designed to "promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man." NEPA therefore requires additional considerations including an evaluation of impacts to the upland resources, the valleys that will be filled, as well as the jurisdictional waters that will be buried.

REVIEW BY THE COURT

The Court must "immerse" itself in the evidence in order to "determine whether the agency decision was rational and based on consideration of the relevant factors."

After reviewing thousands of pages of the administrative record, the Court found:

"The Corps' staff clearly devoted substantial time and effort reviewing and considering the applications. … Even so, it is not the amount of the Corps' effort that is at issue here; rather, what matters is whether the results meet the proper standards. … the Court finds that the Corps has not met its obligations under the CWA and NEPA. The Court's criticisms arise more from the practices and fundamental assumptions used by the Corps than from the expertise or diligence of the staff."

Eg "The Corps has evaluated the physical structure of the streams and partially considered impacts to these streams as habitat, but has given no more than lip service to the other attributes of headwaters that must be considered in assessing the structure and function of a stream."

"… the Corps has failed to take a hard look at the destruction of headwater streams and failed to evaluate their destruction as an adverse impact on aquatic resources in conformity with its own regulations and policies. Its decisions do not provide a reasoned explanation for the conclusion that adverse impacts have been adequately determined."

- The valley fills will cause adverse impacts and those impacts will be significant.

- The Mitigation Plans will not compensate for those adverse impacts.

- The Corps improperly limited it scope of review.

- The Corps inadequately evaluated cumulative impacts.

The Court did allow that the Corps adequately assessed surface water runoff by relying on the state approved analysis for the permits in questions. Also, citing the lack of clear regulatory definition of riffle and pool complex, the Court gave deference to the Corps' determination in these matters.

LOOKING AHEAD

With the Court's detailed Memorandum Opinion and Order in hand, the Corps is to reconsider the applications.

"The Court finds fundamental deficiencies in the Corps' approach, resulting in EAs [Environmental Assessments] which are inadequate and unsupported. The Corps has gone to great lengths to issue a FONSI [Finding of No Significant Impact] and avoid conducting an EIS [Environmental Impact Statement] with respect to each of these permits. Some of the deficiencies, such as the cumulative impact findings or the use of stream creation as mitigation, may be difficult to correct and still result in a FONSI being issued by the Corps. However, each permit is different in scale and setting, which may affect the viability of a mitigated FONSI as well as a CWA permit for a particular project. Further, the agency has committed substantial resources to its efforts and deserves the opportunity to reevaluate its FONSI conclusions. The Corps may decide of its own initiative that an EIS is required, as it apparently did with the Spruce No. 1 Mine, or it may reexamine its findings to determine if it can issue a FONSI which conforms with the Court's Memorandum Opinion and Order. Moreover, while surface mining is heavily regulated by federal and state agencies, Congress mandated the Corps "maintain the chemical, physical, and biological integrity of the Nation's waters," which may require the Corps ultimately to deny the permits if the adverse impacts to the waters are significant. That, however, is a determination for the Corps to make."

This is the third federal judge, and the fourth decision…that could potentially lead to limiting the size and impacts of filling stream valleys — or eliminating the practice altogether in some instances. But the Fourth Circuit has either overturned or otherwise impeded the three earlier decisions.

As the VOICE goes to press we are waiting to hear if the Department of Justice will appeal Judge Chambers reasoned decision in this instance. Once again the fate of the invaluable headwater streams and the people living near these streams hangs in the balance.

*NB – The Highlands Conservancy and other plaintiffs have also challenged the adequacy of the EIS done with regard to the Corps permit for the Spruce#1 mine in Pigeonroost Hollow in Blair. The Court has chosen to hear that challenge as a separate action distinct from this March 23rd decision.*

# "A Sense of Wonder" in Elkins West Virginia: A Celebration of Rachel Carson's 100th Birthday

Compiled by WVHC Board Member Russ McClain and Davis & Elkins College Chemistry and Biology student Jennifer Sisler, with additional text provided by Canaan Valley National Wildlife Refuge staff.

In honor of the 100th birthday of Rachel Carson, the play *A Sense of Wonder*, by actress Kaiulani Lee, was performed to a packed room at the Boiler House Theater at Davis & Elkins College on February 16, 2007. The event was proudly co-sponsored by the West Virginia Highlands Conservancy, Canaan Valley National Wildlife Refuge, Davis & Elkins College, Friends of the 500th, Main Line Books of Elkins, Mountaineer Audubon Society, The Rachel Carson Council, and the West Virginia Chapter of the Sierra Club. Nearly 200 people attended the performance, witnessing both the moving performance of Ms. Lee and educational displays of the conservation efforts of many of the sponsors, including the WVHC and The WV Wilderness Coalition.

Written and performed by Ms. Lee, *A Sense of Wonder* is a two-act, one woman performance illustrating the life, character and beliefs of environmental writer Rachel Carson. Ms. Lee has been touring the country with this play for over ten years. The play has been the centerpiece of regional and national conferences on conservation, education, and the environment and has been performed at over one hundred universities, dozens of high schools, and the Smithsonian Institute in Washington. Additionally, Ms. Lee has been invited to perform the play for the US Congress this spring in Washington, D.C.

True to the nature of the play, the significance of Rachel Carson's contributions can best be understood through her life story. The youngest of three children, Rachel Louise Carson was instilled with a strong sense of independence and a love of nature and writing by her mother. Carson herself later developed these traits into a career when she entered Pennsylvania College for Women (now Chatham College), first as an English major, then switching to Biology. After graduation in 1929, Carson completed her M.A. in zoology at Johns Hopkins University, a rare accomplishment for a woman in that era.

In 1936, Carson was the first woman to pass the civil service test and was hired by the U.S. Bureau of Fisheries (now the U.S. Fish and Wildlife Service - USFWS) as a junior biologist. During her 15-year career, Carson's talent and dedication helped her become editor in chief of all USFWS publications. While working for the USFWS, Carson began to publish her own work. Her first major success came with the publication of *The Sea Around Us* in 1951. Profits from *The Sea Around Us*, an extremely popular account of marine life and ecology, allowed Carson to retire from government service to write full time.

Although unmarried, Carson remained very close to her nieces and adopted her 5 year old grandnephew, Roger Christie, upon her niece's death. In 1956, Carson wrote a series of magazine articles based on her exploration of the Maine coast with her young grandnephew. These articles, originally titled "Help Your Child to Wonder" were designed to help parents introduce their children to the wonders of nature. Carson wrote, "If a child is to keep alive his inborn sense of wonder, he needs the companionship of at least one adult who can share it, rediscovering with him the joy, excitement and mystery of the world we live in." These articles were later combined and republished under the title *The Sense of Wonder*.

In 1962, Carson published *Silent Spring*, a work that shook the foundations of public trust in the chemical industry and sparked the beginning of the modern environmental movement. In *Silent Spring*, Carson documented the harmful effects of pesticides and called for the development of strict and responsible controls on their use. The publication of *Silent Spring*, along with similar research, spurred congressional hearings into federal pesticide policy. Consequently, DDT, an especially harmful pesticide, was banned from use in the United States. Perhaps more importantly, *Silent Spring* spurred the American public to begin thinking critically about environmental issues.

Russ McClain, April Daras (D&E Theatre Dept.), Kaiulani Lee, and Ken Sturm (USFWS) brought the life of Rachel Carson to the campus of Davis & Elkins College February 16th, 2007."

After a long period of illness, Rachel Carson died in 1964 at the age of 56 from breast cancer. It is indeed a rare thing when one person so dramatically affects the mindset of an entire nation, but Rachel Carson did exactly that. She taught us to love and marvel at the natural world in *The Sea Around Us* and in *The Sense of Wonder*. In *Silent Spring*, she taught us to consider the breadth of ecological damage that can occur when our society becomes complacent or unthinking in our use of modern technologies.


*"A child's world is fresh and new and beautiful, full of wonder and excitement. It is our misfortune that for most of us that clear-eyed vision, that true instinct for what is beautiful and awe-inspiring is dimmed and even lost before we reach adulthood. If I had influence with the good fairy, who is supposed to preside over the christening of all children, I should ask that her gift to each child in the world be a sense of wonder so indestructible that it would last throughout life, as an unfailing antidote against the boredom and disenchantments of later years, the sterile preoccupation with things that are artificial, the alienation from sources of our strength."*

Rachel Carson – The Sense of Wonder, 1956

# GROWING *AND* GREENING BUSINESS IN WEST VIRGINIA

By Frank Young

The West Virginia Environmental Institute (WVEI) is planning its annual Conference on the Environment for May 2-3, 2007 at the University of Charleston. This year's conference will explore how to define and foster environmentally friendly businesses in West Virginia.

The working theme of this year's conference is: Connecting the dots among economic, environmental and human health to yield a bright future for the state.

What are the advantages and barriers for environmentally friendly businesses in West Virginia? Are there things we as a state can do to increase those advantages and decrease unintended barriers? What are appropriate roles for state and local governments, the private sector and higher education? How can existing businesses be more environmentally friendly? Do we appropriately acknowledge and appreciate improvements in environmental stewardship? Is adequate support and information available for those wanting to explore the economic feasibility of shrinking their environmental footprint?

WVEI has assembled a diverse group of speakers with broad experience to address these questions, and more, based on their own experiences and motivations- including both profit AND ethics. Speakers will be experienced in energy efficient housing and construction, both home and utility scale renewable energy industries, bio-diesel fuel developments and other both conventional as well as "green" industries.

After hearing from those who have worked with operations large and small, the first day will conclude with a panel or corporate leaders. Participants will have ample opportunity to interact with speakers, and second day participants will compile insights from the day before, and then craft recommendations for state leaders.

Individual and/or panel presentations and audience discussion will include the following:

* What is an environmentally friendly business? (Two separate panels)
* What are the opportunities and challenges for creating environmentally friendly businesses in West Virginia?
* Corporate round table- what we have learned and need to learn more about
*Facilitated discussion: creating a roadmap for developing environmentally friendly businesses in West Virginia.

Regular conference registration fee is $175.00. If pre-registered before April 25th, the fee is $150.00. For those who apply before April 25th, scholarship registration is only $25.00,.

For scholarship and registration forms and other information, contact: Angela Brown at 304-542-6972, or by e-mail at abrown@te-associates.com

The West Virginia Environmental Institute is a volunteer, non-governmental multi-interest organization that has promoted productive dialogue about West Virginia environmental issues for over twenty years. It is composed of representatives from academia, environmental organizations, industry and commerce, and regulatory agencies.

## Water Gap Retreat Offers Environmentally Friendly Tourism

Water Gap Retreat, in Randolph County, offers a retreat from the hustle and bustle of every day life. It is founded on the principles of "eco-tourism, a commitment to a creative life style, an affinity for nature, and an understanding of nature's restorative powers." (From the website. They offer housing in unique fabric shelters (like tents, but different) as well as a series of workshkops on such topics as stream ecology, organic gardening, Allegheny geology, forest meditation.and caves. For more information, go to www.watergapretreat.com.

## Speakers Available !!!!!!

Does your school, church or civic group need a speaker or program presentation on a variety of environmental issues? Contact Julian Martin at 1525 Hampton Road, Charleston, WV 25314, or Martinjul@aol.com, or 304-342-8989.

**Mine Cleanup Fund Going Broke**

# CITIZENS SEEK TO FUND MINE CLEANUP, END WATER POLLUTION FROM OLD MINES

By Ken Ward

Citizen groups started two major legal actions Wednesday to force the Manchin administration to properly fund the cleanup of abandoned coal mines that are polluting streams with acid drainage.

In one action, the West Virginia Highlands Conservancy sought to reopen a seven-year-old federal court lawsuit over the state's cleanup program.

In the other, the Conservancy and the West Virginia Rivers Coalition threatened to sue the state Department of Environmental Protection for illegal water pollution from mine sites the DEP is cleaning up.

Both actions are aimed at fixing a major environmental problem that dates back more than 25 years.

Late last year, a DEP advisory panel urged Gov. Joe Manchin and lawmakers to increase coal taxes to create a nearly $300 million trust fund for the cleanups. Neither Manchin nor lawmakers took up the recommendation.

In its annual report, the Special Reclamation Fund Advisory Council said the state cleanup fund could run out of money between 2012 and 2018.

"The longer we wait, the harder it will be to fund the trust," said Cindy Rank, chairwoman of the Conservancy's mining committee.

"Coal mining will decline as resources are depleted, but the money needed to treat polluted water will remain constant or even increase," Rank said. "Acid mine drainage will likely continue for hundreds of years. Unless we act now to build an adequate fund, the last mining company and ultimately the public will be left holding the tab for an enormous bill."

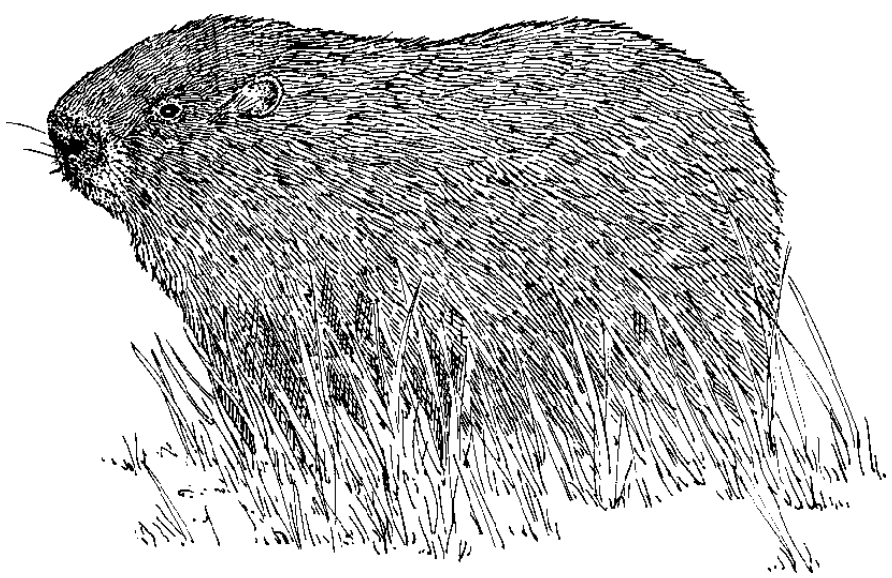
DEP officials had no immediate reaction Wednesday afternoon to the environmental groups' actions.

The special reclamation fund cleans up coal mines that were abandoned after passage of the 1977 federal strip mine law. A separate program handles sites abandoned before that.

In West Virginia, the fund has never had enough money. Over the years, thousands of acres of abandoned mines sat unreclaimed. Hundreds of polluted streams went untreated.

The fund was historically short on money because coal operators had not posted reclamation bonds sufficient to pay for mine cleanups at sites that went belly-up. The state's special reclamation tax and civil penalties paid by coal operators were never enough to make up the difference.

As early as 1981, when the federal Office of Surface Mining Reclamation and Enforcement first approved West Virginia's strip mine regulatory plan, OSMRE was asking for a better cleanup fund. Reports in 1986 by the General Accounting Office and 1991 by the Interior Department Inspector General blasted the state's cleanup fund.



In one study, OSMRE estimated West Virginia needs more than $2.6 billion over the next 50 years to clean up polluted water at abandoned mine sites.

OSMRE has consistently refused to launch a federal takeover of the reclamation fund, however, saying the state is taking steps to improve the situation.

Starting in 2000, Conservancy lawyers sought to have then-U.S. District Judge Charles H. Haden II force that takeover. Haden, who is now deceased, cited a "climate of lawlessness" created by repeated inaction on the issue, but still declined to force a federal takeover.

Now, with the DEP advisory group's reports as their evidence, Conservancy lawyers are back in federal court, trying to reopen that case. A new judge would have to be assigned to hear the case.

"Once the case is reopened, the Conservancy can renew its demand that the federal Office of Surface Mining Reclamation and Enforcement declare the state in default on its federal responsibilities under its state mining program, and consider revoking the state's authority over its bonding program," said Conservancy lawyer Jim Hecker of the group Trial Lawyers for Public Justice.

In the other action Wednesday, the Conservancy and the Rivers Coalition cited at least 40 discharges of polluted water at DEP cleanup sites that do not have Clean Water Act permits.

At each site, discharges have frequently violated legal pollution limits for acidity, iron, manganese and aluminum, according to a formal notice of intent to sue sent to DEP Secretary Stephanie Timmermeyer.

"The state is running these sites 'off the books' to try to escape accountability for necessary water treatment," said Liz Garland, executive director of the Rivers Coalition. "Acid mine drainage from these sites is not being treated adequately, and the streams are being polluted illegally."

Joe Lovett, another lawyer for the citizen groups, said, "By not obtaining permits or complying with required standards, DEP has significantly underestimated the costs of treating acid mine drainage at these sites. The bond fund for water treatment must be increased to account for the full cost of meeting treatment requirements at all sites."

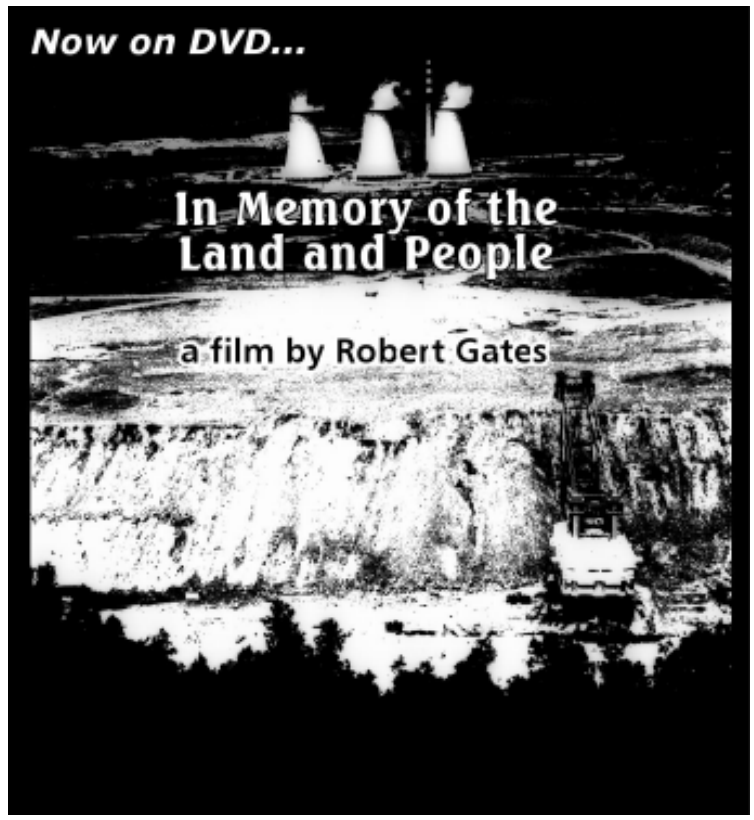
*Editor's note: This article originally appeared in the Charleston Gazette.*

## Editorial Comment

In the movie Groundhog Day, Bill Murray is forced to live the same day (the Groundhog Day of the title) over and over again. The Special Reclamation Fund (discussed in the first half of this story) is the Groundhog Day of mining issues. Since, more or less, forever the Highlands Conservancy and others have been having the same meeting with state and federal mining regulators to talk about the Fund. We say the fund is broke; they more or less admit either that it is broke or that they don't know what the liabilities are. They promise to keep trying to do better. Perhaps with some judicial attention there will be more progress.

# HISTORIC FILM NOW AVAILABLE ON DVD

By ob Gates




This is the DVD release of my 1977 film on strip mining “In Memory of the Land and People Over the years many have urged me to release this film on VHS which I never did. It is a bigger film than VHS can reveal. Now with improved DVD technology my friend poet Jim Webb convinced me to re-release it so that the general public would again have access to the film. He offered to raise money for this $3,500 project and put up $1,700 of his own money to get it going. To do it right we pulled a new internegative from the 16mm original. WRS film lab president Jack Napor gave us a discount on the cost of the internegative and video transfer because he believed this to be an important project. The resulting quality is beautiful, not often expected from film materials of this age. The DVD release was premiered at the Appalachian Studies Conference on March 24, 2007 .

“Gates has expressively woven the visual action with the deep feelings and dark furies of the music of 20th Century composer Bela Bartok, as well as with the simple, melodic folk songs of Mike Kline and Rich Kirby.” Greg Carannante, Mountain Call. “Unlike many documentaries, Gates’s presentation includes no script or narration. Rather, it is composed of a series of striking visual images, skillfully photographed and artistically integrated. The voices heard in the film are those of people who reside in regions where strip mining has taken place, and describe in their own words its devastating effects on their land and lives.” Elizabeth Lawrence, Tufts University, American Anthropologist.

The film has had showings by grassroots groups around the country, the Museum of Modern Art in New York, a conference of the electric power industry in Seattle, and hearings held by the late Congressman Leo J. Ryan on Capitol Hill. Showing the film in its working stages helped fuel passage of the Surface Mining Control and Reclamation Act of 1977 (for whatever good that did) and inspired the formation of the West Virginia group Save Our Mountains.

It is great to have this film back in circulation. We are looking for a few sponsors to help cover the costs of this project, however more important is to have the film widely seen as the issue of strip mining has morphed into mountaintop removal coal mining. Well over 300,000 acres of land in West Virginia alone have been razed by this monster, over 1,200 miles of streams buried, and the count of major regional flash floods is getting close to a dozen, six of which are documented by my recent video “Mucked: man made disasters - flash floods in the coalfields” (now also on DVD). Other impacts on the people: my video “All Shaken Up” documents blasting damage from mountaintop removal mining which uses nearly 4 million pounds of explosives per day (an equivalent explosive force of 27 Hiroshima-style atomic bombs per year).

When I was filming the crossing of Interstate 80 by the “Mountaineer” shovel, climax of the film, someone said to me over my shoulder “It is a good thing these cannot operate in West Virginia”. I said “just wait”.

The DVD is available from:

Omni Productions
PO Box 5130
Charleston, WV 25361
omni@ntelos.net

Copies for personal use are $25 ppd, funded institutions may purchase copies for $150.00. Persons wishing to help sponsor this effort $100.

## HATS FOR SALE

West Virginia Highlands Conservancy has two models of caps for sale.

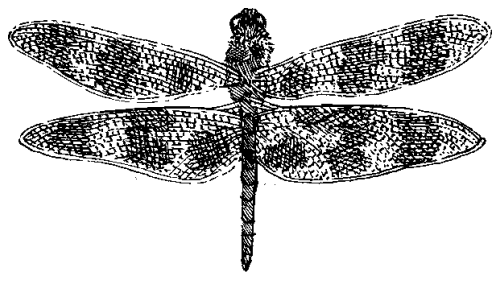
One is khaki and the pre-curved visor is forest green. The front of the cap has West Virginia Highlands Conservancy in gold above We (Heart) Mountains. The heart is red; and lettering is black.

The other model is tan with a muted green pre-curved visor. The front sports the lovely, in color, logo that appears on the VOICE masthead. Beside the logo is “West Virginia Highlands Conservancy” in green. The lower back of the hat has the We ? Mountains slogan.

Pictures of both appear on our website www.wvhighlands.org. Both are soft twill, unstructured, low profile with sewn eyelets, cloth strap with tri-glide buckle closure. Cost is $12 by mail. Make check payable to West Virginia Highlands Conservancy and send to Julian Martin, P.O. Box 306, Charleston, WV 25321-0306

Your comments and opinions are important to us.

Please email any poems, letters, commentaries to the VOICE editor at johnmcferrin@aol.com or send honest to goodness, mentioned in the Constitution of the United States,l mail to WV Highlands Conservancy, PO Box 306, Charleston, WV 25321.



# WHAT'S DOING WITH WILDERNESS

By Matt Keller

Anti-Wilderness Resolution defeated in State Legislature, 3rd year in a row!

During the state legislative session that recently ended, there was yet another attempt by those who oppose protecting wild places on the Mon to pass a resolution against any new wilderness designations. Thanks to people like you who took the time to call their state senators and the committee chairman, the resolution never made it out of the Senate Natural Resources Committee. This resolution, while non-binding, would have expressed the will of legislature in a way that is not accurate. In fact, many state senators and delegates have written the federal delegation in Washington DC in support of MORE wilderness. I'd encourage you to ask your's to do the same if you live in West Virginia!

**Wilderness legislation for the Mon.**

As the 110th, Congress buckles down and begins to take on a new agenda, we are excited that our own Congressman Nick Rahall is the new Chair of the House Natural Resources Committee. This is the Committee where Wilderness Bills generally originate in the House of Representatives. Congressman Rahall is recognized nationally as being a champion of public lands and has done much to protect special places in WV and across the country. The Committee has already approved a long held up piece of legislation for the Wild Sky Wilderness in Washington State and will be looking at several other pieces of wilderness legislation for other states including Virginia, Idaho and others

Now Congressman Rahall and our other members of the House and Senate are beginning to seriously consider Wilderness legislation for the Mon, and they are in a powerful position to move a bill forward once it is introduced. To be sure, opponents of wilderness are aware of this and have been circulating misinformation in an effort to stop legislation. See #3 below for more on this. As the final decisions are being made about which, and how many, areas will be included in a "Wild Mon" Bill, it is crucial for us to generate, and demonstrate, as much support as possible. We can still influence what this bill will look like. We need to be sure that our Representatives know which areas are the most important to include in a Bill. Areas like the Dolly Sods and Cranberry Wilderness expansions, Roaring Plains, Seneca Creek, Spice Run, Big Draft, Cheat Mountain and East Fork of the Greenbrier.

In recent weeks we have redoubled our efforts to garner business and organizational endorsements (now nearing 200!). In addition, we have been requesting letters to congress from our supporters to clearly demonstrate the broad-based support for our proposal. A Religious Campaign for Wilderness is also underway, centered around a Declaration of Spiritual Values for the Mon sponsored by the West Virginia Council of Churches, Christians for the Mountains and several other organizations. Read more about this initiative at Christians for the Mountains' website: www.christiansforthemountains.org.

**Get involved in the campaign!**

Volunteers are the cornerstone of our campaign, and there are numerous ways in which you can have an immediate impact on the wilderness campaign's outcome. Should you have questions or need assistance with any of the items below, please contact the West Virginia Wilderness Coalition (Jason Keeling, Outreach Coordinator, 304.989.3262 or jason.keeling@wvwild.org ).

**Contact Your Elected Officials**

The ultimate decision to protect greater portions of the Monongahela National Forest lies in the hands of Congress, and therefore, the more calls, letters, and visits that West Virginia's delegation receives, the better. Please demonstrate your support in some form to Senators Byrd and Rockefeller, and to your Representative, whether that's Mollohan, Capito, or Rahall.

Also, it remains important to demonstrate support to state and local officeholders, including Gov. Manchin and your respective state legislators. If you know a state or local officeholder that may be interested in signing-on to a letter of support for the wilderness campaign, please let us know.

**Generate Business and Organizational Endorsements**

To date, over 150 businesses and organizations across West Virginia have endorsed the citizens' wilderness proposal as a means of promoting tourism and economic development in the state. Help us grow this list by referring business owners and organizational leaders to www.wvwild.org/get_involved_05.htm, where they can sign-on as an endorser (no financial commitment) with just a few keystrokes. Thereafter, the Wilderness Coalition will provide letter templates for endorsers to send in to Congress.

**Send a Letter to the Editor**

Coverage in area newspapers furthers public awareness and dialogue on the importance of wilderness, and letters to the editor are an excellent means of generating such. If you're interested in submitting a letter or two, contact the Wilderness Coalition for talking points and media information.

**Generate Support for the Spiritual Values Statement**

Christians for the Mountains and the West Virginia Council of Churches has developed "A Declaration on the Spiritual Values of the Monongahela National Forest," which describes the importance of wilderness to those of faith and their duty to help preserve such. Churches and faith-based organizations may sign-on as endorsers of the declaration, and an accompanying DVD is available to provide further perspective.

Contact Christians for the Mountains or the WV Wilderness Coalition if you would like to circulate the spiritual values statement and accompanying DVD.

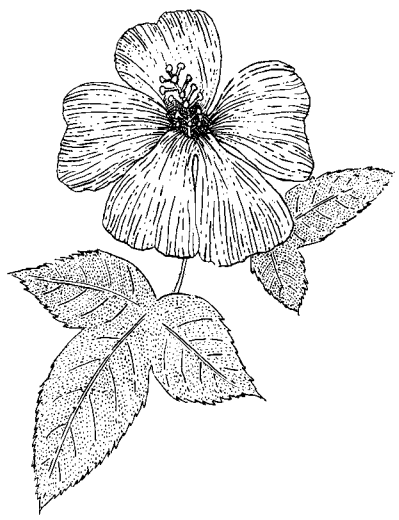
**Letter writing raffle winner gets free Patagonia Jacket!**

After a disappointing release of the final Mon Forest Plan from the US Forest Service in Elkins which recommended very few new wilderness areas, we released a call to action for folks who care about wild places to write a letter to WV's congressional delegation in Washington, DC. Many of you responded and impact has been very noticeable in our nation's capitol. To all of those who wrote, we thank you. It's not to late to write your letter if you haven't done so already! Patagonia Inc., makers of fine and environmentally friendly outdoor gear was kind enough to donate a waterproof shell to the winner of a drawing we conducted of those that sent us copies of letters they wrote to congress. Gardner Hathaway of Montrose, WV was the lucky winner and has been sent a jacket directly from Patagonia. Patagonia is a company that puts its money where its mouth is when it comes to conservation and they deserve your business! Visit them online at www.patagonia.com or if you are in Washington, DC, visit their store in Georgetown.

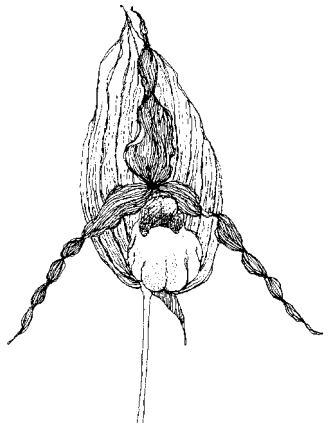
# THE STRAIGHT SCOOP ON WILDERNESS

Wilderness and Wildlife on the Mon National Forest:
(in response to false information circulating)

- § Hunting and fishing are not only 'allowed' in wilderness, but they are intended uses of the National Wilderness Preservation System which aims to ensure high quality, wilderness quality hunting and fishing are available to the public
- § Wilderness Designation does not affect Payment in Lieu of Taxes or PILT for counties with National Forest land. These payments go to counties since lands owned by the federal government are not subject to property taxes and are the same whether the land is designated wilderness or not.



- § Many species, including a number of game species and those listed as federally threatened or endangered, need minimum impact from humans to thrive. Such remote habitat is increasingly rare in the East. In West Virginia, total current and proposed WV Wilderness accounts for less than 1.5% of the state's land, and less than ¼ of the Mon NF. Furthermore, nearly half of the acreage with Mon NF proclamation boundary is private land, containing large expanses of open fields and small openings, and early successional habitat that add to the diversity of the Mon NF ecosystem. Rather it is actually old growth, provided by permanent Wilderness, which is truly lacking in terms of habitat diversity in the Mon.
- § What now appears to be essential to grouse nesting success is not clearcuts and their resulting high-density ground cover, but rather dense, large old trees, a closed canopy, and downed logs, in other words the old growth that Wilderness can provide. This was demonstrated in a recent 7-year study published in 2006 in the Journal of Wildlife Management involving the WV DNR and nine other state and university wildlife research programs[1] .
- § Wildlife management can and does occur in Wilderness areas across the nation, including West Virginia. One of the main purposes of the 1964 Wilderness Act, which our own Senator Robert Byrd strongly supported, is to restore native wildlife species whose populations have been negatively impacted by human activities. Management needs to be done in a way that protects the area's wild character using what is known as the "minimum tool;" Simply put, the least impacting tool that can be used to accomplish a task is the one that should be used. If the minimum tool is found to mechanized or motorized, then that is the tool that can be used. Current and proposed wilderness areas make up less than 15% of the 1.5 million state and federal acres the WV Department of Natural Resources manages[2] ; management of the other more than 1.2 million acres is not subjected to the minimum tool requirement.
- § Trout Unlimited strongly supports wilderness designation because of the positive impact it has on wildlife species. A recent National TU bumper sticker reads, "Wilderness: A Great Place to Hunt and Fish."
- § The West Virginia Wilderness Coalition has worked with WV DNR Wildlife and Fisheries managers, along with U.S. Forest Service fisheries personnel and WV Trout Unlimited members, in drawing proposed Wilderness boundaries. As a result, boundaries for several areas were modified to avoid conflict with current wildlife management activities. Over 17,000 acres of proposed Wilderness acreage (nearly 10%) were removed from consideration to accommodate most current WV DNR wildlife management activities requiring occasional vehicular access and motorized equipment. Another 8,200 acres (Tea Creek Mtn. 6.2 Area) were removed to insure access to the streams within for liming.
- § Before the massive timber harvesting of the early 1900's, an incredibly diverse and rich old growth forest with abundant, diverse, and healthy wildlife populations existed here, and not because of human management! Classic ecology describes the stability and resilience of natural, old growth ecosystems. They are not generated overnight. Our Appalachians have recovered remarkably by mother nature's hand from what humans did to them a century ago. Wilderness will guarantee regeneration of at least small areas of old growth in the Mon NF.
- § Chemical treatment of waters is permissible in Wilderness if done to restore native habitat impacted by human activity. In fact, application of limestone fines to counteract acidification is already being done here in West Virginia in Otter Creek and Middle Fork of the Williams, both Wilderness streams, as well as the North Fork of the Cranberry which borders the Cranberry Wilderness. In developing its proposed wilderness boundaries, the West Virginia Wilderness Coalition worked closely with WV DNR and Trout Unlimited to make sure that streams being considered for liming in the future could be accessed by vehicle.
- § Concerning maintenance of oak-hickory or oak-pine forests (a concern of some wildlife managers), even if all proposed wilderness areas were designated, over 75% of the Mon National Forest would be open to more intensive forms of wildlife management. Importantly, only one area being considered for Wilderness has oak-hickory forests and only one has oak-pine forests.
- § 6.2 management is a temporary, administrative protection put in place by the U.S. Forest Service. It is created 'with the stroke of a pen' rather than through an act of Congress like Wilderness, and can be taken away just as easily, as we have now seen here. In their recent Forest Plan Revision for the Mon NF, the Forest Service attempted to change 6.2 guidelines to allow for clear cutting and road building in these areas. Because of push back from wilderness advocates, this did not come to pass. However, in the new Mon NF Final Plan, 39% of the original 6.2 areas, all or parts of ten of the original 16 areas, have been switched to management prescriptions that allow logging and road building. Some other areas (less acreage) were put into 6.2, showing the impermanence of 6.2 protection. Such switching of lands will never promote the old growth ecosystems so lacking in the Mon. Every time the management plan is revised, 6.2 areas will be threatened.[3]
- § The 6.2 management prescription espoused by opponents of wilderness would also prevent even-aged timber management that they feel is so critical to game species success
- § In pre-settlement days, when there was no unnatural even-aged management (clearcutting), West Virginia was a magnificent wilderness rich in wildlife



**(More on the next page)**

## MORE SCOOP ABOUT WILDERNESS (Continued from previous page)

species including brook trout and a diversity of game animals, with ample natural openings created by windfall, tree death, storms and other natural acts.

§ The Wilderness Act allows for the restoration of native species. If a disease-resistant strain of American Chestnut was developed, it could be planted in a Wilderness Area, and in fact, this would likely be a high priority for restoration given its important role in the native ecosystem.

§ The Wilderness Act specifically states that certain measures may be taken to control fires, insects and disease in Wilderness Areas, including the possible use of mechanized equipment, when justifiable.

§ Noxious weeds and invasive non-native plant species may be eradicated from designated Wilderness by physical means, such as grubbing, when the infestations are isolated, and herbicides may be used when justifiable.

[1] JOURNAL OF WILDLIFE MANAGEMENT 70(1):138–144; 2006

[2] West Virginia Land Stewardship Data, Natural Resource Analysis Center and West Virginia Cooperative Fish and Wildlife Research Unit, West Virginia University, updated January 2000

[3] Monongahela National Forest Land and Resource Management Plan 2006 Table RE-10

# WHIPPING THE TRAILS INTO SHAPE

By Don Gasper

A characteristic of "The High Sods" above the present Dolly Sods Wilderness is, of course, the flagged spruce with all their branches pointing east away from the wind. The wind brings lashing rains that can, here and there perhaps in conjunction with brief rapid flows, actually cause the low vegetation to actually roll up, roots and all, like a carpet. The sod is low, tough, clinging to rock as it does, but it is fragile. On these wet and boggy in places, we get heavy foot-traffic in summer - even horse-use. Finally, to complete the erosional problem, during a wild fire a fire lane was bulldozed up there and left open.

The U.S.F.S. has had a recently upgraded trail system and map. That has been attracting even more use. It was of course, in the West Virginia Highlands Conservancy's Guide to Hiking on the Monongahela. It has for a long time been getting more and more use, and to manage this the U.S.F.S. has felt the need to unobtrusively stabilize more areas as a part of what might be considered regular trail maintenance.

The West Virginia Highlands Conservancy has experienced these emerging problems for visitors from near and far away - Pittsburgh, D.C. etc; its board has discussed it many times. We have helped in its mapping.

We know and care so much about it that we have decided to be the citizen group partnering with a federal trails program. Just over $1,000 of our regular budget will be spent to match public funds and put a $7,500 program on the ground to augment the regular summer trail maintenance program of the U.S.F.S. Cheat Ranger District.

Now that the paper work is done, and the project will get underway this summer, we all have to continue it, and perhaps increase it in following years. We will be looking for signs of recovery. There may be on opportunity for volunteers to help; it would be announced as an "outing" in Highlands Voice. Everything we do must conform to high natural appearance standards, yet be permanently contributing to recovery of the area.

# SUMMER CAMPS

By Don Gasper

The West Virginia State Conservation Camp is held the third week in June for about 100 youngsters from 14 to 18 years old at a big 4-H camp in Webster County. There are morning classes on Watershed Management, Forest Products and Management, Nature Awareness, Soil Conservation, Water Quality, Game Management, Fish, Conservation, Law Enforcement - and we have 6 officers to keep order.

In the afternoon campers can choose between fishing and boating at the 11 acre lake, stream life and chemistry, shooting skills, archery, outdoor cooking, crafts, mountain hiking, even rappelling down a rope.

The hands-on/outdoor instruction is provided by natural resource experts from the responsible agencies of the W.V. Department of Environmental Protection and Division of Natural Resources' Game and Fish Biologist, the Division of Forestry, the Nat. Parks, and the Conservation Officers themselves. It is a great week of interaction, between the experts and campers and the campers among themselves. There are campfires every evening. All youngsters are welcome but must have their way paid for by an established out-door oriented group. We can make recommendations and should have scholarships. Contact Don Gasper, 4 Ritchie St., Buckhannon, WV 26201.

The Junior Conservation Camp is supported particularly by WV DEP, but some of this fun staff is experts from other agencies. Campers really get a chance to fish here as the cabins are right on the lake and the lake is full of hungry, big bluegills - and Trout Unlimited is there to show them how. There are various kinds of boats just right for the 11-14 year old camper. There are all kinds of contests, skits, and activities. It is held at Cedar Lakes near Ripley 4 days in June. The cost is $125, and any one can pay the camp fee to WV DNR. Write them for more information c/o Diana Haid, W.V. D.E.P., Youth Environmental Program, 601 57th St., S.E., Charleston, W.V. 25304. We might pay someone's way to this camp.

Trout Unlimited has a "Fly Fishing School" every summer for teenagers at the 4-H Camp Pioneer in Randolph County. This year the dates are June 1, 2, & 3. The cost is $250. More information is available from Larry Orr, 104 Hillcrest Ave., Elkview, W.Va. 25071 - 7514.

# WIND FARM UNDER CONSTRUCTION NEAR MT. STORM

By Mona Ridder

One of the largest wind farms proposed for the region is under construction along Grassy Ridge adjacent to the Dominion Power Plant at Mount Storm.

With up to 200 turbines planned the project has been approved by the West Virginia Public Service Commission and received permits to begin construction.

Work has been continuing at the site since early fall with land clearing and road construction.

Foundations for the towers that will support the turbines are also under construction, according to Tim O'Leary, spokesman for the NedPower Mount Storm wind project. NedPower, a Dutch company, is the developer of the project. The company has also developed wind farms in India and Germany and is looking to develop one in Ireland as well.

O'Leary said of the Mount Storm project recently, "You'll see an increase in activity come spring and by late spring the turbine parts will begin to come to be erected during the summer. " He said the project is expected to be commissioned by the end of the year.

O'Leary and other representatives of the project met with county officials and others in Mount Storm recently to update them on the status of the project, according to Grant County Commission President Jim Wilson.

"This is going to provide some much needed money for some of those landowners," Wilson said, noting that the lease fee for each of the turbines is $4,000. He also said that O'Leary indicated that Grassy Ridge Road will need to be shut down during periods when some of the tower and turbine parts are trucked in.

"They talked about the size of them and it's hard to fathom just how big they are going to be," he said.

David Friend, marketing and sales with U.S. WindForce, said his company has a smaller wind farm project proposed for Grant County, not far from the NedPower project, as well as two others in Western Maryland.

He said the one in Grant County and one of the two in Western Maryland are expected to be constructed in 2008.

He said that the project on Savage Mountain, located in both Allegany and Garrett counties, has been held up because of the need to complete reclamation from prior strip mining operations at the site.

"That was finished in September so now we have the green light to get going," Friend said, adding that the project has received its permits from the state.

Another project of U.S. WindForce in Mineral County on Green Mountain also is still on the books, though permits have not yet been issued.

Friend said that both projects are going to be less visible than the state's only operating wind farm in Tucker County.

He said the reason is that they are not in a single strip but in "a series of bumps, kind of like a washboard," so they won't be visible from the roads, which he said are down in the valleys and not close to the turbines.

Opponents of the NedPower project at Mount Storm filed a suit in circuit court seeking reversal of the Public Service Commission's approval of the project. Judge Phil Jordan ruled against them and the project has moved forward. The opponents are now appealing to the state Supreme Court to overturn the ruling. The high court is slated to hear arguments in April. There was no legal action to halt the project pending the appeal.

Synergics has also proposed a wind farm in Garrett County. The project has not yet been permitted. Clipper Windpower Development is another company that has proposed a 40-turbine wind farm on Backbone Mountain in Garrett County. Officials of that company said they hope to break ground this year. The project has also been challenged in the courts on environmental issues.

Legislation pending in the Maryland General Assembly would make it easier to build large wind power projects by not requiring that they get approval from the Public Service Commission and would eliminate environmental reviews that look at the potential impact on wildlife, endangered species and forest fragmentation.

That bill has come under attack by environmentalists. Sen. President Mike V. Miller said the goal of the bill is to preserve the environment, not hurt it.

Many of the turbines that will eventually be located in the Potomac Highlands, Western Maryland and southwestern Pennsylvania are being shipped through the Port of Baltimore.

The first shipment in a series of wind turbine parts arrived at the port on Dec. 12, according to Brooks Royster, executive director of the Maryland Port Administration, who indicated the turbines are being imported from various locations around the world.

The first wind farms in the region were located in Meyersdale and Somerset, Pa. Pennsylvania has continued to approve additional wind farms and the state now boasts 179 in eight operating wind farms.

Five additional sites are being considered.

**Editor's note: A slightly longer version of this story originally appeared in the Cumberland (Maryland) Times-News.**

## T- SHIRTS

White, heavy cotton T-shirts with the ***I ♥ Mountains*** slogan on the front. The lettering is blue and the heart is red. "West Virginia Highlands Conservancy" in smaller blue letters is included below the slogan. Sizes: S, M, L and XL. **Short sleeve** model is $10 total by mail; **long sleeve** is $15. Send sizes wanted and check payable to West Virginia Highlands Conservancy ATTEN: Julian Martin, WVHC, P.O. Box 306, Charleston, WV 25321-0306.

## BUMPER STICKERS

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

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

**Thirteen Arrested; Coal silo and sludge lake focus of problem**

# CITIZENS PROTEST, DEMAND NEW MARSH FORK SCHOOL

By Frank Young

Nearly a hundred citizens protested, and thirteen were arrested on non-violent civil disobedience related charges during a protest related to the continuing saga of a coal processing facility in close proximity to a public elementary school in Raleigh County, West Virginia.

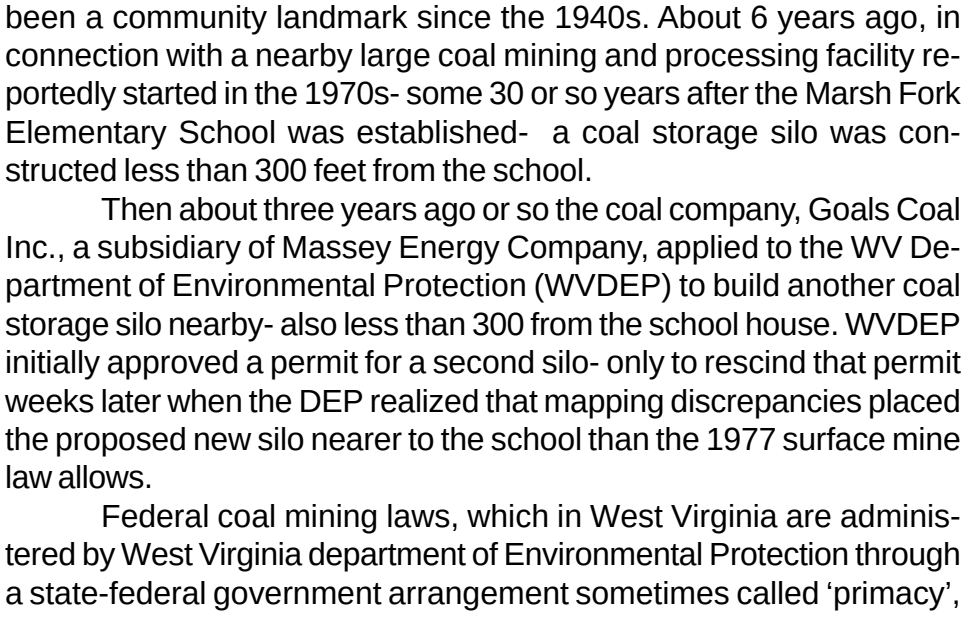
According to local residents, Marsh Fork Elementary School has been a community landmark since the 1940s. About 6 years ago, in connection with a nearby large coal mining and processing facility reportedly started in the 1970s- some 30 or so years after the Marsh Fork Elementary School was established- a coal storage silo was constructed less than 300 feet from the school.

Then about three years ago or so the coal company, Goals Coal Inc., a subsidiary of Massey Energy Company, applied to the WV Department of Environmental Protection (WVDEP) to build another coal storage silo nearby- also less than 300 from the school house. WVDEP initially approved a permit for a second silo- only to rescind that permit weeks later when the DEP realized that mapping discrepancies placed the proposed new silo nearer to the school than the 1977 surface mine law allows.

Federal coal mining laws, which in West Virginia are administered by West Virginia department of Environmental Protection through a state-federal government arrangement sometimes called 'primacy', require that coal mining operations not be located closer than 300 feet from certain facilities, including school houses. Goals Coal maintains that the current silo is supposedly "grandfathered" and therefore exempt from that provision in law. But WVDEP maintains that the proposed new silo is not exempted from the current school proximity regulations that apply to all coal operations conducted after the passage of the federal surface mine act.

But on March 14th the WV Surface Mine Appeals Board overruled the WVDEP's denial of the silo permit. This action then had the effect of reversing the WVDEP's denial.

So two days later, and after years of objections to the second coal silo application, citizens took a more "direct action" tactic with state officials. On March 16th a hundred or so citizens took their case for a new Marsh Fork Elementary School, to be located within the community but far from the coal processing facilities and the 3 billion gallon sludge dam, directly to the office of West Virginia governor Joe Manchin. That Friday morning school age children, their parents and grandparents (including one 87 year old grandmother) and other sympathizers, mostly from southern West Virginia, occupied the governor's reception room in mass, demanding to speak directly with the governor about the Marsh Fork School situation.




Ed Wiley talking about the need for a new Marsh Fork Elementary School. He says it's "Common Sense."

Youth participating in a protest rally do a little pickin' for the governor. Except for the part about his never coming out to listen, it was great.

In spite of a whole day of demanding to see him, the governor did not meet with the group. But speaker after speaker addressed the governor's several aides and security personnel and Sate Police officers present, demanding a new Marsh Fork School. They demanded a school in which students would not be subject to the dust and poisonous chemicals emitted from the coal handling complex at Marsh Fork, as well as the dangers associated with a hundreds of feet tall coal sludge refuse dam holding back billions of gallons of water and waste coal materials located just upstream from the school.

For almost four hours a governor's aide repeatedly told the crowd that decisions about schools were a county matter, and not directly a state issue. The aide did say that if county school officials were to declare a need for a new Marsh Fork school, and apply for state aid for a new school, that the Governor Manchin would look favorably on such a request

Throughout the standoff, capital security police personnel told several protesters who were occupying one corner of the governor's reception room and a connecting anteroom to move away from those "secure" areas. But protesters, loosely organized under the banner of "Mountain Justice Summer", did not budge and continued to demand to meet only with Governor Manchin about what they consider to be a dangerous, emergency situation.

By mid-afternoon it became apparent that the governor would not come out to meet with the protesters. About that time several dozen capital security police and uniformed and armed state police officers waded into the throng of peaceful protesters and proceeded to take a total of thirteen of them into custody- most charged with obstruction of law enforcement officers by opposing their orders to vacate certain parts of the governor's reception area.

Those taken into custody were not at all repentant in the face of their arrests for misdemeanor "obstruction". They vowed that engaging in non-violent civil disobedience to call attention to social injustices is both moral and necessary.

# CITIZENS SPEAK OUT, GET ARRESTED (Continued from previous page)

"This is exciting that students and community members have joined together to demand a safer school for the kids who attend Marsh Folk Elementary," says Sarah Kidder, a student at Glenville State College and a key protest organizer. "These kids should not have to endanger their lives simply by going to school and having to breathe in air polluted by coal dust."

"Governor Manchin seems to believe that all he has to do is make promises while the children who attend Marsh Fork continue to breathe in coal dust," says Bill Price of Charleston, WV. "We are not interested in promises. We want a new school for these kids so that they do not have to breathe in polluted air while they are trying to learn."

A media report was that protesters were kicking, biting and hitting at police officers was totally untrue. I was at the protest for almost the entire day. The only physical aggression I saw from anyone was from State Police and capital police officers who singled out certain protest leaders for especially rough treatment in the course of taking then into custody. See related photographs.

Even Deputy Director of Capitol Police Randy Mayhew said none of the protesters demonstrated violence, but that some of them sat on the ground after they were instructed to clear the small "safe zone" between a trooper's desk at the back of the reception area and the door that leads into the governor's office. "They weren't violent, they just wouldn't comply," the Raleigh-Register quoted Mayhew as saying.

All 4 foot 11 3/4 inches of OVEC board member and Keeper of the Mountain Larry Gibson gets toted off to the hoosegow. Photo by Dave Cooper.

## BROCHURES

**The West Virginia Highlands Conservancy has joined with the Sierra Club, Coal River Mountain Watch, Ohio Valley Environmental Coalition, West Virginia Rivers Coalition, Appalachian Voices, Kentuckians for the Commonwealth, Keeper of the Mountains Foundation and Christians for the Mountains have put together a new brochure entitled** *"Mountaintop Removal Destroys Our Homeplace STOP THE DEVASTATION!"* **For a copy send a self addressed stamped envelope to Julian Martin, 1525 Hampton Road, Charleston, WV 25314.**

**Quantities are available for teachers, civic and religious groups and anyone who can distribute them.**

# OTTER CREEK WILDERNESS--THE CONSERVANCY'S FINEST HOUR

By Dave Elkinton

Bob Burrell, the second president of the Highlands Conservancy, and the first editor of The Highlands Voice, called the legal battle to preserve Otter Creek the Conservancy's finest hour. Others have cited it too, although Judge Haden's decision restricting mountaintop removal mining runs a close competition.

In the late 1960s, the Highlands Conservancy had begun to advocate that Congress declare Dolly Sods, Otter Creek and the Cranberry Backcountry as wilderness areas under the National Wilderness Preservation System. All three areas were in public ownership, within the Monongahela National Forest, but like much of the Mon, their mineral rights remained in private ownership.

In early 1970, the Island Creek Coal Company, a subsidiary of Occidental Petroleum, and the owner of Otter Creek's mineral rights, announced its intention to conduct core drilling for the purpose of determining the feasibility of mining operations. Conservancy leaders knew that the construction of roads necessary for the drill rigs would destroy the wilderness characteristics they desired to preserve.

The Morgantown Dominion-Post reported that Island Creek owned 22 million tons of high-quality, low sulfur Sewell coal in the Otter Creek basin and estimated the construction of 28 miles of roadway were needed to reach the proposed drill sites. Far from restricting the proposed core drilling, the Monongahela National Forest was actively supporting the extension of the McGowan Mountain Road into Otter Creek to facilitate logging. Thus, Conservancy President Tom King wrote in the May 1970 Highlands Voice, "The Conservancy finds itself today in the unenviable position of having to oppose the wills of two powerful adversaries to preserve the pristine beauty of the Otter Creek basin."

In June, the Conservancy sought and was granted a temporary restraining order against the Island Creek Coal Company stopping it from cutting roads into the Otter Creek area. On June 2, United States District Judge Robert E. Maxwell ruled that the Conservancy had just cause to restrain the coal company and the Forest Service from cutting roads in Otter Creek. Hearings were scheduled later that summer to determine the merits of permanent protection.

This court action by the Conservancy marked the first of perhaps two dozen times over the next forty years that the Conservancy would use the judicial system as the "court of last resort." Some of the details behind the Otter Creek injunction illustrate the dynamics of joining local West Virginia resource people with expertise from nearby states, a characteristic that distinguished the Conservancy from its origin to the present day.

In a 2005 interview, Fred Anderson remembered his Conservancy involvement: He and a fellow young attorney, Jim Moorman, had renewed their acquaintance as they met in a field near Seneca Rocks. Both were working in Washington, D.C. Moorman invited Anderson to a nearby Highlands Conservancy Fall Review. Over the next several years they attended various Conservancy meetings and became volunteer legal advisers to the Conservancy.

When the Island Creek Coal Company seemed poised to begin the road building, in advance of their core drilling, members of the Conservancy were desperate to preserve the wilderness potential of Otter Creek. Anderson and Moorman researched the brand-new Environmental Policy Act of 1970, and found an opportunity to stop the Forest Service from allowing the roads and drilling. Conservancy President King, a respected dentist from Bridgeport, found "local counsel" in the person of Willis O. Shay, a member of Steptoe and Johnson, a well-known Clarksburg firm. Working together, Shay, Anderson and Moorman went before the Judge Robert Maxwell in United States District Court. Anderson recalled the most telling evidence given to Maxwell were photographs of Island Creek's initial construction, taken by Conservancy member Sayre Rodman.

After issuing three ten-day restraining orders, Judge Maxwell granted the Conservancy a stronger preliminary injunction banning road building and timber sales in the 18,000-acre Otter Creek basin. The injunction was directed against both Island Creek Coal Company and the U.S. Forest Service.

Island Creek Coal Company had nearly completed the first of five planned temporary roads to take core samples in the basin – a mile long road between the two main forks of Moore Run beginning at the McGowan Mountain Road – when it was stopped by the court. Island Creek appealed the preliminary injunction and asked for a trial, which would probably be held in August. It was expected that there would be an eight-month delay before the coal company could resume operations even if the final decision was in the favor of the company.

In April 1971, the Voice reported that the U.S. Fourth Circuit Court in Richmond had denied the Forest Service appeal of the preliminary injunction issued by Maxwell that prohibited activities that would be detrimental to the Otter Creek area that has been proposed for wilderness designation. The case would return to Maxwell's court for trial at some time in the future.

A year later, in April 1972, Anderson reported that Maxwell gave the Island Creek Coal Company limited permission to drill 5 of the 25 planned test holes in the Otter Creek drainage. The prospecting would be done by packing equipment in on mule back. The Conservancy was expressly permitted to inspect the drilling sites at any time and the court ordered Island Creek to report back to it in May 1972, on progress with the drilling. According to Anderson, during the hearing, the judge called a conference. Instead of a helicopter, someone, he doesn't remember who, half-heartedly recommended taking the drilling equipment into Otter Creek by mule, thus saving the need for building roads. The Conservancy readily agreed if the company would try it.

In July 1972, Helen McGinnis added several details. McGinnis wrote:

> Judge Maxwell ordered lawyers representing the Conservancy and the coal company to get together to agree on a method of sampling [the coal] that didn't require roads. Pack horses and heli-

***(Continued on next page)***

# More About Core Drilling with Pack Horses (Continued from previous page)

copters were two alternatives for getting the heavy core drill rigs to five sites within the basin. In December 1971, Island Creek announced that horses were the choice. Work began almost immediately in early January. An old road starting at the Showalter Farm just northeast of the basin was reopened to the boundary of national forest land, and the drill rigs brought there by truck. Here they were taken apart and loaded onto a specially designed litter-shaped platform suspended between two draft horses. Mules perhaps would have been preferable, but they have all but vanished from this part of the country. A commercial riding stable at Deep Creek Lake is renting Island Creek riding horses and several teams of draft horses.

A team can carry 800 pounds at a time on the platform, and it takes nine trips to transport an entire rig. Once at the drilling site, it must be reassembled. The work is hard on the horses, and they must have a day or more of rest after completing a round trip. When I first met the crew in April, the team was standing almost knee-deep in mud. The ground is frequently rocky, and the horses are constantly loosing shoes.

The Highlands Conservancy owes a debt of gratitude to the lawyers – Jim Moorman, Fred Anderson, Willis Shay, and their assistants – and to the others who have managed to keep the Otter Creek wilderness intact – for the time being.

On August 23, 1972, Skip Johnson, highly-respected writer for The Charleston Gazette, announced the decision, in an article titled, "Otter Creek Prospecting Put on Shelf":

> Island Creek Coal Co., which spent $100,000 on a unique horseback core-drilling operation in the Otter Creek area of the Monongahela National Forest, has at least temporarily abandoned plans for further coal exploration there. F.A. MacDonald, an attorney for the Huntington-based firm, confirmed Tuesday that Island Creek has decided that "for the present time and for the foreseeable future" it will do no more prospecting in Otter Creek.
>
> The horseback core drilling operation – unique in the nation – came about after the West Virginia Highlands Conservancy objected to Island Creek's plans to bulldoze roads into Otter Creek. The conservation group went to court and obtained an injunction that prohibited the company from building roads to transport drilling equipment. In proceedings before Judge Robert Maxwell of the U.S. District Court of Northern West Virginia at Elkins, the coal firm and the conservancy agreed upon the horseback method. The laborious operation started last January and was completed in June. A total of five holes were drilled.
>
> The coal firm and the Highlands Conservancy took different viewpoints on whether Island Creek's decision to shelve plans for further coal exploration in Otter Creek means it didn't find sufficient coal there. Conservancy lawyer Shay said analysis of all five drilled holes, taken together, indicated the coal there is "of questionable value." He said that one 30-inch seam – which he described as "marginally operable" – was found at 667 feet below the surface, and that other seams were smaller.
>
> MacDonald, the coal firm's lawyer, said, "it's a matter of who evaluates it. We found Sewell coal in varying thicknesses, so we know it's there." Asked if Island Creek considers the coal under Otter Creek economically feasible to mine, he commented that "everybody can draw their own conclusions. We're satisfied for the present."

Burrell, by then the Conservancy President, wrote a letter to Willis Shay, expressing the Conservancy's appreciation:

> It is a rare day when the West Virginia Highlands Conservancy can claim an almost complete victory. Our lot seems to be one of constant reversals and disappointments, but the recent decision regarding the final findings on the Otter Creek core samples was a pleasant shot in the arm to remind us all to keep our noses at the grindstone as you have so ably shown us. The decision by Island Creek Coal Co. to pull out of Otter Creek for good was very good news to these tired ears.
>
> The West Virginia Highlands Conservancy desperately needs other attorneys living in West Virginia to become concerned with such problems and help us out. You have been a pioneer and have blazed a well-marked trail that I hope others will soon follow.

Anderson, Moorman, and Shay would be but the first three of many young attorneys to follow that trail, using the court system to achieve environmental protection objectives when the industrial exploiters or governmental agencies failed to cooperate. No wonder Burrell called it the Conservancy's finest hour.

*Note: This article was excerpted from the forthcoming history of the Highlands Conservancy's first forty years to be published later this year. Dave welcomes comments at* daveelkinton@hotmail.com.

## SUCH A DEAL–A GOOD PRICE ON SOMETHING YOU WOULD ACTUALLY USE

During the preparation of Edition 8 of the Monongahela National Forest Guide we ordered seven topographic maps from the U.S. Forest. Unfortunately the maps showed the private lands with a light gray shading that our printer was not sure they could handle. So we ordered the same seven maps from the US Geological Survey after gaining assurances that these were not USFS-modified topo maps but ordinary topo maps. This proved to be false information. Unfortunately topo maps cannot be returned to either source for a refund, so the Conservancy must swallow a loss of almost $100. Rather than discard the maps, it seems like we could recoup some losses by selling the maps at 50% off. If you think you might be interested, the seven maps are: Cass, Hopeville, Laneville, Lead Mine, Mozark Mountain, Parsons, and Sharp Knob. The price is $3/map plus $3/order for shipping expenses. You would pay $6./ map plus $5/ order from the USGS, and $6/ map plus $3.50/ order from the MNF. Send your order to Bruce Sundquist, 210 College Park Drive, Monroeville, PA 15146-1532. Make checks payable to West Virginia Highlands Conservancy. For questions, contact Bruce at 724-327-8737 or bsundquist1@alltel.net

# West Virginia Mountain Odyssey

# Outings, Education and Beyond

**Open Dates:** 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 lunch for a picnic on Larry's mountain. Call in advance to schedule. Julian Martin (304) 342-8989; martinjul@aol.com or Larry Gibson (304) 586-3287; (304) 549-3287

**APRIL 21 Spruce Knob/Big Run tour**. We will meet at the Spruce Knob parking lot at 11 A.M. and spend about 1 hour in the area orienting by foot and map to the area and its spruce ecosystem. Then we would travel to a small patch of virgin forest; again just a short walk where we all might eat our lunches. Then on to the North Fork and lower Big Run and its brook trout fishery, to a clear-cut on a feeder stream for perhaps a 2 mile easy hike up, ending the day at 4 P.M.
No need to contact anyone, just show up; your leader is Don Gasper 304-472-3704.

**APRIL 21-22 West Virginia Highlands Conservancy Fall Review, Canaan Valley** Hikes and activities scheduled for Saturday. See the complete schedule elsewhere in this issue.

***APRIL 21-22 (Sat – Sun): GWNF, Pedlar Ranger District, VA: AT/Mau-Har overnight backpack**: Strenuous 12.7 mile loop with 6800 ft elevation change offering outstanding views and an impressive canyon. Pre-registration required. Contact Mike Juskelis at 410-439-4964 or E-mail at mjuskelis@cablespeed.com.

**MAY 12 Buckhannon River Canoeing.** This is a short 3 mile long canoe run in a very safe reach. The bed in the 100' wide lower Buckhannon is bed rock, shallow then, but very interesting. We will bring lunches, and stretch our legs. We would meet at Sheetz in Buckhannon at 11 and take out by 4 P.M. Good for beginners or old folks. Don Gasper, old himself, is the leader. No need to contact him, just show up. Canceled if raining. 304-472-3704

**May 26-28 (Sat – Mon Memorial Day Weekend): Cranberry Wilderness, WV Backpack Trip**: Backpack in about 7 miles on the Big Beechy Trail and set up a base camp on day one. On day two do a 10+ mile day hike through the Wilderness. Day three backpack out about 8 miles along the scenic Middle Fork of the Williams River. Some potentially challenging stream crossings. Pre-registration required. Contact Mike Juskelis at 410-439-4964 or E-mail at mjuskelis@cablespeed.com.

**June 2 This Otter Creek Wilderness hike**. Downhill, smooth, and easy, and slow. We may have one moderately difficult crossing that will be managed well- or not at all. We will cancel if the water is too high. We begin down the Big Spring Trail about 1.5 miles to the crossing. Then 5 miles on a big good trail along the beautiful Otter Creek. We will not hurry out but we should reach Dry Fork and our cars by 5:00 p.m. We will meet at Sheets in Parsons at 11:00 a.m. No need to contact , just show up. This trip's leader is Don Gasper, 304 472-3704.

***June 30–July 2 (Sat – Mon): SNP, VA - Brown Mountain-Rockytop Backpacking Trip**: Strenuous 18 mile trek spread out over 3 days. Lots of vistas and beautiful streams. Total elevation gain approximately 5100 ft. Pre-registration required. Contact Mike Juskelis at 410-439-4964 or E-mail at mjuskelis@cablespeed.com.

**July 13 - 15 (Fri -Sun) BACKPACK, Seneca Creek in the Spruce Knob/Seneca Rocks NRA, WV**: This 22.5 mile moderate backpack will take us along a beautiful stream in the Seneca Creek Backcountry. We will hike in 5 miles past the Judy Springs campground to the Upper Falls of Seneca Creek for basecamp. Saturday will involve "stream whacking" along Seneca Creek to explore the sights and sounds of this seldom seen area. INFO: Susan Bly (sbly@shepherd.edu) 304/258-3319 7pm - 9pm.

**July 28-30 (Sat – Mon): MNF, WV, Dolly Sods Backpacking Trip**: An approximately twenty mile moderate trek through portions of beautiful Dolly Sods North and Dolly Sods Wilderness. Visit Raven Ridge, Rock Ridge, the Lions Head, the Forks and more. Pre-registration required. Contact Mike Juskelis at 410-439-4964 or E-mail at mjuskelis@cablespeed.com.

**September 1-3 (Sat – Mon Labor Day): MNF, WV, Laurel Fork Wilderness /Allegheny Trail Backpacking Trip**: Approximately 28 miles. Main trails are old railroad grades that parallel beautiful streams. Cross-connectors are a mixture of footpaths and old woods roads with modest elevation gains. Approximately 5 miles of road walking and rail trails required to close the loop. Some potentially challenging stream crossings. Pre-registration required. Contact Mike Juskelis at 410-439-4964 or E-mail at mjuskelis@cablespeed.com.

**September 15-17 (Sat – Mon):MNF, WV, Roaring Plains Backpack/Base Camp:** Day 1 – Backpack in 2.5 miles on the east segment of the South Prong Tr visiting several vistas along the way and set up a base camp in a pretty hollow next to a stream. Explore a seldom-visited vista of the South Prong drainage. Day 2 – 11 mile day hike over some of the most rugged and beautiful terrain on the east coast. Day 3 – Backpack out from whence we came. Pre-registration required. Contact Mike Juskelis at 410-439-4964 or E-mail at mjuskelis@cablespeed.com.

**October 6 - 8 (Sat-Mon) BACKPACK, Otter Creek Wilderness, WV**: Enjoy the fall colors at their max in a justly famous Wilderness. Count yourself among the lucky ones to see brilliant golds, russet reds and rustling rusts as we backpack 20.6 moderate miles in the Wilderness. INFO: Susan Bly (sbly@shepherd.edu) 304/258-3319 7pm - 9pm.

# MORE OUTINGS

**October 6-8 (Sat – Mon Columbus Day): MNF, WV, Cranberry Backcountry Backpacking trip**: 31 mile strenuous trek with 4500 ft elevation change utilizing the beautiful Pocahontas and Fork Mt trails. Several vistas. Three miles of road walking required to close the loop. Tentatively, the trek starts at Summit Lake near Richwood. Pre-registration required. Contact Mike Juskelis at 410-439-4964 or E-mail at mjuskelis@cablespeed.com.

***October 20-22 (Sat – Mon): GWNF, VA, Cole Mt, Mount Pleasant Backpacking Trip**: Day one – Backpack approximately 4 miles and set up base camp at Cow Camp AT Shelter. Day 2 – day hike approximately 12 moderate miles visiting 3 magnificent vistas: Cole Mt, Mount Pleasant and Pompey Mountain. Day 3 – backpack back down the mountain. Note: Elevation Gain on day one is approximately 2400 feet over 3 miles. Pre-registration required. Contact Mike Juskelis at 410-439-4964 or E-mail at mjuskelis@cablespeed.com.

***November 3-4 (Sat – Sun): GWNF, VA, Big Schloss Overnight Backpack**: 12 mile moderate backpacking trip. This may be suitable for novices if you are experienced hikers. The hardest part is a 1400 foot climb over 4 miles on the first day. The short out and back to the primary vista will be packless. Pre-registration required. Contact Mike Juskelis at 410-439-4964 or E-mail at mjuskelis@cablespeed.com.

**Items with an (*) are VA trips.**

## MONONGAHELA NATIONAL FOREST HIKING GUIDE
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**The Monongahela National Forest Hiking Guide describes 180 U.S. Forest Service trails (847 miles total) in one of the best (and most popular) areas for hiking, back-packing and ski-touring in this partof the country (1436 sq. miles of national forest in West Virginia's highlands). 6x9" soft cover, 368 pages, 86 pages of maps, 57 photos.**

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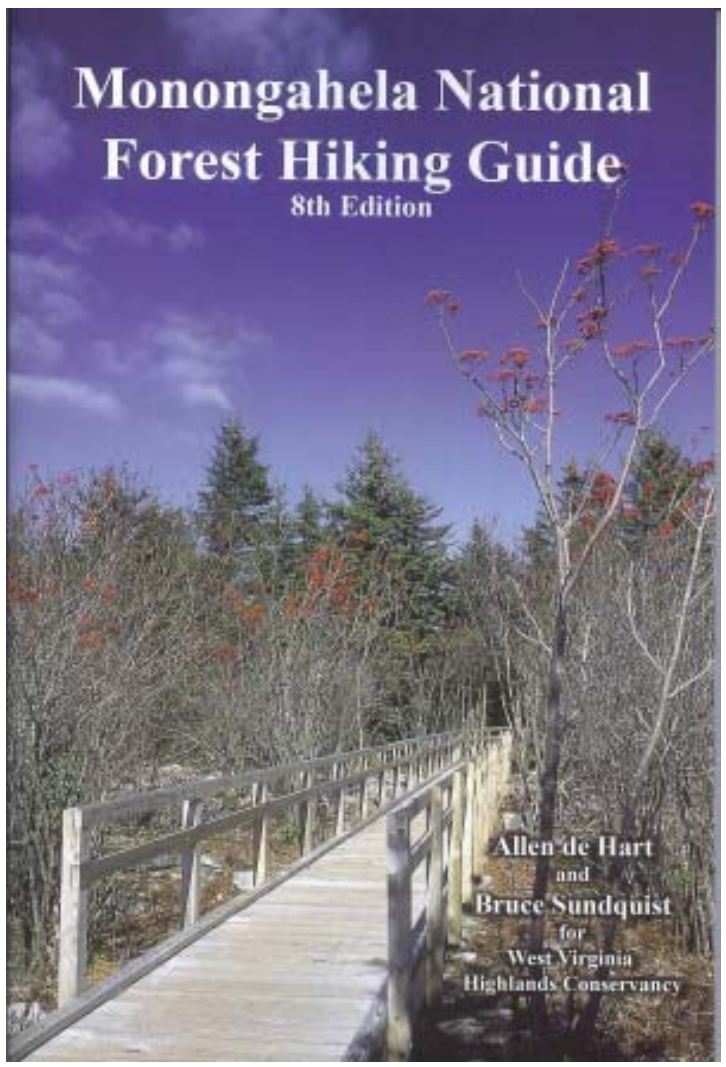


## More About Corridor H (Continued frm page 2)

itly classified as non-contributing, there's nowhere for the piers to stand.

There are no drawings of the proposed bridge—a significant omission where so much depends on its design. In July 2002, the Forest Service wrote, "whatever the final design of the piers and span, a bridge of the proportions necessary for this project cannot fail to have an adverse effect on the integrity of setting, feeling, and possibly association of the site." Later, the Forest Service settled for $1,200,000 worth of mitigation, i.e., research and signage, but it did not withdraw the comment.

"Adverse effect," though, is less strictly prohibited than direct use of a Section 4(f) property. The difference provokes speculation about whether DOT would replicate the steel arch bridge over the New River Gorge. No central piers, no contact, no foul. The cost of the bridge might erase the old route's financial advantage, but what the heck, this will be the last piece of Corridor H ever built, if it's built, so why not really splurge?

Note: cost estimates in this SFEIS still use the old figure, $11 million per mile. The Elkins-to-Kerens section, completed five years ago, cost more than that. We are not experiencing deflation in the road construction business. Last year, the state let a contract for grading and drainage on one and three quarter miles in Grant County for $23.7 million. That's $13.5 million per mile to prepare for a highway—pavement, bridges, and all—to be built. Money is now the main reason the DOT consistently misses its projected completion dates.

A little more than a quarter of the 100-mile corridor, all in Hardy County except for Elkins-to-Kerens, has been finished and opened to traffic. In the DOT's projections, construction on the Parsons-to-Davis section would not begin before 2015.

# *Our readers write*

**Long Live the Bottle Bill**

To The Editor:

The WV Bottle Bill (HB2773) Is Dead (for now)

After more than two decades of attempts the WV Bottle Bill (HB2773) failed again to emerge from our House & Senate committees onto the floor for public discussion.

Why this issue has remained consistently stalled in our state legislature, never exposed to public scrutiny is a mighty big mystery.

Eleven other states already have a Bottle Bill. Maine signed it into law three decades ago. I have driven through Maine for a month and observed almost zero roadside litter.

West Virginia taxpayers spend three million dollars annually on litter control. That money is thrown down a rathole in my opinion since it address only a symptom and ignores the root cause.

A measurably predictable percentage of any given population is ignorant, uncaring, messy and/or drunk. Most of that segment will refrain from recycling unless affected in their wallets.

The drivers tossing empty beverage containers out the window onto West Virginian highways will think twice only if it costs them money. They already fail to respect the natural beauty of Wild and Wonderful and their fellow citizens as well as any visiting tourist. Why not make them pay a dime every time they despoil our state. Litterers can redeem that deposit which will be an incentive on average for eighty percent of them. This state uses over a Billion beverage containers every year. That amounts to approximately ninety thousand tons of landfill waste.

Much of it is plastic which dissolves over centuries producing carcinogenic leachate which sinks into groundwater and is consumed not only by humans but by the fish and animals we hunt and raise for food.

Visualize, if you will, a state legislature which for more than twenty-one years has failed miserably to address the issue of road and streamside litter other than by throwing good tax money after bad, the band-aid approach. Is it not time they managed to craft a Bottle Bill that is comprehensible to even the slowest readers in House and Senate so it may be brought out of committee and onto the floor at long last for public debate ? Until that day no West Virginia voter will ever know for sure exactly where our legislators stand on this issue no matter what promises they make. Only by their votes will we know them.

A West Virginia Bottle Bill will reduce litter by approximately eighty per cent, will create hundreds of jobs, will help greatly to de-uglify Wild and Wonderful and inspire others to do their part to re-cycle or redeem for the deposit. West Virginia is a NO TRASH ZONE. Three points on a driver's license and a twenty-five thousand dollar fine ain't working. We need a Bottle Bill. It is a nickle and/or dime simple solution to a multi-million dollar problem.

Richard Collier
Grafton, West Virginia

*Editor's Note: We received Mr. Collier's letter very near the end of the 2007 legislative session. Unfortunatley, this was past the deadline for the March iossue. Because the bill did not pass, the letter is still timely and will be for at least one more legislative session.*

## Save the ramps

Dear Conservancy,

Growing up on Otter Creek. Beautiful Mountain Stream with beautiful brook trout! Incredible surroundings! People are over fishing, taking more than their share. I met a guy fishing that had at least 30 trout of various sizes. The camp sites are being trashed, especially between Big Spring Gap and the Dry Fork River. ATVs are still going in there on occasion. I am for fly fishing only in the Otter Creek Wilderness. Catch and release between Moore's Run and Coal Run. People should not take more than their limit. People better take care of it, don't trash it, don't dig so many ramps & don't leave fish guts and heads in the creek.

I am a ramp lover, Allium tricoccum. People are over harvesting. They are digging ramps by the truck loads. These local Ramp Festivals have to stop! Soon they will put them on the edge of extinction. I have seen entire large patches disappear. Ramps are a special and important plant. An indigenous part of our mountain heritage. I see nothing wrong with a family digging ramps for themselves and their neighbors but this wholesale slaughter is incredulous. Ramps are easy to grow. People should grow their own transplants, they will take care of themselves and be there for your family. Please please please stop the ramp festivals or we shall surely lose them.

Thank you.
Joe Gatski

## Windmills?

Dear Editor,

Judy Bonds' endorsement of wind power (Dec., 2006) requires some further comment. She begins by stating that: "First of all,..people want their electricity and it will come from somewhere. People do indeed want their electricity. They also want their big SUVs, their over sized dwellings, their energy wasting and ecologically destructive lawns, meat-based diets, air travel, and all the other things they could do without, likely to their general benefit, if they had to.

There's no doubt that Mountain Top Removal-Valley Fill type mining is as horrendous as can be imagined, and we all owe Judy and Coal River Mountain Watch a debt of gratitude for opposing it so strongly. I know of no study thus far that compares in detail the total environmental impacts per kilowatt hour of wind and coal power, but I wouldn't be surprised to learn that the latter is the more damaging.

It has, however, become environmentally fashionable to classify certain energy sources such as solar or wind as "renewable", "clean" or "green," without presenting justifying details. It's true, that the gleaming wind mills look clean, if unsightly, but if we think about it, the metals that comprise them were mined, smelted and manufactured using the same coal, oil and nuclear energy as the rest of our industrial products, and their production exhausts their sources as well. It's obvious then, that these types of dependencies prevent any real renewabilily. And what of the pollution from the pesticides needed as replacements for the birds and bats killed by the mills, or the climate amelioration lost by the destroyed forest? Then too, although a coal fired plant may be prohibitively dirty for the energy produced, the output of individual wind turbines is so low as to require forests of them, covering every ridge top, with all the access roads, wire and other infrastructure, to equal the output of one conventional power plant.

If we think further, we will realize that the greatest yield of vital forms of energy for our society can come from eliminating the highly wasteful sectors mentioned earlier, and which are based on such factors as human vanity, greed, ingrained convention and special interest bias. These factors, as well as strict conservation in all energy use, can yield not only the cheapest but also the cleanest form of energy, namely that saved, or not used in the first place! Reflection will tell us that even the "cleanest" forms of initially produced technological energy rapidly and uncontrollably transform to dirty forms on use. Thus the electricity produced by wind turbines may be used to synthesize highly toxic and pollution-prone industrial chemicals, and one of the major end products of their use is heat. Consequently, the basic energy problem in our society is not a need for more, but the fact that we have and use too much energy already! Global warming, loss of species, vital habitat and life support systems on land, in the seas and in the air, indicate that this excess of energy is already burning up our world, and no switching to "alternative" forms can save us.

R. F. Mueller
Virginians for Wilderness
Staunton Virginia 24401

# And the letters just keep on coming

## MTR-What Is it Good For?

Dear Editor;

Arch intends to make one billion off the coal in ten years on the Spruce Number 9 Permit. Dollar numbers as far as benefits to West Va. is minimal when you hold it up against one billion in income for Arch. If the mining is completed sooner then they say tax revenues suffer, projected employee payroll is diminshed yet the obscene profits for Arch remain the same. There is no penalty or other system to alot for an early completion of the mine and the resulting loss in the projected taxes collected and payroll projections. So obviously Arch will mine as fast as they can.

The major reason stated for allowing the permit is economics and national energy security but arch coal exports 60% of their coal (see their website) so the domestic use contentions are total bull. The coal is also not that a high a quality and in the current climate crisis sending bituminous coal to unregulated dirty burning foreign countries will exasperate C02 levels and contribute to 02 loading of the atmosphere greatly. Domestic power consumption is only projected to increase in demand of 2% between now and 2020. Our country should be turning away from coal not expanding it's use.

In green dollars the export value of coal is not worth the cost in environmental damage and other costs. Mollohan buried a study on this by the Bureau of Economic Analysis that was assessing the 'actual' costs of coal mining in Green Dollars. When a ton of coal came out to be worth about $6 to the GDP Mollohan sponsored an amendment to the 1995 Appropriations that stopped this study from being completed. Every time we mine a ton of coal, GDP goes up by $17 a ton, but that doesn't take into account the fact that we've harvested one ton of coal from the Earth and that ton of coal is no longer there. Green accountants would add in depletion, and when you do that, the numbers start to change. These initial results from the BEA released in 1994 showed that GDP numbers were overstating the impact of mining companies to our nation's economic wealth. Mining companies didn't like those results, and it didn't take long for Capitol Hill to react vis a vis Alan B. Mollohan.

The combined cumulative effects of forest fragmentation are excessive when you relate the location of this mine to all the past mining and future mining plans, which all intend to connect. Forest fragmentation destroys native species and invites invasive and predatory species to move in.

Here's an example: Unlike gray squirrels, red squirrels only began to spread throughout the state within about the past century. At the same time, the number of gray squirrels in forests is declining as more forest habitat is destroyed and fragmented. The problem with this shift in species is that gray squirrels and red squirrels don't store nuts and seeds in the same way, and they play different roles in the forest community. Gray squirrels use what ecologists call "scatter hoarding," in which they bury single nuts, such as acorns and walnuts, in numerous locations. Gray squirrels seldom remember where they bury every nut. This ensures that some nuts remain in the ground to germinate the following spring. Scatter hoarding by gray squirrels is important to the germination success of these nuts. They're buried, so they don't dry out, and they're placed in a location suitable for germination, so they're able to sprout and grow. This is not the case with nuts gathered by

red squirrels, this species practices "larder hoarding," in which individuals collect nuts and store them in large piles above the surface. Larder hoards are basically death traps for seeds. Unlike gray squirrels, it is very unlikely that red squirrels will aid in the dispersal and germination success of the tree species that we have here in the central applachian hardwoods region. Red squirrels just aren't wired that way and they are moving in fast through forest fragmentation.The issue is that gray squirrels are absolutely essential if we're going to have forest regeneration. They provide the only mechanism by which acorns and other nuts can get far enough away from the shade of the parent tree to have a chance of succeeding. Gray squirrels do not tolerate forest fragmentation.

There is no real distance being allotted for between these huge mines and therefore the combined cumulative negative effects to water drainages and forest habitat is excessive and extreme through the resulting fragmentation of the hardwood ecosystem. Since all the mining equipment has already been removed from the completed adjacent Logan MTR mine, Arch Coal's contentions of needing to mine contigously from mine to mine for economic reasons in this case is false. If they have to haul equipment many miles to the new mine to protect the health of our forests, so be it.

Arch Coal maintains that preserving the top soil for redistribution is economically unfeasible. With one billion in income they have got to be kidding. Top soil is an extremely valuable asset to West Virginia's mountains and takes thousands of years to create. No forest, no top soil, no top, soil no forest. There will be few (if any) valuable hardwoods on these abandoned mines so the long term economic negative impact regarding the loss of a sustainable timber harvest in West Virginia will be long term and never replaced. The land will essentially be worthless forever (how many golf courses and Wal-Marts does West Va. need?). Soil substitutes as planned for this mine reclamation just are not going to cut it. Fake soils may allow scrubby pines to grow but will not allow important native plants needed for wildlife food sources.

Top to bottom dumping of mine waste is absurd. The only reason they do it is because it's the cheapest method. Stable land masses as huge as what's left behind after MTR can only be achieved through the systematic compaction of the waste through 'steps' and 'lifts'. This is not required by this permit and will therefore over the long term create unstable mountainsides (that in a future climate of severe weather events) will be susceptible to massive and catastrophic failures.

The late Judge Haden's decision that prevented this massive mine was soundly created to reflect the intent and purpose of the Clean Water Act. The Bush Administration was instrumental in helping to destroy this sound legal ruling. Perhaps now the voters and folks that care about the land and children can vote out the ones that support this corrupt administration and their lapdog policies towards out-of-state industries (Arch is St Louis & Texas based), and restore the leadership in this state to leaders willing to consider what we leave behind for our grandchildren.

King Coal wants to rule West Virginia but not with a kind and thoughtful hand but a greedy, selfish and devastating one. If we don't fight (through the voting booth) to restore the Wild and Wonderful in West Virginia more than the Open for Business attitude, exploitation of our resources and the destruction of our environment is guaranteed. Our beautiful environment is what attracts desirable clean business to WV. Almost Heaven is headed for Almost Hell if we don't take action now. Our good water and healthy forests will be a very valuable asset to the world (and West Viriginians) in the future if we still have them.

Crede Calhoun
Friendsville, Maryland

PS: I lived near Canaan Valley and in Slaty Fork West Virginia for many years. I currently operate an Eco Tour company in western Maryland where our goal is to teach children and families about Nature so they can appreciate it and protect it.

You are invited to join us in celebrating

# The West Virginia Highlands Conservancy Spring Review

**Friday, April 20th, Saturday April 21st and Sunday, April 22nd**

**In beautiful Canaan Valley**

**At Black Bear Resort**
**Northside Cortland Road**
**Canaan Valley**
www.**blackbearwv**.com

**Friday:** check-in and social hour in lodge (after 4:00)

**Saturday (during the day**):

- Fisher's Spring Run Bog Hike, led by Jonathan Jessup
- Tree Planting with The Nature Conservancy
- Day Hike with Buff Rodman
- Tour of the Canaan Valley National Wildlife Refuge Visitors' Center and trails

**Saturday (late afternoon and evening):**

- See Bob Gates' Film: *In Memory of the Land and People,*
- Hear: a presentation of the latest information on Wind Projects,
- Updates on the Mountaintop Removal court ruling, Monongahela Forest Planning, Wastewater plant on the Elk River, and other WVHC issues.

**Then……**

Enjoy songs and music by the Klein's and other entertainment

**Sunday, April 22:** WVHC Board of Directors Meeting—9:00 am—open to members.

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## Meals and Lodging

Saturday's Dinner will be served at the Black Bear Resort Lodge

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Other meals include breakfast on Saturday and Sunday and box lunches for Saturday.
Catering is by Sirianni's

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**Black Bear Resort offers several types of lodging, including inn suites, small cabins and luxury cabins. We can book your accommodations; please contact Marilyn Shoenfeld, mshoenfeld@mountain.net or 304-866-3484 for details.**

***Hope to see you there! Marilyn Shoenfeld, Barbara Weaner and the Board of Directors of the West Virginia Highlands Conservancy***