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The Highlands Voice

The Monthly Publication of the West Virginia Highlands Conservancy

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WEST VIRGINIA LEGISLATURE: UNFINISHED BUSINESS

Even if all the talk has been of storage tanks, leaks, drinking water, etc. there are still other issues that the Legislature needs to take a look at:

TAMING SHALE GAS DRILLING

By John McFerrin

What is to be done about drilling for gas from the Marcellus Shale? Some believe that it brings with it such a bundle of problems—air pollution, water pollution, traffic, etc. etc., etc.—that it cannot be tamed and should be abolished.

West Virginia's policy is, of course, otherwise. It is widely accepted by most, if not all, public officials that Marcellus gas is an important part of West Virginia's economic future. We talk on and on about well drilling jobs, cracker plants, manufacturing based on natural gas, etc. Whatever planning for the future is going on in this state assumes that Marcellus gas drilling will be a big part of it.

Along with this assumption is the near universal recognition that we have to do things to control Marcellus gas drilling. Only the willfully blind or ignorant would deny that the process has the potential for great destruction of our roads, our air, our water, our lives. Society can't

SITING INDUSTRIAL WIND FACILITIES

By Larry Thomas

Industrial or grid-scale wind energy already has a foothold in the highlands of West Virginia. What more is there to say about industrial wind energy? What of these industrial size wind turbines that dot out ridges? Some see them as an important part of our energy

future, an alternative to coal. Some see them as noisy killers of birds and bats, ugly both now and in the future when they are rusting hulks on the mountain tops. Some see them as part of the "all of the above" energy strategy; others see them as producing so little power so unreliably that they are not worth having.

Readers of tea leaves might infer something about wind turbines from President Obama's State of the Union message. He praised solar power and

natural gas. He didn't mention wind.

There is one thing, however, that we agree on: we can't put them just anywhere. Assuming, as West Virginia does, that there



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Ramblin' the Ridges

By Cynthia D. Ellis

~Oh, the Irony~

"Is this water 'ironic'?" I can hear my 9 year-old self asking that question as the handle went up and down and water flowed from a pump at a roadside park along a two-lane West Virginia highway sometime a long while ago. I loved words...collecting new ones, learning their meaning and context, and I was with friends and family on an outing. The friends included a teacher and newspaper reporter; they could be friendly adult resources for a budding vocabulary enthusiast. In truth, I'd just heard someone say it was «Iron water.» No, they smiled indulgently...that water is not exactly "ironic".

Now, decades later, I'm watching water flow from my own faucets with a real sense of irony...or something sadder. As one of the 300,000 [individuals? families?] affected by a chemical spill in the Elk River, I've had many sensations. And not even a long-standing passion for collecting words may support me in telling of this event. It could be nearly indefinable or indescribable.

First, it feels very strange to have been someone who reviewed a book, in this newsletter three months ago, about looming water difficulties ["The Ripple Effect," Oct. '13]. Of course I made some mental connection to the problems described in stories from around the U.S. and the world, but that is not like living it.

In the same way, I had participated in a number of environmental activities, directly and indirectly linked to the West Virginia Highlands Conservancy, and had seen bad water and ruined streams and other sources elsewhere in our state, and had been deeply moved by affected residents. Now, I am one. I may have more options and choices than others, but I am an affected resident. I cannot drink the water from the tap. I cannot cook with that water. Like some other West Virginians, affected by mining, or fracking; and like people dealing without water worldwide, I must now make decisions about self, family, pets, livestock, plants, and the value of my property.

Here are some thoughts on the event that could be examined for irony, or lack of.

Many people decried the surge of lawsuits following the disaster. Investigative reporter, Ken Ward, Jr. has urged that people remember that some solid facts may be derived from the investigations of this leak.

Soon it happens that I will become a Great Aunt. I'm happy. And I'm very worried, as is the mom-to-be. She struggles and juggles, to find accurate information and to handle her water usage in a non-harmful way.

Among the most helpful people, in bringing water, baby wipes, and other supplies to areas away from the metro Charleston area have been treehuggers and out-of-state religious groups. These are the same folks reviled by some in the coal counties as meddlers.

In 2010, National Geographic magazine devoted an entire

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West Virginia Highlands Conservancy President Cynthia D. Ellis petitions the government for redress of grievances, as do several of her compatriots.



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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.

TAMING SHALE GAS DRILLING (Continued from p. 1)

just leave the industry to its own devices and hope things work out.

We most recently addressed this in 2011. In that year a select legislative committee developed legislation. There followed a special session of the legislature in which, after consultation with the oil and gas industry, Governor Tomblin proposed a lesser version of those recommendations, the version that was enacted. It is easy to imagine Governor Tomblin dusting off his hands, marking through that item on his to-do list, and moving on to whatever was next. In both the 2012 and 2013 State of the State addresses he patted himself on the back for a job well done.

There are, of course, some problems with this approach. Many are convinced that the laws are not strong enough. That the oil and gas industry was heavily involved between the time the select legislative committee made its recommendations and Governor Tomblin proposed his version would make anybody skeptical. Then there are the usual problems with implementing a new law, enforcing a new law, having enough people to enforce it, etc. The job is never really done.

Beyond these general things such as improved enforcement, etc. there are things that we still have to do:

Drill cuttings

Drill cuttings are the rock and dirt that come out when a hole is drilled down to the Marcellus Shale and then horizontally through that shale. A hole drilled to thea is through the shale for hundreds or thousands more feet Marcellus Shale produces over six hundred tons of cuttings (assuming a hole two feet in diameter and one mile deep). Once the drilling reaches the shale, a horizontal hole is drilled through the shale for hundreds or thousands more feet. The cuttings have to go somewhere.

Right now they are going to municipal landfills. There are two problems with this. First, there is so much of it. We have a system for setting size limits on landfills, including referendums for landfills above a certain size. County and regional solid waste authorities have made siting plans based on transportation infrastructure, property values, aesthetic and environmental quality, and the public health, welfare and convenience, among other things.

Sending drill cuttings to landfills kicks this whole system in the head. The sudden increase in volume threatens to overwhelm the landfills and with it all the system for siting, planning, etc. that lies behind the current system for disposing of solid waste. For more detail on this, see the article in the November, 2013, issue of *The Highlands Voice*.

The second problem with sending drill cuttings to landfills is that the cuttings are often radioactive. One way that the drilling crew knows that it has reached the Marcellus Shale is that it can detect radioactivity in the drill cuttings.

The West Virginia Department of Environmental Protection has made some attempts to temporarily address the problem of overwhelming the landfills with drill cuttings. It has done nothing to address the problem of radioactivity. The Legislature needs to do something. As a start it could require the disposal of drilling mud and drill cuttings in special landfills paid for by the drilling companies, not the taxpayers. It should require monitoring of that waste for radioactive elements and the restoration of the tonnage caps for our solid waste landfills.

Waste pits

Drilling for gas is a messy business. There are all manner of

materials hauled in and out as well as waste produced on site. In the past, much of the waste has ended up in waste pits. This has resulted in thousands of waste pits, most of them toxic, being buried all over West Virginia.

The Legislature could fix this by requiring that drillers to use "closed loop" drilling system. In such a system, all materials and wastes are hauled in and out by truck. This eliminates the need for any waste pits and is a common practice throughout the nation.

Bad neighbors

A Marcellus well is an inherently bad neighbor. It is noisy and smelly. It has bright lights. Its presence ensures that there will be truck traffic all the time. It is possible that its neighbors will make it through without having their water supply ruined but that is by no means certain. Apologists for the industry routinely say things such as "we try to be good neighbors" and some are better than others. The truth of the matter, however, is that there is no way to turn such a noisy, smelly thing into a good neighbor.

The Legislature has previously recognized this. It attempted to address this last year by requiring that the center of the well pad be 625 feet from houses. Then it commissioned Dr. Michael McCawley, a professor from the West Virginia University Department of Occupational and Environmental Health Science, to figure out if this was an effective way to protect neighbors from the effects of gas drilling.

The answer was, "not really." Although he did not have enough funding to do all the sampling necessary, his sampling did reveal the presence of contaminants. He pointed out, however, that well sites vary in topography and weather conditions. Some of the activities which would produce the pollution took place other than in the center of the well pad, the point from which the 625 feet would be measured. They could end up being closer than the 625 feet. Nothing in his presentation suggested that 625 feet was an effective limit. In his presentation he suggested more monitoring rather than relying so heavily upon a numerical set back.

The legislature has to fix this. It can start by changing the point from which any distance is measured. Right now the distance is measured from the center of the well pad. Since the pads are always several acres, this means that the activity will be substantially closer to the homes than 625 feet. It can drop the 625 feet; it's an arbitrary number anyway, achieved by Legislative negotiations rather than any factual basis. If the Legislature is going to rely upon a setback, 1,500 feet from the edge of the disturbance is more reasonable.

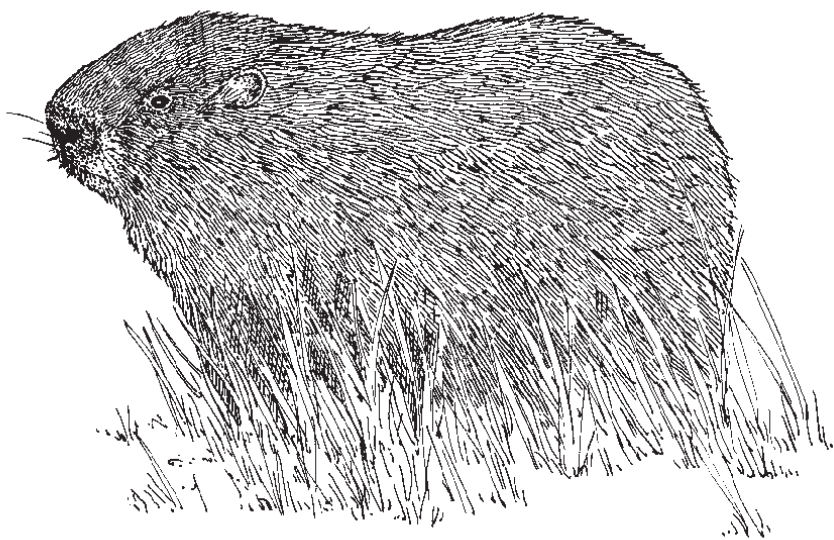
Instead of relying upon an arbitrary distance, the Legislature should follow the lead of its hired expert and require monitoring of monitoring of air, noise, dust and VOCs (Volatile Organic Compounds). It should establish best available control technologies that can be adjusted for geography and weather conditions.

Finally, it should fund long-term health studies of area residents. There is a growing body of evidence that living near gas drilling has adverse health effects. We need to know if this is really happening so we can make whatever adjustments are necessary to protect public health.

WHAT WEST VIRGINIA LOOKS LIKE WITHOUT SNOW



Photo courtesy of www.forestwander.com



**And the guy who gets to say
when it will happen again.**

WINDMILLS: WHERE TO PUT THEM? (Continued from p. 1)

are to be industrial size wind turbines, we need a sensible policy for siting them. That is why the siting of wind turbines should be on the Legislature's plate.

The Legislature has started down this road before. In 2003 it passed a statute that required the Public Service Commission of West Virginia (PSC), when approving the location of a wind power facility, to "appraise and balance the interests of the public, the general interests of the state and local economy, and the interests of the applicant."

After the Legislature acted, the PSC went through the rulemaking process. In the summer of 2005 it made final the rules on siting we have today. Although the Siting Rules cover a fairly broad range of topics regarding the potential impacts of generating facilities, to date the rules most subject to controversy and the presentation of conflicting evidence have largely related to the detriment to the environment generally and to wildlife in particular, disruption of the viewshed, diminished integrity of historic resources, and the introduction of noise into extremely quiet rural environments.

There are ways in which the current rules are not working. First, the PSC lacks the expertise to apply these rules. The PSC and its staff have extensive experience in evaluating traditional public utilities. They are not, however, experts on wildlife, historic preservation, noise, etc. They can hardly be expected to evaluate an application that addresses these things.

In the consideration of industrial wind facilities so far, the applicants have been the source of the information on the items the current siting regulations list. The PSC lacks the expertise to determine if the information is accurate or if there is other data which would suggest a different conclusion. If, for example, the company presents a study saying the operation would not affect bats, the PSC lacks the expertise to determine if that study is correct or the knowledge of other studies which reached the opposite conclusion.

The Legislature could fix this by creating a mechanism by which the PSC taps the expertise of other agencies who are able to evaluate the detriment to the environment generally and to wildlife in particular, disruption of the viewshed, diminished integrity of historic resources, and the introduction of noise into extremely quiet rural environments.

Ten years of experience from around the world and in West Virginia has highlighted issues that must be addressed by the PSC in revised application rules for the siting of industrial wind energy projects in the highlands of West Virginia.

Our proposed revisions rest upon several assumptions, each of which reflects the public interest and the cause of justice:

- (1) The PSC possesses relevant expertise in the regulation of electric utilities and the facilities traditionally operated

by those utilities. Its regulation of exempt wholesale generators under federal law (in this circumstance, all wind developers coming on the scene) should focus upon those same aspects, and it should not be placed in the precarious position of foretelling or divining the findings and conclusions of agencies charged with the protection of water resources, wildlife, and the like.

- (2) Notwithstanding the existence of certain public notice requirements set forth in connection with various other regulatory processes, an exempt wholesale generator should not be permitted to proceed behind the scenes in obtaining regulatory approvals, and in no event should not be permitted to obtain such approvals and permits after the conclusion of the evidentiary hearing in a siting certificate case before the PSC.



- (3) Intervenors in cases before the PSC, particularly EWG siting certificate cases, should not carry the burden of proof in any aspect of the case. It should always be the burden of the energy developer, and not that of private citizens, to prove the absence of impacts or the adequate mitigation of such impacts.

- (4) Proceedings before the Commission under West Virginia Code § 24-2-11c should be accompanied by a policy encouraging greater disclosure of information about an applicant and its proposed project, rather than less disclosure.
- (5) Impacts from an electric generating facility should be imposed within reasonable geographic proximity to where the majority of the benefits are incurred. West Virginia citizens should not absorb further externalities of expanded electric generation when the state already generates twice as much electrical energy as its residents consume, and there is no indication that this gap in generation and native consumption will narrow at any time in the foreseeable future.
- (6) (Perhaps most importantly) Because the activity of EWGs, particularly wind energy developers seeking to reap the benefits of renewable portfolio standards, the production tax credits and other federal and state incentives, are responding to market opportunities

(A little more on the next page)

WIND: THE REST OF THE STORY (Continued from previous page)

rather than to demand for electric generation, such entities should be held to a higher standard than our traditional public utilities. The two terms can be distinguished in that “demand” refers to the projection of customer load in a given year in the state or in the PJM region, compared to the available generating capacity, while a “market” exists whenever an energy developer can procure a buyer, typically a utility or electric cooperative purchasing power over a 20-year period under a “power purchase agreement.” Information that has been released by PJM Interconnection, our regional transmission organization, has indicated a decline in projections of increasing demand in the region over the coming years. PJM has sufficient generating capacity for its constituent utilities to serve electric customers for many years to come; the construction of “alternative” or “renewable” energy sources will not serve to displace any conventional fossil fuel-fired generation.

We can conceive of alternate ways of modifying the siting certificate statute, particularly to impose additional affirmative duties upon the PSC to consult directly with other governmental agencies. The result in practice may be actually to reduce the burdens on the Commission in such cases.

In the interest of providing for less deference to entities not legitimately invested in our state and its future and in the interest of granting greater weight to the rights of the citizens of West Virginia, we hope that that these proposed revisions are introduced during this session in at least substantially similar form as they appear here.

The West Virginia Highlands Conservancy is concerned about the cumulative impact of industrial scale wind energy development on the environment and acknowledges that continued development of industrial wind facilities, in and of itself, is harmful to the West Virginia Highlands, which it is our mission to protect.

Note: John McFerrin contributed to the writing of this article.

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.

Oh Lord, It's Hard to be a Buddhist

A West Virginia ballad

By Victor Marshall Depta

Oh Lord, it's hard to be a Buddhist and loving-kind
When the men on the mountaintop
As you're sitting crosslegged as a hamhock
Knock you clear off the porch

where you're pelted with flyrock
and the house tilt as you fume and holler
at Blankenship and his ilk.
It's hard to be a loving Buddhist

with the coal piles and slurry dams
with the mountains flushed in the floods
with dust in your face, or mud.
It's hard to be a Buddhist and One with

a mountaintop recently stripped
Or to sip from a spigot
when Unity has sulfur in it
when there's black goo in the yard

and orange streaks in the creek
And you'd just as soon toke
or be an Oxy freak.
It's hard to be a Buddhist and loving

with your friends on Xanax and Lorcet
when they're zonked or dead
up in the head of a hollow
where there's valley fill and fracking for gas

where the coal trucks are on your ass.
Buddhism says you oughn't get ruffled
with birth defects and cancer and asthma
or when your dead folks get shuffled

and fall off a cliff
since the mountains ain't what they've been
since there ain't no place to lift
traveling souls out of going to

when they're through.
Buddhism says there's an endless now
and us hillbilly men and women
thought out mountains were in it

but eternity fell to pieces
hin and yon, hin and yon
and our endless joy's long gone.
Oh Lord, it's hard to be a Buddhist.

©Victor Marshall Depta

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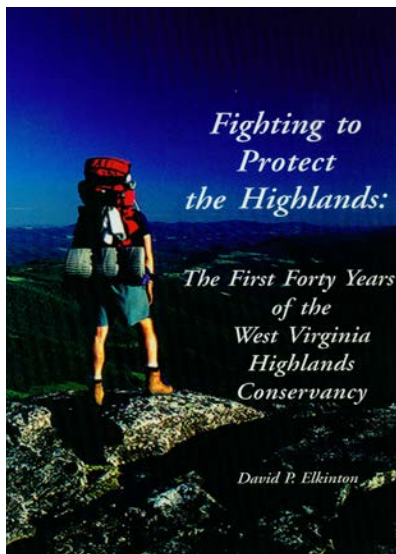
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Other	\$ 15		
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Sustaining	\$100	\$ 150	\$ 200
Patron	\$ 250	\$ 500	\$ 500
Mountaineer	\$500	\$ 750	\$ 1000

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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.

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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.

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THE LEGISLATURE AND THE “WATER CRISIS”

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

The 2014 session of the WV Legislature convened here in Charleston on Wednesday, January 8.

On Thursday, January 9, a chemical spill into the Elk River resulted in the declaration of a state of emergency in nine counties, including Kanawha County, the home of state government. There was no water to drink. There was no water to cook with, wash or bathe with. So the Legislature basically shut down for about five days.

The legislators returned the next week and basically resumed normal business on Tuesday, January 14.

Except it was not back to business as usual. Suddenly there was a new focus to the legislative session (if there had been one before). The focus was now on water.

The “water crisis” had hijacked the Legislature.

On Wednesday, January 15, SB 355 was introduced in the Senate. This bill was the result of recommendations made by the Joint Legislative Oversight Commission on State Water Resources, which is normally an “interim” committee. SB 355 amended the Water Resources Protection and Management Act and adopted the State Water Resources Management Plan. It is a water “quantity” bill.

On Thursday, January 16, SB 373 was introduced. SB 373 added a new section to SB 355 requiring registration of existing aboveground storage tanks and directing the secretary of the Department Of Environmental Protection to develop a program to regulate new and existing aboveground storage tanks (the chemical spill that occurred a week earlier was the result of a leaking aboveground storage tank). The bill’s lead sponsors were the Senate President Jeff Kessler (D-Marshall) Senate majority leader, John Unger (D-Berkeley).

So SB 373 was the first bill out of the hopper to deal directly with the Elk River chemical spill.

On Friday, January 17, the Joint Legislative Oversight Commission on State Water Resources met and began an “investigation” into the chemical spill. The Commission co-chairman, Senator Unger, said that the Commission would meet throughout the regular session. And, in fact, those meetings have continued.

On Monday, January 20, Gov. Earl Ray Tomblin held a press conference to announce his proposed legislation to implement an above ground storage tank regulation program. On Wednesday, January 22, the governor’s bill was introduced in both the House and Senate, HB 4258 and SB 417 respectively. Frankly, the governor’s bill contained so many exemptions that it was difficult to find a storage tank that it would cover.

In the Senate, SB 373 was “fast tracked”. On Wednesday, January 22, the Senate Natural Resources Committee met and passed a “committee substitute” for the bill, that included many of the exemptions from the governor’s bill. Then, the very next day, the Senate Judiciary Committee took up the bill, unanimously passing a “committee substitute” of the Natural Resources Committee “committee substitute”. That version of SB 373 was passed by the Senate on Tuesday, January 28.

Now the action is shifting to the House of Delegates, which seems to have been waiting for the Senate to act.

So that’s where we are, with more than a month remaining in this legislative session. Citizens are angry and scared. Most are refusing to drink the tap water because it still smells and tastes bad. Much is still unknown about the chemical that leaked. Lawmakers who never before cast a vote to keep our water clean are suddenly spouting platitudes about the value and necessity of clean water.

A report issued shortly after the spill by Downstream Strategies and the West Virginia Rivers coalition called the disaster a failure “at multiple levels of government.” “Federal, state, and local governments and agencies could have taken steps that would have reduced the risk of this spill occurring or made it easier to effectively respond to the spill,” according to the report.

As currently drafted SB 373 is narrowly focused and only addresses one aspect of the many threats to West Virginia water. It is at best a Band-Aid.

It is now up to the House of Delegates to improve the legislation.

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.

BOARD HIGHLIGHTS

By John McFerrin

It was a small but hearty band which met at the Habitat for Humanity Re-Store Center in Charleston for the winter Board meeting of the West Virginia Highlands Conservancy. Cold, ice, and snow (as well as a couple of family demands) had reduced our numbers to a quorum with little (actually, none) to spare.

We accepted the application of the Shavers Fork Coalition for a seat on the Board of Directors. Jim Van Gundy will be its representative.

President Ellis reported the dates for 2015 Board meetings: Sunday, January 25, 2015; Sunday, April 26, 2015; Saturday, July 25, 2015; Sunday, October 18, 2015

She also reported the locations for meetings in 2014. The April meeting will be at the McClintic Library in Marlinton. The July meeting will be at the Old Hemlock Foundation in Bruceton Mills.

She also reported that a professor at Virginia Tech is teaching a course using *Fighting to Protect the Highlands, the First 40 Years of the West Virginia Highlands Conservancy* as a text.

Treasurer Bob Marshall went over our revenue and spending for 2013. Things turned out more or less as we expected in all areas. We did deplete our cash reserves somewhat so that we now have less undedicated money than we have had in several years. Much of the money we have is in dedicated funds; it was raised or donated for a specific purpose such as mining, wind, public lands, etc. The undedicated money is what we have to pay routine expenses. We still have enough to pay such expenses although without so much in reserve as we have had in the past.

Later on in the meeting Larry Thomas offered some explanation for the decline in our undedicated money. Most of what we do is, in a sense, independently funded. Committees such as Mining or Public Lands spend contributions that have been dedicated to those committees. Activities such as *The Highlands Voice*, lobbying, and outings are funded from general revenue such as dues and unrestricted donations. We don't have enough unrestricted revenue to fund these activities while still paying for the basic expenses (postage, office supplies, insurance, etc.) necessary to run the organization. He is going to suggest some ways we can move things around in our balance sheet so as to better reflect our spending and revenue.

Treasurer Bob Marshall also presented the budget for 2014. It adds some money for Outings in anticipation of the celebration of the 50th Anniversary of the signing of the Wilderness Act. It does not include any funding for interim lobbying; it is our intention to make some contribution toward interim lobbying although we will have to wait to see how we do on the fund appeal and other expenses to see what our contribution might be.

We learned of how our website is faring. Our webmaster, Jim Solley, is not doing well physically. Our new webmaster, Jackie Burns is posting the Voice on line but the transition is still incomplete

so she has not assumed maintenance of the website. As a result, the website is still useable but is not as up to date as it was in when Jim was at full strength. To address this difficulty, Jim Van Gundy volunteered to help.

We had a report on the Legislature and how legislation we were interested in was doing. The West Virginia Legislature has been thrown completely out of whack by the chemical spill. It hit right at the beginning of the session so everybody went home. When they came back it was a tank bill here, a tank bill there, everywhere a tank bill. Delegates and Senators are falling all over themselves trying to show that they are on top of this issue. There is a bill flying through the Senate. Different bills have different requirements and different exemptions and it is all a confusing mess.

With all the tank bill chaos, there is no interest in focusing on anything else. At the last Board meeting we had listed as

our priorities addressing the externalities of the gas industry (disposal of drill cuttings, control and disposal of drilling fluids, and injection wells) and siting rules for wind farms. We hope to see to it that bills on these topics are introduced shortly. Our Wind Committee also plans to write the Public Service Commission requesting that it develop better rules for siting of industrial wind facilities. It has rules now just not very effective ones.

The 50th Anniversary of the Wilderness Act is coming in 2014 and we are gearing up to celebrate, as are people in all fifty states. 2014 is also the 25th anniversary of the West Virginia Environmental Council. We are thinking of some sort of joint celebration with the Sierra Club, the Wilderness Society, and the West Virginia Environmental Council. We would be celebrating both the 50th Anniversary of the Wilderness Act and the 25th Anniversary of the West Virginia Environmental Council.

We continue to have a presence on Facebook and on Twitter. We have 1284 likes on Facebook. For a small extra fee it is possible to "boost" our post. For the Elk River spill we did that and our posts reached 8029 people, proving that—on Facebook at least—it is possible to buy friends. We have Facebook fans in Serbia, Mexico, Indonesia, France, Germany, Algeria, India, the Dominican Republic, and Italy.

We will have a table for E-Day at the Legislature on February 17.

As meetings go, this one was pretty fun. There were interesting parts and some slow parts but there is just so much fun a meeting can have.

The unadulterated fun came in the other activities. There was a door prize, the book [Greenbrier River Trail](#) by Bill McNeel. Lunch was great—two kinds of soup, yeast bread, cookies, brownies. Copies of [Greenbrier River Trail](#) are available at, among other outlets, the West Virginia store at the Culture Center in Charleston and at <http://www.wvbookco.com/ProductDetails.asp?ProductCode=greenbrierrivtr>

(An itsy, bitsy bit more on the next page)



WHO ARE THESE PEOPLE?

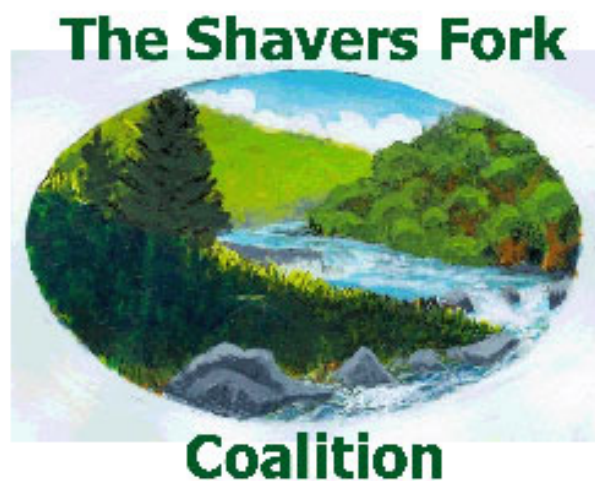
As reported elsewhere (Board Highlights, p.10) the West Virginia Highlands Conservancy recently gave a seat on our Board to The Shavers Fork Coalition. Jim Van Gundy will be its representative.

The Shavers Fork Coalition is an environmental group. It is dedicated to long-term cooperation among watershed interests in order to promote and care for the unique qualities of the Shavers Fork for the purpose of improving the region's quality of life. It describes its vision this way:

We see the Shavers Fork watershed as a resource that, through its cultural heritage, natural appeal and ecological health, will sustain an outstanding quality of life and a diverse economic community for present and future generations.

Jim Van Gundy taught biology and environmental sciences at Davis and Elkins College for (approximately) a bazillion years. He has now retired from that position. Many, many years ago he was on the Board of the Highlands Conservancy and led outings for the group. In the time since he left the Board he has, among many other things, served for a time on the West Virginia Environmental Quality Board.

Welcome aboard!



THE REST OF THE STORY ON THE BOARD MEETING (Continued from p. 10)

At lunchtime we had a presentation by Saro Lynch Thomason on the Battle of Blair Mountain. It was wonderful. See the story on p. 11.

We also had a personal, in the flesh (or, to be precise, in the scrap iron) appearance by "Mountain Melody: Phoenix Duet." by Mark Blumenstein. We are raffling it off: tickets are still available. See the information right over there.



A GREAT STORY WELL TOLD

When he was about six one of our son Samuel's similes was "boring as a meeting." As meetings go, the winter meeting of the West Virginia Highlands Conservancy Board was not bad. But I can see Samuel's point.

What changed the meeting from the usual necessary, productive, and only occasionally entertaining meeting was the halftime show. It was great!

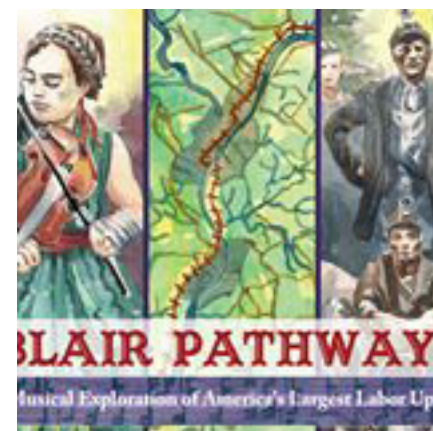
We had a presentation by Saro Lynch-Thomason. She is a ballad singer, illustrator, and amateur folklorist now living in Asheville, North Carolina. Her presentation is a combination of narration, singing, and photographs on the West Virginia mine wars between 1900 and 1921.

For the presentation she collected songs that were being sung by miners and their friends and neighbors at the time of the mine wars. She also collected photographs from both West Virginia and national archives.

The result is a forty five minute presentation that blends songs, pictures, and words to tell the story of the America's greatest labor uprising. In her format she tells the story in three ways at the same time. She offers some narrative, usually just a few sentences at a time. During the narrative pictures appear on a screen. Then she sings a song from that time. She does not exactly talk about the pictures; she does not say, for example, "This is the company store at Whipple." She tells the story, the songs tell the story, and the pictures tell the story, all woven together.

And what a story it is. It is a story of an epic struggle, a fight for fair wages, safer conditions, and basic human rights. It is a story of a people in such desperate conditions that they were willing to take up arms. It is a story of a political system that can't, or won't, address the conflict. Prepare to be moved.

If you would like to arrange a presentation, you may contact Saro Lynch-Thomason at <http://www.blairpathways.com/the-mine-wars-show/>. There is also a music CD, *Blair Pathways: A Musical Exploration of America's Largest Labor Uprising*. It is a collection of songs from the time covered by artists of today.



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.



LEMONADE FROM LEMONS, SO TO SPEAK

By Colleen Anderson

Like many others, I'm distressed and angry about the chemical leak that fouled my city's water supply and turned off the taps for three hundred thousand taxpayers. But I can't sustain my outrage without a dose of laughter now and then. And it occurs to me that Charleston may want to consider looking for a niche in the extreme tourism market. So, with the help of my co-writer and accompanist, George Castelle, I've put my thoughts into a song:

Charleston—the town inimical
Hip, historic, cool and chemical
Yes, there's sludge, and it could spill
So if you're looking for a thrill...it's

Charleston—we're excellente
Whole place smells like Good n' Plenty
You'll get accustomed to the stink here
Just don't shower, eat or drink here

Flush your pipes and flush your hoses
Close your eyes and hold your noses
Flush your drain and flush your sink
Now fill your glass...let's have a drink

Charleston's a real big time
Come on in, the water's fine
It's a dandy place for a holiday
Unless you work for the E.P.A.

Methyl cyclo hexane methanol
May not even kill us after all
But downstream they're goin' batty
It's on its way to Cincinnati...from

Charleston—there's no place hotter
Better bring some bottled water
Climb our mountains, if you care to
Y'all come back, now, if you dare to

© 2014 Colleen Anderson and George Castelle

Note: If you want to listen to this song, go to www.wvpublic.org and follow the link. Listening to the song, and the bouncy tune that goes with it, makes it even easier to remember that it is a joke.

MORE FROM CYNTHIA D. (Continued from p. 2)

issue to one topic..."WATER; Our Thirsty World". I purchased extra copies and gave them to my local legislators. None acknowledged receipt.

"Throw the bums out!" say some, as a suggestion for improving legislative action. But how would good candidates be recruited and how would they fund their election efforts? Enhanced by the "Citizens United" decision, the political funding by extraction industries here is well maintained. Those industries work to limit regulation.

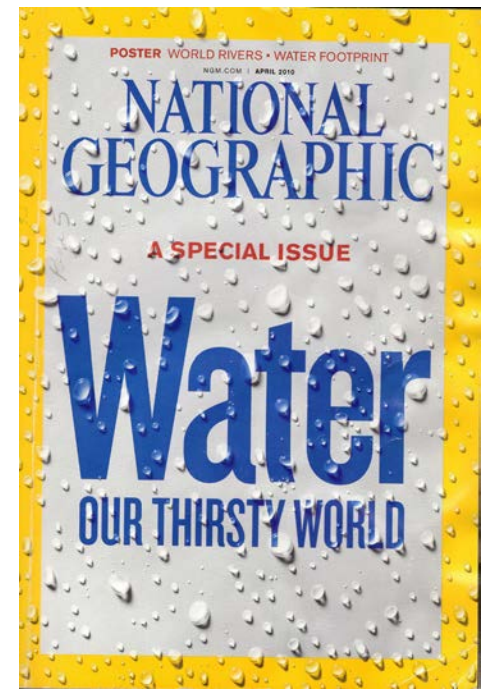
"Take Back the Tap". I have liked the name and the focus of that campaign. There are so many negative aspects of bottled water--- questionable sources, content, impact of bottle production and disposal/recycling---that I could support the idea that we should all work to make our own local water convenient, affordable, and safe. However, now, here, we have been told we can "take back" our tap, but our trust is gone.

In my own area, to complete bird surveys at a lake reservoir maintained by the Putnam PSD, I had to have an approved application to enter the site, with an affidavit of purpose, a referral, and two pieces of ID. We are learning that other water sites are not so secure.

So--- to return to the word "ironic"--- there is one definition which uses an opposite as an example. It poses, "What's NOT ironic?" Answer~ "It's just an unfortunate scenario; there's no reversal of expectations."

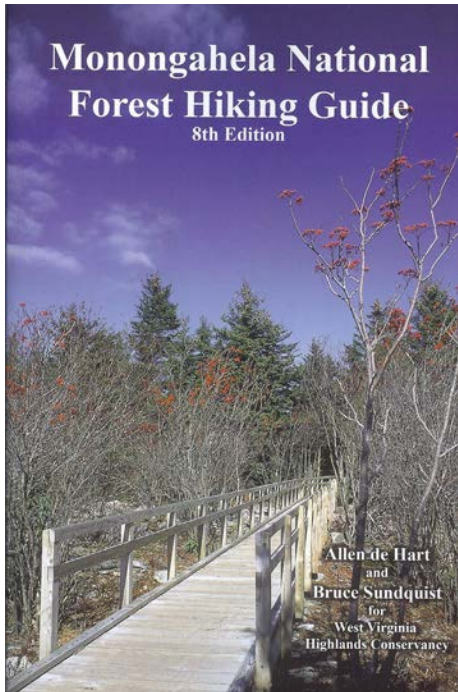
The water at a roadside park in 1956 may not have been ironic. Perhaps, in early 2014, the water supplied by West Virginia American Water to nine counties may not be either. But the latter, laced with at least two hazardous substances, is a deeply "unfortunate scenario".

And anyone who reads The Voice knows it was preventable.



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)

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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.



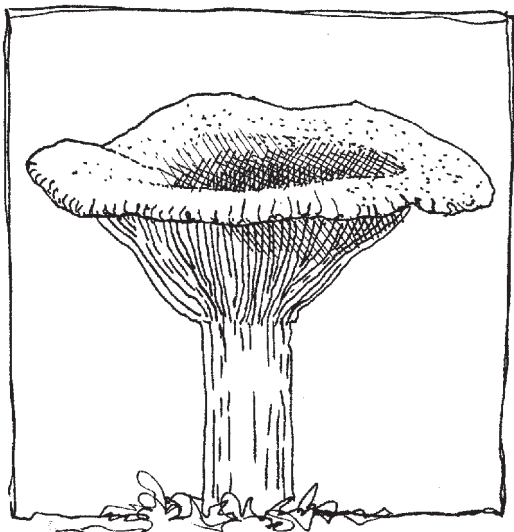
TEAM MONITORING WATER NEAR MINE

In 2008, International Coal Group proposed a longwall mine in Taylor County, adjacent to Tygart Lake State Park in the Tygart Valley River watershed. Although the mining permit was overturned twice, the requisite permits have now been issued, and the Leer Mine will begin operation. The mining permit includes areas of planned subsidence, or settling of the surface into the void left by the removal of coal. This has the potential to impact groundwater and surface water quality and quantity in the watershed.

Taylor Environmental Advocacy Membership (TEAM) and the West Virginia Highlands Conservancy (WVHC) retained Downstream Strategies to perform baseline monitoring of water sources in the watershed prior to mining operations from 2008 through 2013. As longwall mining has just begun, Downstream Strategies will continue water quality monitoring at established sites, and a new phase of the project will begin.

With continued funding from WVHC, the next phase provides free resources for individual landowners who may be undermined and potentially affected by subsidence. Downstream Strategies will be available to answer landowner questions about changes in their water resources via the Taylor Environmental Help Line for Longwall (TEHLL). Landowners can also request Downstream Strategies to conduct pre-and/or post-mining surveys of the water resources, including streams, seeps, springs, ponds, or wells. Information collected may include flow or water level information, field measurements (pH and conductivity), photos and/or video, and GPS information. A confidential database will be maintained as digital storage for landowners and to monitor the impacts of longwall mining around the Leer Mine.

Potential impacts to water resources from subsidence can include stream channel bed fracturing, loss of flow through such fractures, pooling or damming of water behind fractures, loss or relocation of springs and seeps, water level changes in wells, or changes in water quality. Taylor County landowners around the mine who notice any of these issues or other changes are encouraged to contact Downstream Strategies Project Manager Kendra Hatcher to report their observations so they can be tracked or investigated. Kendra can be reached by calling (304) 292-2450 or by email at khatcher@downstreamstrategies.com.



PROPOSED SURFACE MINE CAUSES CONCERN TO KANAWHA STATE FOREST FOUNDATION

By Bill Hall

In 2009 Keystone Development submitted a new surface mine application to the WV Department of Environmental Protection. The permit would cover 597.87 acres parallel to Middlelick Fork and across the valley from the southeast slopes of Kanawha State Forest. The operation, including active mining and reclamation, would span about five years. The application has been reviewed, studied and contested by state and federal regulatory agencies as well as Board representatives of the Kanawha State Forest Foundation.

An informal conference was held on November 12, 2013, at Riverside High School to allow for education and comment from the public regarding the application. Several revisions to the mining plan were announced in response to the issues impacting Kanawha State Forest.

The overall permit acreage had been reduced to 413.8 acres; any temporary in-channel pond construction or permanent valley fill had been eliminated; there would be a buffer between mining activity and all identified ephemeral and intermittent streams; there would allegedly be no affect on jurisdictional waters; and there would be a minimum buffer of 588 feet from the Kanawha State Forest.

The proposal also clarified no topsoil substitute would be used in reclamation. Topsoil would be removed ahead of the mining operation and used as the final cover for the regarded development prior to seeding. The application also specifies the mine site will be returned to approximate original contour.

While these are welcome changes, Kanawha State Forest Foundation Board member Doug Wood was authorized to draft a letter detailing numerous other concerns as well as recommendations on behalf of the Foundation.

His remarks addressed issues related to the broad impact of explosive blasting; potentially damaging effects on forest wildlife and their habitats, especially species in greatest need of conservation and the federally endangered Indiana Bat; and compliance with water quality standards. Steps to ensure enforcement, punitive measures and/or mitigation proposals for violations, and a suggestion for the reclaimed mine site to be donated to the public domain were outlined.

Many thanks to Doug for his meticulous and scientific treatise that had been sent to the DEP permit supervisor and then forwarded to the acting director of the Division of Mining and Reclamation. Copies were also sent to the state DNR Mining Coordinator and representatives of the US Fish and Wildlife Service.

The permit application has been extended and a ruling by DEP is pending.

LEGAL UPDATES

MINGO-LOGAN COAL COMPANY

The Highlands Voice has reported extensively (Most recently in December, 2013) on the controversy over whether the United States Environmental Protection Agency may veto mining permits issued by the Corps of Engineers when the water quality impacts are unacceptable. The most recent development was that the coal company Mingo-Logan Coal, had asked the United States Supreme Court to review the ruling of the lower Court. The lower Court had held that the Environmental Protection Agency had that authority.

Now the Solicitor General of the United States, who represents the EPA, has until February 14 to file a response. The Justices of the U.S. Supreme Court will probably meet privately on March 21 to decide whether it will review the case.

The only question to be decided March 21 is whether or not the Court will review the case. This case could end with a wimper if the Court says, “No, thank you.” If it says yes, then the Court will set a date for a full hearing when the parties will appear, prepared to slap leather.

BLAIR MOUNTAIN

As reported in the November, 2012, issue of The Highlands Voice, the West Virginia Highlands Conservancy and several other groups are parties in a case to determine whether the Blair Mountain Battlefield belongs on the National Registry of Historical Places. Blair Mountain was the site of the 1921 Battle of Blair Mountain that ended an unsuccessful three-year struggle to unionize the coal miners of Logan, Mingo, McDowell, and Mercer counties.

The United States District Court ruled that the Keeper (who says what places go on the National Register) properly ruled that the battlefield should not be on the Register. The plaintiffs, including the Highlands Conservancy, sought to appeal this ruling but were dismissed for lack of standing.

“Standing” is law talk for having a dog in that fight. It is based upon the assumption that controversies are best decided when the litigation is between people who stand to gain or lose something as a result of the litigation. If there is no possible gain or loss as a result of the litigation, then the parties don’t have a dog in the fight. In legal terms, they lack standing.

The plaintiffs appealed the ruling that they did not have standing. A hearing has been set before the U.S. Court of Appeals for the District of Columbia Circuit has scheduled oral argument in our case for the morning of Thursday, February 6.

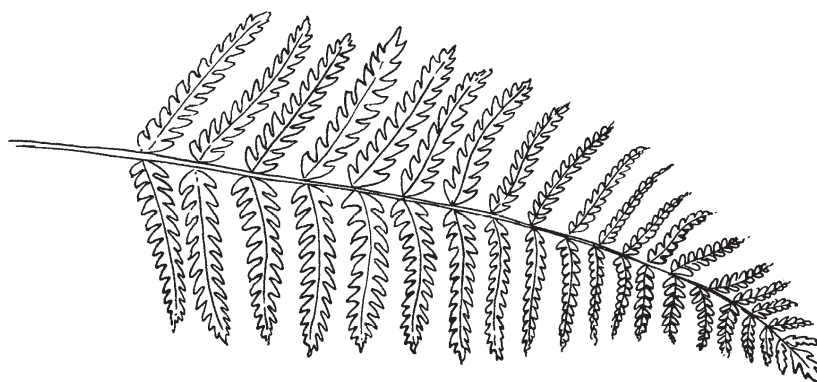
If the Court reverses the standing decision then the case will go back to the District Court for a decision on the merits—whether the battlefield belongs on the National Register.

ALEX ENERGY IN KANAWHA CIRCUIT COURT

The Circuit Court of Kanawha County (Kaufman, J) has upheld the West Virginia Environmental Quality Board’s decision holding that a permit issued to Alex Energy for its Peachorchard surface mine improperly omitted an effluent limit for selenium.

The West Virginia Department of Environmental Protection had originally issued the permit with no limit on the amount of selenium that the mine could discharge. The West Virginia Highlands Conservancy and the Sierra Club appealed that decision to the West Virginia Environmental Quality Board which reversed the Department and held that a limit on selenium was required.

Alex Energy appealed that ruling to the Circuit Court of Kanawha County. That Court recently upheld the ruling of the Environmental Quality Board.



HIGHLANDS CONSERVANCY BOUTIQUE



► The baby (and tyke) 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