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Big, noisy case ends with a wimper

UNITED STATES SUPREME COURT DENIES REVIEW OF MONSTER STRIP MINE CASE

By John McFerrin

The United States Supreme Court has refused to review a decision by the United States Court of Appeals which upheld the authority of the United States Environmental Protection Agency to withdraw approval of a permit to mine in Pigeonroost and Oldhouse Branches and their tributaries.

This means that the decision of the United States Environmental Protection Agency to withdraw approval of the permit stands.

The Supreme Court almost never offers any reason why it refused review. This case was no exception. Most would infer that the refusal of review indicates that the Court considers the question of EPA's authority to be settled and that EPA does have the authority it exercised in this case.

Because the deliberations of the Court are private, it is impossible to know precisely its thinking.

The path to the Supreme Court

This mine has been controversial since at least 1998. It was a part of the *Bragg v. Robertson* litigation by the West Virginia Highlands Conservancy that resulted in the programmatic Environmental Impact Statement studying mountaintop removal mining.

More recently, in 2007 the Corps of Engineers issued the permit required to fill streams, known as a §404 permit, for the mine. This immediately resulted in protests from the West Virginia Highlands Conservancy, the Ohio Valley Environmental Coalition,

and Coal River Mountain Watch as well as continued interest by the Environmental Protection Agency. The interest manifested itself in additional study, including proposing alternatives to the mining plan as proposed.

The EPA spent the next two years looking for less damaging alternatives to the proposed mining plan. Finally, in 2009 the EPA asked the Corps of Engineers to use its discretionary authority to deny the permit. When the Corps of Engineers went ahead and granted it, EPA issued notice of a proposed veto. In announcing its decision to not allow the mining, the EPA said:

EPA's final determination on the Spruce Mine comes after discussions

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Ramblin' the Ridges

By Cynthia D. Ellis

Turtle Bandits

They came and took our timber. They came and took our oil and gas. They came and took our coal. Now they've been coming after our turtles...and salamanders, snakes, frogs, lizards, and toads. But this will stop.

For years now, West Virginia---alone among its border states---had no regulations regarding the capture and transport of reptiles and amphibians from our streams, wetlands, and forests. But that ceased with the adoption last year of new laws to oversee the numbers of creatures that could be captured and carried away.

The problem was not well known, but officials were aware of some collecting activity. However, in 2008, officials followed up on a tip concerning an unusual number of wood turtles being collected in the mountains. A bust found \$250,000 worth of several varieties of turtles in process of being carried off. These were bound for Florida where captives are raised for the domestic pet trade; some critters are also sold for food and bait. In addition, many amphibians and reptiles were sought for the European and Asian pet trade, where native species have long been extirpated. Some cultural beliefs there threaten turtles. These include the notion that eating turtle meat ensures longevity, and that good Karma can be gained from releasing turtles into local waters [without regard to their ability to adapt to a strange ecosystem].



Painted Turtle

We need healthy numbers of the cold-blooded native species here. Amphibians and reptiles are vital components of thriving mountain ecosystems. Serving as both predator and prey, as well as important scavengers, they are valuable for rodent and insect control too. Barb Sargent, Coordinator of the WV DNR Natural Heritage Program, noted that much research and thought was given to the formation of the rules. Details, such as snake handling in some churches, were considered. Our state's esteemed herpetologist, Dr. Tom Pauley [also a WVHC member] was consulted as the regulations were reviewed.

New limits restrict, or in some cases prohibit species that may be taken. Additionally, their offspring, eggs, and body parts may
(More on p. 3)

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MORE ABOUT TURTLES, AS CYNTHIA D. FINISHES UP (Continued from p. 2)

not be collected, including those from West Virginia's official state reptile, the timber rattlesnake. These new rules should help. Turtles and their kind have also been stressed from population losses, as well as from water quality problems and habitat loss.

A helpful brochure may be viewed at the DNR website.

<http://www.wvdnr.gov/Publications/Amphibians/index.html>

It includes this reminder, "Reptiles and amphibians are an abundant and valuable wildlife resource. They provide us with opportunities to study, appreciate and use our natural heritage. The WVDNR established these regulations to enable these activities without harming amphibian and reptile populations."

When contacted, DNR's Barb Sargent summarized, "We will complete training WVDNR Natural Resource Police Officers regarding the new regulations on March 26 in District 6. The officers have been enthusiastic about the regulations, and have offered up suggestions for better enforcement. This first year will hopefully be spent educating the public about the regulations, as opposed to handing out citations left and right. Folks are still surprised to hear about the illegal wildlife trade in the US, Europe and Asia that involve West Virginia herptiles-- and this was our main focus for the regulations: curtailing that trade."

LINGUISTIC CONUMDRUM

By John McFerrin

When we lived in Beckley, we had different names for our small bodies of flowing water. Some were called "branches"; some were called "forks"; a lot were called "creeks." Many didn't really have names of their own. Hollows had names, whether from some physical feature, a family that lived there, or whatever. The waterway that ran down the hollow just took its name from the hollow's name.

What we didn't have was "runs."

Now we are in Morgantown and the place is thick with "runs." There are creeks also and maybe a few forks and branches but many, many small bodies of flowing water are called "run."

What is going on? Is there some sort of aquatic Mason-Dixon line running through West Virginia, separating the branch/fork/creek West Virginia from the run/creek West Virginia? Is there an equivalent of US Route 60, the northern boundary of Southern West Virginia?

If you know the answer or have any insight please let *Voice* readers know.



Bird species visible during the editing of this issue.

TIME TO PLANT SOME TREES

April 12, 2014 - Red Spruce Ecosystem Restoration, Canaan Valley National Wildlife Refuge. Join us as we continue our efforts to restore the red spruce ecosystem in the West Virginia Highlands. This tree planting event will take place on the Canaan Valley National Wildlife Refuge. We will meet at the Refuge Headquarters and Visitor Center at 9 am. Following an orientation about the red spruce ecosystem and our work to restore it we will car pool to the restoration site. Come dressed for the weather, wear sturdy shoes or boots and bring gloves. Lunch will be provided. Please RSVP! For more information, visit www.restoreredspruce.org, or contact Dave Saville at daves@labyrinth.net, or 304 692-8118.

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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.

MOUNTAINTOP REMOVAL AT THE SUPREME COURT (Continued from p. 1)

with the company spanning more than a year failed to produce an agreement that would lead to a significant decrease in impacts to the environment and Appalachian communities. The action prevents the mine from disposing of the waste into streams unless the company identifies an alternative mining design that would avoid irreversible damage to water quality and meets the requirements of the law. Despite EPA's willingness to consider alternatives, Mingo Logan did not offer any new proposed mining configurations in response to EPA's Recommended Determination.

The EPA also held public hearings to consider comments upon its proposed action. See the June, 2010, issue of *The Highlands Voice*.

After considering its own studies and the public comments, the EPA issued the veto that is the subject of the ongoing litigation. See the February, 2011, issue of *The Highlands Voice*.

The company appealed the EPA's decision and, on March 23, 2012, a federal court in the District of Columbia overturned the U.S. Environmental Protection Agency's veto. See the April, 2012, issue of *The Highlands Voice*. The EPA then appealed that decision to the Court of Appeals. The Court of Appeals overturned the District Court, reinstating the veto. The company then petitioned the United States Supreme court for review. Now, by refusing to review the case, the United States Supreme Court has allowed the decision of the Court of Appeals to stand.

What is at stake

Locally, the proposed mine project would have:

- Disposed of 110 million cubic yards of coal mine waste into streams.
- Buried more than six miles of high-quality streams in Logan County, West Virginia with millions of tons of mining waste from the dynamiting of more than 2,200 acres of mountains and forestlands.
- Buried more than 35,000 feet of high-quality streams under mining waste, which will eliminate all fish, small invertebrates, salamanders, and other wildlife that live in them.
- Polluted downstream waters as a result of burying these streams, which will lead to unhealthy levels of salinity and toxic levels of selenium that turn fresh water into salty water. The resulting waste that then fills valleys and streams can significantly compromise water quality, often causing permanent damage to ecosystems and streams.
- Caused downstream watershed degradation that will kill wildlife, impact birdlife, reduce habitat value, and increase susceptibility to toxic algal blooms.
- Inadequately mitigated for the mine's environmental impacts by not replacing streams being buried, and attempting to use stormwater ditches as compensation for natural stream losses.

In issuing the veto, EPA said, "The proposed Spruce No. 1 Mine would use destructive and unsustainable mining practices that jeopardize the health of Appalachian communities and clean water on which they depend," said EPA Assistant Administrator for Water Peter S. Silva. "Coal and coal mining are part of our nation's energy future and EPA has worked with companies to design mining operations that adequately protect our nation's waters. We have a responsibility under the law to protect water quality and safeguard the people who rely on clean water."

The Arguments

The Environmental Protection Agency, the West Virginia Highlands Conservancy and those who have weighed in on EPA's side argued before the Court of Appeals that the Clean Water Act authorizes "withdrawal" of a permit at any time and that there is no confusion about its meaning. They say that the Clean Water Act contains no limit on EPA's authority based on whether or not the Corps has issued a permit. Rather, the statute does the opposite: Section 404(b) mandates that the Corps's permitting authority is at all times subject to EPA's veto authority.

Because the Supreme Court declined to review the Court of Appeals decision, the EPA, etc. never made any arguments before the Supreme Court.

The company had contended that the Corps of Engineers has primary authority to issue Section 404 (dredge and fill) permits. EPA may participate in the consideration of the application but once the permit has issued the EPA's authority ends. The Clean Water Act says that the EPA may withdraw its approval "whenever he determines, after notice and opportunity for public hearings, that the discharge of such materials into such area will have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas (including spawning and breeding areas), wildlife, or recreational areas." The Court of Appeals relied heavily on the use of the word "whenever." The company contends that "whenever" means any time before the permit is issued.

The company also argued that if companies can't rely upon permits which have been issued they won't be able to plan, will spend money needlessly, can't get financing, and the sky will fall.

It ain't over till it's over, and even then it's not over

WHAT HAPPENS NEXT?

Once the United States Supreme Court has spoken, it would be easy to assume that the case is over, the action by the Environmental Protection Agency stands, and that's the ballgame. Environmental controversies are not life and are not subject to the ordinary rules of life (or baseball). Even though the EPA is ahead at the end of the ninth inning, we are going to play a couple more innings, just to see if that changes the outcome.

Back when Mingo Logan filed its challenge to the EPA action, it alleged two things. First, it said that the EPA did not have the authority to veto the permit. Second, it said that, even if EPA had the authority, it exercised that authority in an arbitrary manner.

The United States District Court ruled that the EPA did not have the authority to veto the permit (the ruling that was later overruled). Because it had decided that EPA lacked the authority, it never had to decide whether or not the EPA had used that authority arbitrarily.

Now the Court of Appeals has spoken (and the Supreme Court has refused to review the case) so we know that EPA has the authority. Still undecided is the question of whether the EPA used its authority in an arbitrary manner.

To resolve this question, the case will go back to the United States District Court. That court will consider evidence and arguments and decide whether EPA used its authority arbitrarily.

More Bugs, Please.

A book review by Cynthia D. Ellis

The idea of using more, or only, native plants in gardening and landscaping today is becoming widely circulated. Usually though, such proposals come from someone with a botanist's background.

Douglas Tallamy however is an entomologist and wildlife ecologist. He "comes from" bugs. So, his message, in "**Bringing Nature Home; How You Can Sustain Wildlife with Native Plants**," deals largely with the attractions and benefits of native plants maintained for insects.

Tallamy, who himself has a bit of an aversion to spiders, makes a good case for learning about bugs and the plants with which they interact. Over and over he points out that bugs eat and get eaten...and that's a good thing, a natural thing, and a process that is perfectly fitted to a well-functioning yard, garden, and forest.

He says, "A plant that is 'pest free' is inherently unpalatable to insects and often is not susceptible to local diseases. Because such plants do not pass the energy they capture from the sun up the food chain, they do not become functioning members of the ecosystem in which they are planted."

"...we need healthy insect populations to ensure our own survival..."

Also though, Tallamy has important messages about the stresses faced by habitats today and particularly those associated with alien and invasive plants. He teaches the origins of invasive plants and why they are so successful, harmful, and difficult to eradicate. He lists alternatives and explains the value of many kinds of native trees, shrubs, flowers, and grasses. We've heard much about the threats to our state's hemlock forests from Woolly Adelgid; Tallamy expands upon other threats to our other native trees and why we should promote their use. "Alien plants begat alien insects" is one theme. He spells out how invasive plants directly thwart the natural "succession" element of our forests.

But, this book is upbeat...and fun. Find out which bugs eat the mate [whole critter or just part] after sex, who strokes who to get one in the mood, and who guards hatchlings. Discover many bug tricksters, including the one that can imitate a serrated leaf edge to hide the fact that it is consuming the leaf. Learn about the one who hunts, gaucho-style, with bolas, and the one who fashions a leaf megaphone to amplify his mating call.

And near the end readers are encouraged, " even if you seem like the only one in all of North America who uses more natives than aliens, wildlife will be better off for your efforts."



Hemlock Woolly Adelgid

WANT TO BECOME MORE INVOLVED?

In addition to reading The Highlands Voice, visiting the website, or going on an occasional outing, the West Virginia Highlands Conservancy offers ways of becoming involved. We have a variety of active committees. Please consider joining one, or more. Here is a description of what those committees do and the person to contact to get involved:

Highways: Although it is entitled Highways, this committee has historically focused on Corridor H. It has led the Conservancy's opposition to the highway and litigation over the route it would take. The committee's current concern is preventing construction in Blackwater Canyon. Contact Hugh Rogers. Moon Run, Kerens, WV 26276, (304)636-2662; hugh.rogers@gmail.com

Legislative: This committee monitors action at the West Virginia Legislature, works with the lobbying team of the West Virginia Environmental Council, and does public education about legislative matters. Contact Frank Young. 33 Carnian Ford Road, Ripley WV 25271 (304)372-3945; fyoung@mountain.net

Mining: This committee leads the Conservancy's advocacy on all mining related matters, including both advocating for enforcement of current laws and for proposed laws or regulations. Its work has in recent years expanded beyond coal mining to include oil and gas drilling. Contact: Cindy Rank, 4401 Eden Road, Rock Cave, WV 26234, (304)924-5802; clrank2@gmail.com

Outings: This committee organizes and either leads or arranges for leaders for outings. In the past, outings have been hikes, bird walks, snowshoeing, canoe trips, etc. They can be either educational or just for fun. Contact Dave Saville.; PO Box 569, Morgantown, WV 26507, (304)692-8118; daves@labyrinth.net

Outreach: This committee distributes information about the West Virginia Highlands Conservancy. Its work includes everything from managing the WVHC Facebook page to staffing our exhibit at events to distributing bumper stickers. Contact Cindy Ellis. RR 1, Box 163, Red House, WV 25168 (304) 586-4135; cdellis@wildblue.net;

Public Lands: This committee leads the Conservancy's advocacy on management of publicly owned and managed land. In the past it has largely focused on the National Forests, particularly the Monongahela National Forest. Its work has also extended to advocacy on issues involving other publicly managed land, including National Park, National Wildlife Refuge, state Forest lands, and Wilderness designation. Contact Dave Saville, daves@labyrinth.net; PO Box 569, Morgantown, WV 26507, (304)692-8118

Wind Energy: The wind committee is concerned about the impacts of large industrial wind projects and has successfully discouraged certain projects and portions thereof. We have studied the technology and economics, concluding that grid scale wind installations are harmful to the Highlands environment and that benefits as a clean energy source are often overstated. We hope to collaborate with other organizations in developing prospective WV public policy that would mitigate the negative impacts. We welcome new members. Contact: Peter Shoenfeld, 167 Balsam Way, Davis, WV 26260, (304) 866-3484, (304) 704-9067, pshoenfeld@gmail.com

TYGART LAKE STATE PARK – SHAFTED BY ARCH COAL

By Cindy Rank

Arch Coal/Tygart Valley Coal Company wants to build a methane gas bleeder shaft to serve its 6,000 acre longwall Leer Mine in Taylor County WV. The application is ICG Tygart #1, Leer Mine Revision, Permit No. U-2004-06, IBR No. 7.

Air shafts, methane bleeder shafts, blind bores or raised – the terminology may be strange but no one can doubt the importance of these structures that are necessary for sucking bad air out of underground mines and enabling the flow of fresh air.

Anyone who has followed Sago, Upper Big Branch, and other mining disasters that have taken the lives of so many knows the importance of fresh air in the mines can't be overstated. And no one wants to compromise the safety of the workers or risk even one life, so yes the Leer Mine must construct the means to move methane from the depths where workers and machines are going about their daily tasks.

BUT HERE !?

... Must this shaft be located so close to Tygart Lake and State Park – and just hundreds of feet from the popular and historic Shaffer camp site ?

With all the engineering knowhow at Arch /Tygart Valley Coal Company and the experienced personnel who design and oversee the 6,000 acre Leer Mine just outside of Grafton, WV one would think and hope that the company could plan a better location for this methane bleeder shaft than at the head of Scab Run just around the bend and up the hill from the area's well known and oft used recreation spots: Tygart Lake Park Lodge and the lake's boat loading ramp.

While it's true that the WV Department of Environmental Protection (WV DEP) is obliged to give due consideration to proposals from the mine company, it is also true that when those proposals have the potential to negatively impact the lives and livelihoods of local residents, full and fair hearing must be given to those who have so much to lose.

The application is an "Incidental Boundary Revision" or IBR and adds an additional 5+acres to the original permit for the mine, prep plant, slurry disposal and coal loading facility to the east. IBRs can be 'significant' or non-significant.

Among other considerations state mining regulations indicate the WV DEP may consider an IBR to be 'significant' if there will be significant impacts to: The health, safety, or welfare of the public (3.29.e.1.A.), Adverse environmental impacts of a larger scope or different nature from those described in the approved permit (3.29.e.1.E.), and Areas prohibited from mining pursuant to the provisions of subsection (d) section 22 of the Act; (3.29.e.1.F.)

The location so close to the Park boundary and high-water level of the Lake should be incentive enough for WV DEP to treat this as a 'significant' revision and WV DEP owes it to the local community to consider not just the company's wishes about where to locate the shaft, but to fully consider local sentiments, fears and concerns before allowing this drilling to proceed.

A 'significant' IBR on the other hand requires four weeks of advertising in the local paper, a 30 day comment period, and the opportunity for a public hearing and informal meetings with company and DEP to explain the operation and ramifications of locating this methane bleeder shaft in such close proximity to the Lake, Park and campground facilities.

WV Highlands Conservancy organizational member T.E.A.M. as well as other members of the community are asking for sufficient time and information to understand the potential and real impacts of locating a methane bleeder shaft so close to an area used by so many and have respectfully requested this revision be considered 'significant'.

At last reports DEP has deemed this IBR # 7 to be 'non-significant' and therefore does not require any public notice or comment -- although in certain instances an all too brief ten day comment period may be granted).

The personal concerns of the nearby residents and visitors to the Lake, Park and associated campgrounds should not to be ignored or taken lightly. At least 18 families own property within 100 Feet of the proposed activity ... and dozens more have permanent or summer camps not much further away in the historic privately owned Shaffer camp site, not to mention the local folks who enjoy meals at the Lodge and the hundreds of visitors who come throughout the year.

What are the short and long term impacts of this shaft?

What will be the short term impacts of the construction phase? How much large truck traffic will travel on the narrow Park road around the Lake and near the Lodge and Boat Ramp? And for how long? How long will it take to plug the existing gas well on the site and improve to 30 ft wide the existing access road from the main drive? What kind of equipment will be used for the drilling of the shaft itself? How long will it take? What kind of noise and lights and dust will be present? And will there be any discharges from the drilling or shaft that will be held in the pit along with the drill cuttings? Will the pond be needed beyond the construction phase? Will there be an Army Corps of Engineers permit for the pond since it will be located in a tributary of Scab Run? And why, when the pond is no longer needed, will it just be wrapped into itself and left on site rather than removed and discarded in an appropriate waste disposal site?

And what long term impacts might be expected? ... What permanent equipment will be installed at the site? Will there be a fan and if so what kind of noise will it produce? Will there be lights at night? And will there be additional power poles and transformers? What will be the effect of methane gas being pumped out into the air near the lake and nearby homes and camps? Might there be alterations to the shaft in future months and years to allow it to serve other purposes for the mining operation?

The application addresses a few of these questions, but this 460+feet deep shaft is no small garden hole, but rather 8 to 10.5 feet in diameter and there are more questions than answers at this point in time.

T.E.A.M. IS ON THE CASE

West Virginia Highlands Conservancy member organization T.E.A.M (Taylor Environmental Advocacy Membership) has been carefully monitoring the permit revision for the Leer mine (see story on the facing page) and have written a letter to the Department of Environmental Protection asking that the revision be treated as a major permit revision with a full public review. Here is that letter:

Permit Supervisor
WV DEP Philippi Office
105 Railroad St.
Philippi, WV 26416

RE: ICG Tygart #1, Leer Mine Revision
Permit No. U-2004-06, IBR No. 7

Permit supervisor,

WV state parks are truly wild and wonderful treasures. These areas are enjoyed and shared the world wide.

Tygart Lake State park is a public gem, with camping, boating and a beautiful lodge the fun and memories created by families, visitor and community are wondrous lifetime experiences. The outdoor sights and activities provide for community school trips, family vacations, national fishing tournaments and much more. The serene beauty and peace experienced personally are a natural wonder. BUT the Taylor Environmental Advocacy Membership (TEAM) has learned through concerned state park guardians that there is a new real threat sneaking in to destroy the park's pristine adventures.

Arch Coal's Leer Mine is proposing a methane air shaft on the borders of the Tygart Lake state park. This would expand the mine 5.33 acre near the park/lake boundary. They have proposed a revision to the original permit that would drill a 660 foot deep 'Bleeder Shaft' at the Scab Run area of the park. This is mere 4000 feet from boat docks and the lodge. The noise alone would be a constant disturbance. The shaft would aggressively expel 250,000 gallons of 1% methane gas per minute. The ambient temperature of the air from the shaft would be 55 degrees in the summer the warmer lake air would likely be displaced by the cooler methane air for boaters to inhale. The Scab Run property is located directly adjacent to the historic privately owned Shaffer camp site that has been part of Tygart Lake's rich history of visitors that have in the past enjoyed the serene peace that was Tygart Lake. Over 70 campers reside annually at this site alone and spend tourism dollars locally in Taylor county. Rare birds have been documented to migrate to this area as well. The relationship of the state park to the natural habitat up to now was symbiotic. But now the Tygart #1 mine permit revision would allow a sludge pond to receive chippings from the 660 foot shaft. This water would require on site treatment and off site hauling due to the pollution and hazardous nature of this discharge. Thus allowing toxins so close to the drinking water source of Taylor County. WV has witnessed first hand the disasters of contamination to our drinking water sources. Truck traffic for drilling and hauling would be constant and lights from the shaft will spoil the night skies from all natural illuminations. Yet, the proposed shaft has been suggested to be a non-significant permit revision according to Leer mine's request IBR #7.

TEAM and friends of Tygart lake would like the DEP to declare this a significant permit revision. We request that the WV DEP grant a full public hearing on this decision. This is NOT a minor change and therefor needs public input, comments and hearings. TEAM respectfully requests that the DEP hear our concerns and not allow the bleeder shaft to be in this direct proximity to Tygart Lake State Park.

Thanks for your attention and response to this concern,

Elizabeth Baldwin
TEAM Board member

STREAM BUFFER ZONE RULE BACK TO COURT

The West Virginia Highlands Conservancy, Coal River Mountain Watch, Kentuckians for the Commonwealth, Kentucky Waterways Alliance, Ohio Valley Environmental Coalition, Save Our Cumberland Mountains, Sierra Club, Southern Appalachian Mountain Stewards, and Waterkeeper Alliance have asked the United States Court of District Court to reconsider its ruling on the stream buffer zone rule. As reported previously (The Highlands Voice, March, 2014) the Court had previously thrown out a revision of the rule which the Office of Surface Mining had proposed in 2008.

The plaintiffs had alleged that the 2008 rule and the procedures the Office of Surface Mining followed in adopting it violated the Endangered Species Act. The Court agreed and threw that revision out.

The plaintiffs had also alleged, however, that the 2008 rule violated the environmental protection standards of the Surface Mining Control and Reclamation Act. They also alleged that EPA's concurrence in the 2008 Rule violates the Act as well.

The Court did not rule on these claims. It concluded that, since it had already vacated the rule based on the Endangered Species Act, it was unnecessary to rule on these claims. Now the West Virginia Highlands Conservancy and the other environmental groups have gone back to court to ask that the Court rule on the claims.

Why everybody cares so much

WHAT THE RULE SAYS

By John McFerrin

The shorthand for the rule that is the subject of the litigation is the Stream Buffer Zone rule. For those who have been talking about it, writing about it, arguing about it for so long that even the shorthand is too long, it is just called SBZ.

The rule has been in effect in its present form since 1983. This is what the rule itself says:

(a) No land within 100 feet of a perennial stream or an intermittent stream shall be disturbed by surface mining activities, unless the regulatory authority specifically authorizes surface mining activities closer to, or through such a stream. The regulatory authority may authorize such activities only upon finding that —

(1) Surface mining activities will not cause or contribute to the violation of applicable State or Federal water quality standards, and will not adversely affect the water quantity and quality or other environmental resources of the stream. 30 C.F.R. § 816.57.

West Virginia has a similar rule, designed to be as effective as the federal rule:

No land within one hundred feet (100') of an intermittent or perennial stream shall be disturbed by surface mining operations including roads unless specifically authorized by the Director. The Director will authorize such operations only upon finding that surface mining activities will not adversely affect the normal flow or gradient of the stream, adversely affect fish migration or related environmental values, materially damage the water quantity or quality of the stream and will not cause or contribute to violations of applicable State or Federal water quality standards. The area not to be disturbed shall be designated a buffer zone and marked accordingly. 38 C.S.R. § 2-5.2.

No one could seriously maintain that any regulator could make these findings when it comes to valley fills. As things stand right now, if the buffer zone rule means what the West Virginia Highlands Conservancy, as well as all the other Plaintiffs, think it means, then all valley fills in West Virginia are in violation.

That was the interpretation given the buffer zone rule in 1999 by Judge Haden in *Bragg v. Robertson*. He ruled that the buffer zone rule applied to valley fills, that the West Virginia Department of Environmental Protection hadn't (and couldn't have) made the required findings, and that they were all in violation.

Judge Haden's decision was later overturned on procedural grounds. No Appeals Court ever said his interpretation of the buffer zone rule was wrong. It just said that he followed the wrong procedures. Because he was overruled, however, his opinion does not provide the definitive judicial guidance on what the rule means.

One thing that could come out of the request to re-open the most recent case (adjoining story) is guidance on what the rule means. Were the Court to decide that the rule means what the Plaintiffs say it does, it would go a long way toward making the now largely ignored stream buffer zone rule an important enforcement tool.

This potential in the 1983 rule is what makes the 2008 amendment important. The 2008 rule, as amended, would dramatically weaken the findings that the Department of Natural Resources would have to make. It would weaken them to the point where the Department of Environmental Protection could look at an application for a permit that included valley fills and say—with at least a semi-straight face—that he made the findings necessary to approve the application. If it becomes law then the stream buffer zone rule becomes virtually useless as a tool to control mountaintop removal mining.

Meanwhile, over in Congress...

CONGRESSIONAL ACTION ON THE STREAM BUFFER ZONE RULE

Lately there has been judicial and agency action around the stream buffer zone rule, the rule that prohibits mining within one hundred feet of perennial and intermittent streams. (See story on facing page). There have been agency and industry efforts to pretend that the rule does not apply to mountaintop removal mines. There have been efforts to amend the rule out of existence (the effort, starting in 2008, to change the rule).

There is always more than one way to skin a troublesome rule. Over in Congress the knives are out. On July 25, 2013, HR 2824, the Preventing Government Waste and Protecting Coal Mining Jobs in America Act was introduced by Rep. Bill Johnson of Ohio. The House Natural Resources Committee voted to send it to the full House, with nine committee members (of a total of 47) filing a dissent to the Committee report.

HR 2824 would require implementation of the rule that was proposed in 2008. This would effectively eliminate the stream buffer zone rule. HR 2824 would also prohibit the federal Office of Surface Mining from altering the rule for five years while it studied the effect the new rule might be having on energy production.

It passed the House on March 25, 2014, by a vote of 229-192, Reps. Capito, McKinley, and Rahall voting in the affirmative. It has been sent to the United States Senate for consideration. The Senate has taken no action.

**Stuff of interest only to lawyers, and
maybe not even to them
CAUTION: MAY CAUSE
DROWSINESS. DO NOT READ WHILE
DRIVING OR OPERATING HEAVY
EQUIPMENT**

Although *Highlands Voice* reporting has referred to this controversy as if it were a single case, in truth there were two cases. The first was filed by the West Virginia Highlands Conservancy, Coal River Mountain Watch, Kentuckians for the Commonwealth, Kentucky Waterways Alliance, Ohio Valley Environmental Coalition, Save Our Cumberland Mountains, Sierra Club, Southern Appalachian Mountain Stewards, and Waterkeeper Alliance. A month later, the National Parks Conservation Association filed a second case. Both cases make the same claims.

The Court made a ruling in the case filed by the National Parks Conservation Association case. Then it dismissed the case filed by the West Virginia Highlands Conservancy Coal River Mountain Watch, Kentuckians for the Commonwealth, Kentucky Waterways Alliance, Ohio Valley Environmental Coalition, Save Our Cumberland Mountains, Sierra Club, Southern Appalachian Mountain Stewards, and Waterkeeper Alliance. The Court said that it had decided the matter in the National Parks Conservation Association case; this left nothing to be decided in the case filed by the environmental groups.

The current request is in the case filed by the environmental groups. It argues that all the relevant issues have not been decided and that the Court should do so.

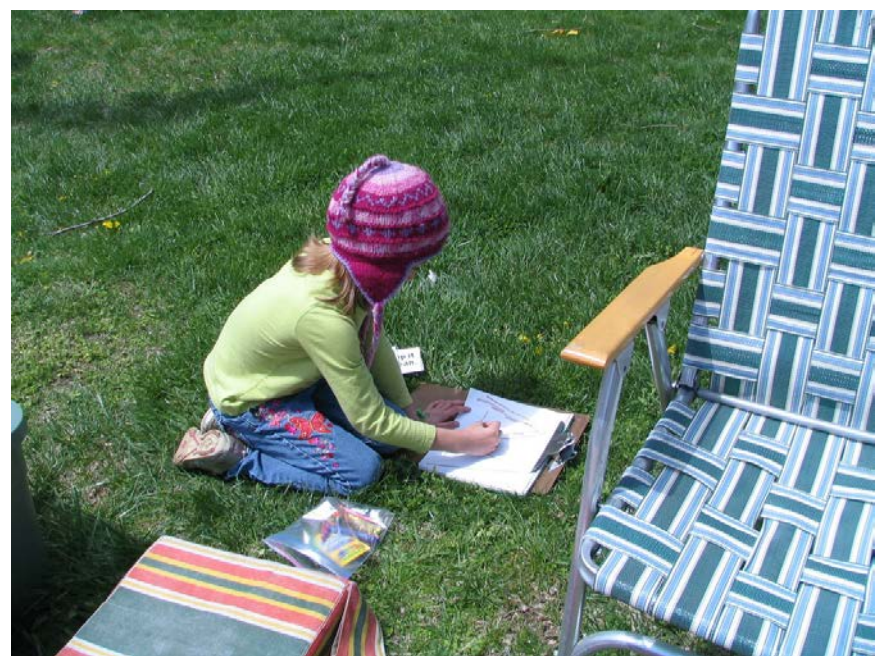
CELEBRATE EARTH DAY IN FAYETTEVILLE

It's the 9th Annual New River Earth Day Celebration. Saturday, April 19, 2014, from noon until 4:00 p.m.

Celebrate our 9th annual event by being part of the festivities. The Earth Day celebration will be held Saturday, April 19th in downtown Fayetteville. We'll have live music, educational booths, conservation activities, outdoor activities and Fayetteville's coolest small town culture. Enjoy local foods and crafts. A special Kid's Zone will delight the young ones with a children's concert, games, and hands-on activities!

We hope you can participate. The event will be held in downtown Fayetteville on Court Street and the Courthouse lawn - weather permitting. Otherwise it will be held in the Memorial Building - 200 W Maple Avenue in Fayetteville.

The West Virginia Highlands Conservancy will have one of the tables. We hope to see old friends, new friends, and future friends we haven't met yet so be sure to drop by. We will have some Spruce tree seedlings to distribute.



Some fun from last year's celebration

Join Now !!!

Name _____

Address _____

City _____ State _____ Zip _____

Phone _____ E-Mail _____

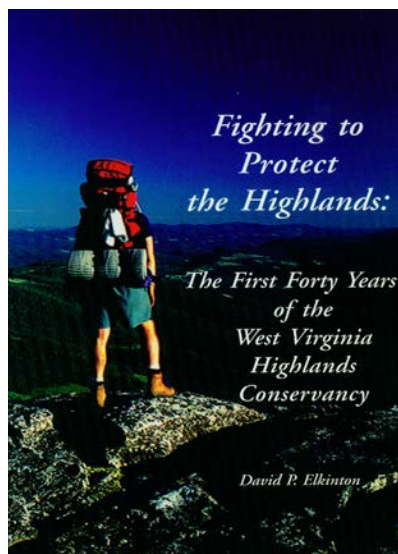
Membership categories (circle one)

	Individual	Family	Org
Senior	\$ 15		
Student	\$ 15		
Introductory			
Other	\$ 15		
Regular	\$ 25	\$ 35	\$ 50
Associate	\$ 50	\$ 75	\$ 100
Sustaining	\$100	\$ 150	\$ 200
Patron	\$ 250	\$ 500	\$ 500
Mountaineer	\$500	\$ 750	\$ 1000

Mail to West Virginia Highlands Conservancy PO Box 306 Charleston, WV 25321

West Virginia Highlands Conservancy
Working to Keep West Virginia Wild and Wonderful!

GREAT HISTORY BOOK NOW AVAILABLE



For the first time, a comprehensive history of West Virginia's most influential activist environmental organization. Author Dave Elkinton, the Conservancy's third president, and a twenty-year board member, not only traces the major issues that have occupied the Conservancy's energy, but profiles more than twenty of its volunteer leaders.

Learn about how the Conservancy stopped road building in Otter Creek, how a Corps of Engineers wetland permit denial saved Canaan Valley, and why Judge Haden restricted mountaintop removal mining. Also

read Sayre Rodman's account of the first running of the Gauley, how college students helped save the Cranberry Wilderness, and why the highlands are under threat as never before.

With a foreword by former congressman Ken Hechler, the book's chapters follow the battle for wilderness preservation, efforts to stop many proposed dams and protect free-flowing rivers, the 25-year struggle to save the Canaan Valley, how the Corridor H highway was successfully re-routed around key environmental landmarks, and concluding with the current controversy over wind farm development. One-third of the text tells the story of the Conservancy's never-ending fight to control the abuses of coal mining, especially mountaintop removal mining. The final chapter examines what makes this small, volunteer-driven organization so successful.

From the cover by photographer Jonathan Jessup to the 48-page index, this book will appeal both to Conservancy members and friends and to anyone interested in the story of how West Virginia's mountains have been protected against the forces of over-development, mismanagement by government, and even greed.

518 pages, 6x9, color cover, published by Pocahontas Press To order your copy for \$14.95, plus \$3.00 shipping, visit the Conservancy's website, wvhighlands.org, where payment is accepted by credit card and PayPal. Or write: WVHC, PO Box 306, Charleston, WV 25321. Proceeds support the Conservancy's ongoing environmental projects.

SUCH A DEAL!

Book Premium With Membership

Although *Fighting to Protect the Highlands, the First 40 Years of the West Virginia Highlands Conservancy* normally sells for \$14.95 plus \$3.00 postage. We are offering it as a premium to new members. New members receive it free with membership.

Existing members may have one for \$10.00. Anyone who adds \$10 to the membership dues listed on the How to Join membership or on the renewal form will receive the history book. Just note on the membership form that you wish to take advantage of this offer.

MOUNTAINTOP REMOVAL UP CLOSE AND PERSONAL

Visit Kayford Mountain and/or Mud River Mountain south of Charleston to see mountain top removal (MTR) up close. Bring lunch for a picnic on Kayford mountain. Hear the story on how the late Larry Gibson saved fifty acres from mountain top removal on Kayford Mountain. Call in advance to schedule. Julian Martin (304) 342-8989; martinjul@aol.com.

VOICE AVAILABLE ELECTRONICALLY

The Highlands Voice is now available for electronic delivery. You may, of course, continue to receive the paper copy. Unless you request otherwise, you will continue to receive it in paper form. If, however, you would prefer to receive it electronically instead of the paper copy please contact Beth Little at blittle@citynet.net. Electronic copies arrive as e-mail attachments a few days before the paper copy would have arrived.

DRILL CUTTINGS TO LANDFILLS: HOW DID THINGS TURN OUT?

Before the Legislative session started the West Virginia Highlands Conservancy listed some things that it thought the Legislature should address (*The Highlands Voice*, February, 2014). One of those issues was the disposal of drill cuttings in sanitary landfills. Drill cuttings are the rock, dirt, etc. that is removed when drilling a gas well. It had become practice to dispose of them in sanitary landfills, a practice which was overwhelming landfill capacities. The Conservancy wanted the Legislature to fix this.

So how did the Legislature do? Not great. At the end of the session, the West Virginia Environmental Council (of which the Highlands Conservancy is a member) issued a press release on that question. Here is what it said:

Landfill Loopholes Are NOT OK, says WV Environmental Council

A conference committee draft of a bill to overturn tonnage caps on landfills accepting drilling waste from the gas industry is unacceptable, and does not protect our water, according to a statement released today by the West Virginia Environmental Council.

The bill (HB 4411) died on the last night of the legislative session, but news reports indicate that Governor Tomblin is considering including the bill in a special legislative session.

"Here they go again, listening to the polluters instead of those who advocate real environmental protection" said Jim Kotcon, of the West Virginia Chapter of Sierra Club. "If we learned anything this year, it is that listening to the polluters will not produce legislation to protect our environment, yet once again, key legislators continue to ignore input from the environmental community, and our regulatory agencies continue to provide misleading input to legislators."

WVEC's position is that municipal solid waste landfills are not designed to handle drilling wastes, which may contain heavy metals, petroleum hydrocarbons, and radioactive materials.

"Just because loopholes were created in federal hazardous waste laws for drilling wastes, that does not mean these wastes are not hazardous" said Kotcon. "I do not want radioactive wastes put into landfills upstream from my drinking water intake. These hazards will be there forever, and eventually will leak into our water. And those who claim that landfill leachate will get "treated" refuse to admit that there is no treatment facility that will remove these radioactive wastes."

Existing laws limit the amount of waste that can be accepted by municipal waste landfills, but DEP Secretary Randy Huffman unilaterally told landfill operators to disregard those laws in a memo he sent to operators last year.

The West Virginia Environmental Council insists that specially designed facilities are needed for drilling wastes, that these need to be strictly monitored, and that existing laws regarding tonnage caps and local control of municipal waste landfills should remain intact.

"The solid waste laws providing for public referendums on landfill size were enacted by the legislature more than 20 years ago. Those laws did not contemplate that municipal solid waste landfills would be allowed to exceed their assigned tonnage limits

by adding untreatable industrial wastes to their total assigned tonnage as approved by local Solid Waste Authorities and via public referendums", said Frank Young, chair of the WV Environmental Council's government affairs committee.

Our solid waste laws have worked well for over 20 years, and there is no need to ignore tonnage caps or to disregard siting plans established by local solid waste authorities," said Don Garvin, WVEC legislative coordinator. "West Virginia can continue to enjoy the economic benefits of the gas industry, but we need to make sure the gas industry complies with the law."

The West Virginia Environmental Council represents a united voice for environmental groups throughout West Virginia.

Notes: At the time of the statement, the bill it discusses had failed to pass. It was, however, made a part of the Special Session that immediately followed the regular session. It passed then.

Although it was not ready in time for this issue of *The Highlands Voice*, Don Garvin is working on a story on the highlights of the 2014 Legislative session for the next issue.

GET YOUR RAFFLE TICKETS NOW!!!

We are having a raffle of the sculpture by Mark Blumenstein entitled "Mountain Melody: Phoenix Duet." (Picture on this page). Tickets are \$3 each; 2 for \$5. The drawing will be held on Sunday, October 19, 2014. The piece is 31" tall, 21" wide, and is on a base that is 12 1/2" in diameter. Tickets are available from any Board member.



JOIN THE 2014 GARLIC MUSTARD CHALLENGE!

Are you looking for an opportunity to get the family outside for a day of fun? Then look no further than the *2014 Garlic Mustard Challenge*! The Garlic Mustard Challenge is a series of events that seeks to provide your family with a day of free, outdoor fun while working to protect the pristine and beautiful West Virginian forests that we all love. The Garlic Mustard Challenge is brought to you by the Monongahela National Forest, Appalachian Forest Heritage Area, and the Potomac Highlands Cooperative Weed and Pest Management Area.

During Garlic Mustard Challenge events, participants will engage in hands-on learning activities teaching about invasive species before competing in our annual garlic mustard pull.

Garlic Mustard is a particularly nasty, non-native invasive species. It rapidly spreads, often using waterways, into disturbed wooded habitats, and is making its way throughout the beautiful and diverse forest ecosystem of West Virginia. Garlic mustard can quickly take over an area pushing out our native plants. Many wildlife species, including species of wild game, depend on spring native plants for their pollen, nectar, fruits, seeds, and roots. Garlic mustard deprives wildlife of these important food sources when it becomes established.

Only an army of volunteers can help get rid of this invasive species! Please join us for the *2014 Garlic Mustard Challenge*. Together we can stop the spread of one of the most invasive species found in our state! The dates and locations are:

- Cascades Day Use Area Pembroke, VA— April 19th
- Ice Mountain Nature Preserve, WV – April 19th
- Seneca Rocks Discovery Center, WV – May 3rd
- Pocahontas 4-H Camp, WV – May 17th
- Blue Bend Recreational Area, WV – May 31st

Please check the website at: <http://www.phcwpma.org/GarlicMustard.cfm> to learn the latest information about the pulls. If you organize your own pull, you can also report the amount you pulled on this website.

This year, our goal is to remove 50,000 pounds of garlic mustard to help protect our native forests, wildflowers, and wildlife. More information will be available soon at: <http://www.phcwpma.org/GarlicMustard.cfm>

Together we can keep West Virginia wild! Join us for one of these important events!



The Invader

“We shall fight on the beaches, we shall fight on the landing grounds, we shall fight in the fields and in the streets, we shall fight in the hills; we shall never surrender.” Winston Churchill (what he would have said had he known about Garlic Mustard.)

Send Us a Post Card, Drop Us a Line, Stating Point Of View

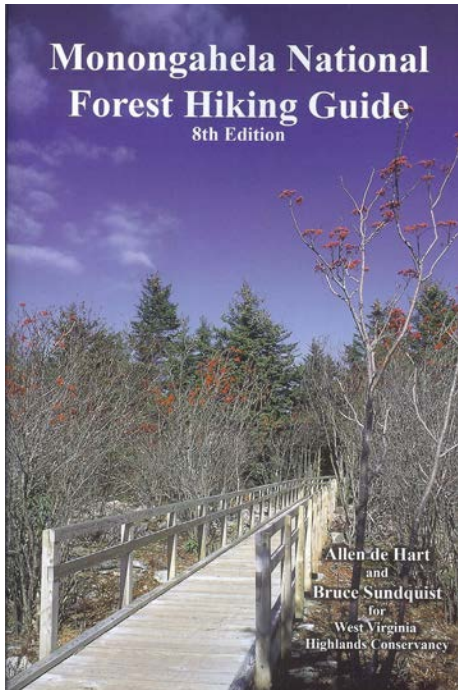
Please email any poems, letters, commentaries, etc. to the VOICE editor at johnmcferrin@aol.com or by real, honest to goodness, mentioned in the United States Constitution mail to WV Highlands Conservancy, PO Box 306, Charleston, WV 25321.

Leave a Legacy of Hope for the Future

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

The Monongahela National Forest Hiking Guide

By Allen de Hart and Bruce Sundquist



Describes 180 U.S. Forest Service trails (847 miles total) in one of the best (and most popular) areas for hiking, back-packing and ski-touring in this part of the country (1436 sq. miles of national forest in West Virginia=s highlands). 6x9" soft cover, 368 pages, 86 pages of maps, 57 photos, full-color cover, Ed.8 (2006)

Send \$14.95 plus \$3.00 shipping to:
West Virginia Highlands Conservancy
P.O. Box 306
Charleston, WV 25321
OR
Order from our website at
www.wvhighlands.org

New 8TH Edition Now Available on CD

WV Highlands Conservancy proudly offers an Electronic (CD) version of its famous Monongahela National Forest Hiking Guide (8th Edition), with many added features.

This new CD edition includes the text pages as they appear in the printed version by Allen deHart and Bruce Sundquist in an interactive pdf format. It also includes the following mapping features, developed by WVHC volunteer Jim Solley, and not available anywhere else:

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

Price: \$20.00 from the same address.

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.



ENVIRONMENTAL PROTECTION AGENCY SETTLES CLEAN WATER ACT CASE WITH ALPHA NATURAL RESOURCES

By John McFerrin

The United States Environmental Protection Agency, along with the State of West Virginia and the Commonwealths of Pennsylvania and Kentucky have reached a settlement with Alpha Natural Resources and its subsidiaries (62 companies in all) of claims that those companies have frequently violated the federal Clean Water Act and parallel state statutes.

Under the terms of the settlement, the companies have agreed to pay civil penalties totaling \$27,500,000. The companies also have to implement certain management and auditing programs to help insure that the violations do not recur. If they do, the consent decree sets forth monetary penalties for each violation that does occur.

The violations fall into two large categories. Most of the mines involved had permits which set out how much pollution could be discharged from the mine. Those mines stand accused of discharging more pollution than their permits allowed.

The second category involves mines who didn't have a permit at all. Since those mines had never gotten permits any discharge of pollution is illegal. A few of the mines involved had not gotten permits.

The Way the Clean Water Act Works

Both the federal Clean Water Act and corresponding statutes in West Virginia, Pennsylvania, and Kentucky prohibit discharge of any pollutant in any amount unless certain conditions are met. The most prominent of these conditions which allow limited pollution is the discharge permit, known as the National Pollutant Discharge Elimination System (NPDES) permit.

The NPDES permit protects streams by limiting the concentration of pollutants that are allowed in water that leaves the mine. The permit allows no more than certain concentrations of pollution such as iron, manganese, and aluminum. The permit is supposed to set these discharge limits low enough that the water coming from the mine may contain small amounts of pollution but not enough to impair the waters that it flows into.

Each site has designated points—called outlets—where water containing this minimal amount of pollution is allowed to leave the site. The companies are required by the terms of their permits to test the water that comes from each outlet and report the results to the regulatory agency that issued the permits.

Theoretically the agency could review the test results (called Discharge Monitoring Reports) and take enforcement action whenever a result goes over what is allowed by the permit. In practice, the Discharge Monitoring Reports gather dust until the company proves itself a chronic violator or something else happens to bring the facility to the attention of the regulatory agency.

Why is the penalty so large?

It's a large penalty because the defendants make up a large organization with many violations. The Complaint which the Environmental Protection Agency filed in this case alleged over 6,000 violations. This does not even include the few mines on the list which were discharging pollution even though they have never gotten permits.

Many of the subsidiaries of the organization are chronic offenders. The Complaint lists eleven times when several of these companies have either been sued or been the subject of an enforcement action. The actions cited all ended with the defendants

agreeing to pay a penalty and not violate the Clean Water Act in the future.

In context, the penalty is not excessively large. The Clean Water Act sets a maximum penalty of either \$25,000 or \$32,500 per day of violation (the law changed in 2009; the maximum penalty depends upon whether the violation took place before or after the change.) While it would be extremely unlikely that a company would be fined the maximum, the potential is there. With as many violations as were alleged, the potential penalty would be many times that agreed to here.

One of the features of cases under the Clean Water Act is that whatever is alleged is almost always true. The companies monitor themselves. While this arrangement occasionally produces some grumbling, analogies to foxes and henhouses, etc., it does mean that whenever a state or the Environmental Protection Agency does take enforcement action the company cannot very well deny the accuracy of the reports.

Who gets the money?

In cases such as this one, the federal treasury gets most of the money. Of the \$27,500,000 civil penalty, the United States Environmental Protection Agency gets half. In cases brought by the citizen groups such as the West Virginia Highlands Conservancy, some part of the settlement might be directed to fund something like a wildlife refuge, the West Virginia Land Trust and the WVU Land Use and Sustainable Development Law Clinic or even a solar panel installation (see *The Highlands Voice*, May, 2013). In all cases some of the settlement goes to the federal treasury. In cases initiated by the EPA, most of the settlement goes to the federal treasury.

The rest of the settlement goes to the three states (West Virginia, Pennsylvania, and Kentucky) who participated in the litigation. West Virginia's share is almost nine million dollars. It does not go to general revenue but rather goes to named accounts dedicated to operating West Virginia's enforcement program.

Why won't Alpha Natural Resources lapse back into its old ways?

The premise of the litigation is that Alpha Natural Resources is a big organization with a big problem complying with the Clean Water Act. Now it has agreed to pay \$27,500,000. It has further agreed to a schedule of fines that will be imposed for each violation in the future. One way of looking at this is to say that Alpha Natural Resources now has twenty seven million reasons not to lapse back into its old ways and that this should be sufficient incentive to keep it in compliance.

While it does have an agreed upon schedule of penalties for future violations, the Consent Decree doesn't take that approach. It assumes that, so far as Clean Water Act compliance is concerned, Alpha Natural Resources has a management problem. The Consent Decree assumes that Alpha Natural Resources (ANR) could comply if it had the systems in place to manage its compliance.

Acting on this assumption, the Consent Decree requires that ANR set up environmental management systems, do audits of its compliance, maintain a data base of its violations, etc. It requires management of compliance in a way that, if carried out, should minimize future noncompliance.

(More on the next page)

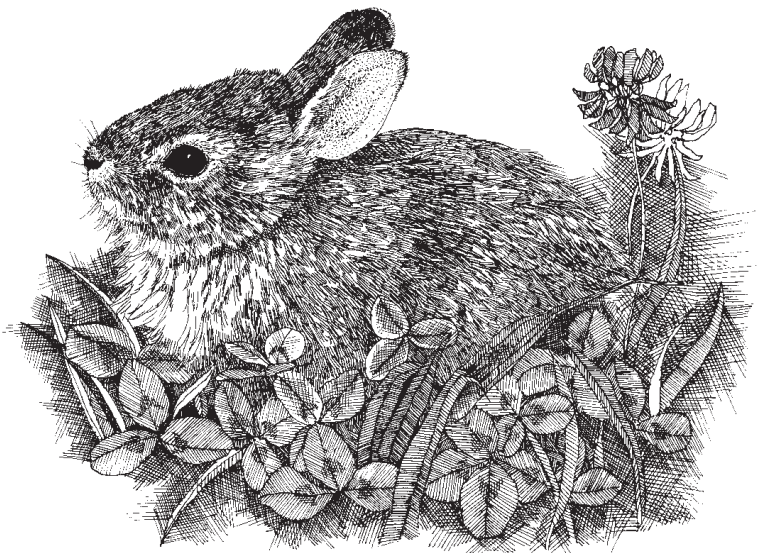
EPA SETTLES BIG CLEAN WATER ACT CASE (Continued from previous page)

If ANR implements these systems and they do result in full Clean Water Act compliance, everyone will be pleased. If it is lax or the systems don't work, it can start saving up another twenty seven million.

What did the West Virginia Highlands Conservancy have to do with this?

This was a federal action, brought through the initiative of the United States Environmental Protection Agency as well as the states where the mines were located. The Conservancy had no direct role.

It did, however, play a part. Part of the Environmental Protection Agency's theory was that Alpha Natural Resources and its many subsidiaries were chronic violators. Part of the evidence for that assertion was that in 2010 the West Virginia Highlands Conservancy, the Sierra Club, the Ohio Valley Environmental Coalition, and Coal River Mountain Watch had twice sued several of the companies named in this litigation. Those cases were settled when the companies paid a penalty and agreed to stop violating the Clean Water Act in the future. The settlements in those earlier cases became part of the Environmental Protection Agency's argument that these Defendants were chronic violators.



THE GIFT THAT KEEPS ON GIVING

A long-time member asked if the West Virginia Highlands Conservancy has an automatic donation program---one that allows members and donors to make a continuous donation throughout the year.

We talked about that at length and with enthusiasm through messages on the Board email listserv. Turns out we do have such a program...no doubt through the far-sighted actions of our webmaster emeritus, Jim Solley.

To make a continuing donation, visit the WVHC website at wvhighlands.org...click on "donate" until you get to the PayPal page. There you will see, in the pale blue box, to the right of "donation amount" a choice for "make this recurring [monthly]." Making that choice means our group benefits from a continuing gift from you.

CLIMATE CHANGE CONFERENCE COMING UP

On June 7, 2014, the Friends of Blackwater will sponsor a conference entitled "**Climate Change and the Highlands: What's at Stake -- What's at Risk?**"

At this conference, you can join others who love the Highlands, enjoy the beauty of Blackwater Falls State Park, and engage with experts who will present the latest information on the impacts of climate change on the Highlands. Featured speakers are the world-famous climatologist (and West Virginia native) Lonnie Thompson; and Charles Bayless, Esq., former utility executive and President of West Virginia Tech. A third featured speaker is Doctor Thomas Pauley, herpetologist from Marshall University, who will present his data gathered from 40 years of monitoring endangered salamander habitat in the Highlands. They will join more than 15 other experts in the areas of forestry, fisheries, floods, wildlife, and the role of citizens in responding to these risks.

This is a three day event, with the meat of the conference on Saturday, June 7, sandwiched between a reception Friday night and outings on Sunday. Registration has already begun. Early Bird Registration (by April 15) is \$50.00; Regular Registration (April 16 -- May 23) is \$65.00; Late Registration (May 24 and after) is \$80.00.

For more information, including how to register and lodging options go to www.wvalleghenyclimate.org.

AND THE OPPOSITION JUST KEEPS ON COMING...

As *The Highlands Voice* has reported in the past, the United States Forest Service has been having trouble finalizing its management plan for the George Washington National Forest. It had hoped to make the plan final during the summer of 2013, then in the fall of 2013, and now who knows when.

The hold-up is hydraulic fracturing. The Forest Service had proposed in its draft plan that the practice be banned from the Forest. This produced many, many positive comments and fewer, but louder, howls of protest.

As the delay continues, the opposition to hydraulic fracturing keeps building. The latest is opposition from Governor-elect Terry McAuliffe. He has written the head of the Department of Agriculture (which includes the Forest Service) saying that he ran for office opposing fracking in the George Washington National Forest and that he is continuing his opposition now that he has been elected.

HIGHLANDS CONSERVANCY BOUTIQUE



- ▶ The baby shirts are certified organic cotton and are offered in one infant and several toddler sizes and an infant onesie. Slogan is "I ♥ Mountains Save One for Me!" Onesie [18 mo.]---\$17, Infant tee [18 mo.]---\$15, Toddler tee, 2T,3T,4T, 5/6---\$18
 - ▶ Soft pima cotton adult polo shirts are a handsome earthtone light brown and feature the spruce tree logo. Sizes S-XXL [Shirts run large for stated size.] \$18.50
 - ▶ Order now from the website!
- Or, by mail [WV residents add 6 % sales tax] make check payable to West Virginia Highlands Conservancy and send to James Solley, PO Box 306, Charleston, WV 25321-0306

T- SHIRTS

White, heavy cotton T-shirts with the **I ♥ Mountains** slogan on the front. The lettering is blue and the heart is red. "West Virginia Highlands Conservancy" in smaller blue letters is included below the slogan. Short sleeve in sizes: S, M, L, XL, and XXL. Long sleeve in sizes S, M, L, and XL. **Short sleeve** model is \$15 by mail; **long sleeve** is \$18. West Virginia residents add 6% sales tax. Send sizes wanted and check payable to West Virginia Highlands Conservancy ATTN: James Solley, WVHC, P.O. Box 306, Charleston, WV 25321-0306.



HATS FOR SALE

We have West Virginia Highlands Conservancy baseball style caps for sale as well as I ♥ Mountains caps.

The WVHC cap is beige with green woven into the twill and the pre-curved visor is light green. The front of the cap has West Virginia Highlands Conservancy logo and the words West Virginia Highlands Conservancy on the front and I (heart) Mountains on the back. It is soft twill, unstructured, low profile, sewn eyelets, cloth strap with tri-glide buckle closure.

The I ♥ Mountains The colors are stone, black and red. The front of the cap has I ♥ MOUNTAINS. The heart is red. The red and black hats are soft twill, unstructured, low profile, sewn eyelets, cloth strap with tri-glide buckle closure. The stone has a stiff front crown with a velcro strap on the back. All hats have West Virginia Highlands Conservancy printed on the back. Cost is \$15 by mail. West Virginia residents add 6% tax. Make check payable to West Virginia Highlands Conservancy and send to James Solley, P.O. Box 306, Charleston, WV 25321-0306