



# The Highlands Voice

The Monthly Publication of the West Virginia Highlands Conservancy

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## Mountaintop Removal Operations to Get More Scrutiny

### NATIONWIDE PERMIT SUSPENDED

The United States Army Corps of Engineers decided June 17, 2010, to suspend Nationwide Permit 21 in six Appalachian states. In its press release announcing the suspension, the Corps said:

*The U.S. Army Corps of Engineers announced today it has suspended the use of Nationwide Permit 21 (NWP 21) in the Appalachian region of six states. NWP 21 is used to authorize discharges of dredged or fill material into waters of the United States for surface coal mining activities. The suspension is effective immediately and applies to the Appalachian region of Kentucky, Ohio, Pennsylvania, Tennessee, Virginia and West Virginia. NWP 21 continues to be available in other regions of the country.*

*The suspension in Appalachia will remain in effect until the Corps takes further action on NWP 21 or until NWP 21 expires on March 18, 2012. While the suspension is in effect, individuals who propose surface coal mining projects that involve discharges of dredged or fill material into waters of the United States will have to obtain Department of the Army authorization under the Clean Water Act, through the Individual Permit process.*

*The individual permit evaluation procedure provides increased public involvement in the permit evaluation process, including an opportunity for public comment on individual projects.*

*The Corps determined after a thorough review and consideration of comments that continuing use of NWP 21 in this region may result in more than minimal impacts to aquatic resources. Activities that result in more than minimal impacts to the aquatic*

*environment must be evaluated in accordance with individual permit procedures. Therefore, NWP 21 has been suspended in this region and coal mining activities impacting waters of the U.S. in this region will be evaluated in accordance with individual permit procedures."*

This is the decision that was the subject of the October 13, 2009, hearing that turned into a pro-coal rally, a chance to bully anybody who disagreed with the pro-coal forces, a near riot, etc. (See *The Highlands Voice*, November, 2009). At that and other hearings in six states, about 6,000 people attended (including a substantial number of WVHC members) and about 4000 gave oral testimony (including WVHC members).

The mob atmosphere that existed at the October 13 hearing prevented there being any real discussion of the proposal. Fortunately, there were other opportunities for commenting on the proposed change. The West Virginia Highlands Conservancy, as well as several other groups (Ohio Valley Environmental Council, Coal River Mountain Watch, Kentucky Riverkeeper, Kentucky Waterways Alliance, Kentuckians for the Commonwealth, Southern Appalachian Mountain Stewards, the Strip Mining Committee of Save Our Cumberland Mountains, Sierra Club, National Wildlife Federation, and Natural Resources Defense Council) made written comments upon the proposal

Overall, the Corps received approximately 23,000 comments.

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## ***From the Heart of the Highlands***

by Hugh Rogers

### **The Senator We Knew**

*The industry of coal must also respect the land that yields the coal, as well as the people who live on the land. If the process of mining destroys nearby wells and foundations, if blasting and digging and relocating streams unearths harmful elements and releases them into the environment causing illness and death, that process should be halted and the resulting hazards to the community abated.*

--Senator Robert C. Byrd, May 5, 2010

Senator Byrd was with us at the beginning of our life as the West Virginia Highlands Conservancy, and he was with us at the end of his life as West Virginia's dominant political figure. In between, we had a complicated relationship.

Before the Highlands Conservancy was incorporated, before it even had a name, Senator Byrd was one of two featured speakers at the first Fall Highlands Review, in 1965 (the other was Secretary of the Interior Stewart Udall). It was a rainy evening on Spruce Knob. Under the big tent, a portable generator provided lights and sound amplification for several warm-up speakers who made no bones about their opposition to proposed dams and highways in the Highlands. Then came the Senator's turn—and the generator failed. He said it was the first time he'd ever had the lights turned out on him.

The year before, the Senator had spoken in favor of the original Wilderness Act, saying that its opponents "seem to consider the chances of exploitation or further development of remaining areas of wilderness better under administrative designation." That Wilderness Act didn't involve any lands in West Virginia. Byrd's opinion reflected his bias in favor of legislative control. He never cared much for administrators.

Subsequently, he would find money to buy the mineral rights under Dolly Sods, support Otter Creek's designation, and after several years' delay during which a land swap was worked out to gain mineral rights, see to it that the Cranberry also became a wilderness area. Further greening that deal was an appropriation to Pocahontas and Webster counties to make up for their loss of coal severance taxes. Our board member Larry George said, "Senator Byrd saved this bill so many times I lost track."

In 2004, a consortium of wilderness advocates gave Byrd a National Leadership Award, and five years later his support was crucial to the Wild Mon Act.

His role in establishing the Canaan Valley National Wildlife Refuge (it took fifteen years to persuade him) and the New River Gorge National River, and acquiring the Mower Tract on the upper Shavers Fork for the Monongahela National Forest, was similar. Whenever conservationists could simultaneously appeal to his pride in West Virginia's natural resources and his extraordinary skill in securing federal money for the state, he'd be on our side.

Not so when we opposed giant "infrastructure" projects. In the late 60's and early 70's, the Highlands Conservancy led the fight against the Rowlesburg Dam, which would have flooded the Cheat all the way up to St. George. It was a typical Corps of Engineers project: the benefits would go to barge companies and their shippers and the economy of Pittsburgh; the costs would come from the residents, land, and economy of Preston and Tucker counties in the Senator's

**(More on p. 10)**

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## MORE ABOUT MINING PERMITS (Continued from p. 1)

The 1,750 comments The Corps considered “substantive” were about evenly split for and against the modification and suspension.

Nationwide Permit 21 is what is known as a “general permit.” General permits are designed for activities that produce minimal environmental impact. They allow such activities to go forward with less scrutiny than there would be for activities that produce a more substantial impact.

Nationwide Permit 21 was issued in 1982 to allow dredged or fill material to be discharged into the waters of the United States from all surface mines without the scrutiny that would come if projects were examined individually.

Since 1997, the minimal scrutiny approach authorized by Nationwide Permit 21 has been used 1,473 times nationwide. Approximately 1,204 have been in the six states covered by the suspension.

The world has changed since 1982. Here is how the Corps of Engineers explained it:

*Since NWP 21 was first issued in 1982, surface coal mining practices have changed, and surface coal mining activities in the Appalachian region of Kentucky, Ohio, Pennsylvania, Tennessee, Virginia, and West Virginia have become more prevalent and have resulted in greater environmental impacts. Mountaintop surface coal mining activities increased because many of the remaining coal seams in the Appalachian region were less accessible to non-surface coal mining techniques. Since the late 1990s, there have been increases in concerns regarding the individual and cumulative adverse effects of those activities on the human environment and the natural resources in this region, including streams and other aquatic resources.*

In light of this new reality, the Corps of Engineers has suspended NPW 21. This would mean that mining projects which discharge dredged and fill material into the waters of the United States could do so only after more exacting scrutiny of review of individual projects.

Activities that were authorized by NWP 21 will be allowed to continue unless the district engineer of the Corps of Engineers takes action in a particular case. They may not be modified to allow additional filling of streams.

It has, of course, been the position of the West Virginia Highlands Conservancy for many years that NWP 21 was bad policy and probably illegal as well.

## GROUPS SUE MINES OVER SELENIUM POLLUTION

The West Virginia Highlands Conservancy, the Sierra Club, Ohio Valley Environmental Coalition, Coal River Mountain Watch, have taken legal action to hold three coal mining companies accountable for dumping harmful amounts of toxic selenium into local waterways.

The companies, including Massey Energy, Arch Coal, and Patriot Coal, through their subsidiaries, are dumping unlawfully high amounts of toxic selenium into waterways from more than 20 coal mines and associated facilities in West Virginia. Selenium is a toxic heavy metal that causes deformities and reproductive problems in fish and amphibians. At very high levels, selenium can pose a risk to human health, causing hair and fingernail loss, kidney and liver damage, and damage to the nervous and circulatory systems.

Although the Clean Water Act permits held by the mine operators all include limits on the amount of selenium the mines can discharge, the West Virginia Department of Environmental Protection (DEP) has consistently given the operators extensions on the amount of time they have to bring their discharges below those limits. As a result, the operators continue to discharge selenium at levels above the limits considered safe by DEP and the federal Environmental Protection Agency.

The most recent extensions all expired by April 5, 2010. Rather than lower their pollution, the operators have tried a variety of legal tactics to avoid compliance, such that they are continuing to dump excess amounts of toxic pollution into West Virginia waterways. Although DEP filed actions against several coal mine operators over the last week for the operators’ violations of selenium limits, these actions do not seek immediate compliance but again provide the operators with even more time to continue dumping pollutants.

The groups filed their three legal challenges in the United States District Court for the Southern District of West Virginia. They are represented by attorneys with the Appalachian Center for the Economy and the Environment.

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

The West Virginia Highlands Conservancy web page is [www.wvhighlands.org](http://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.

# GOLDEN OPPORTUNITY

By Cynthia D. Ellis

It all began on Facebook. Through that internet medium, I saw exciting photos of winter captures of Golden Eagles in the mountains of West Virginia. I'd been a volunteer at the Allegheny Front Migration Observatory at Dolly Sods in Grant County and had helped with the hawk counts at Hanging Rock Migration Observatory in Monroe County, so I knew the thrill of watching numbers of raptors course by, and of seeing songbirds in the hand, briefly, before their release. I imagined it must be quite an experience to do the same with a bird that is larger than a bobcat and that has talons nearly as massive as a man's fist.

Golden Eagles, with their golden tawny nape plumage, are less well-recognized, but certainly as majestic as Bald Eagles, and have long been a species of mystery here. There are no breeding records, although the birds were seen often enough in most seasons of the year to warrant advice to cattle and sheep farmers to shoot them as "varmints" in earlier times. Birders too, have avidly hunted for them with binoculars.

So I was more than ready to attend a West Virginia Department of Natural Resources luncheon seminar, in March, on a study of seasonal populations of Golden Eagles in our state. There Trish Miller and Mike Lanzone, researchers from the Carnegie Museum of Natural History's Powdermill Nature Reserve, shared a program on their current studies.

Miller and Lanzone, with the cooperation of other groups including The National Aviary, the WV Department of Natural Resources, and the Pennsylvania Game Commission, want to determine the extent of wintering Golden Eagles on eastern mountain ridges. Unlike eagles in the American West, eastern Golden Eagles have not been extensively studied. Indeed the work by the Powdermill teams leads them to believe that the eagles here may be a distinct subspecies, separate in several characteristics [wing measurement, leg size, behavior] from their western counterparts.

Miller and Lanzone's presentation noted that eastern Golden Eagles breed in eastern Canada from the Gaspé Peninsula of Quebec to the northern reaches of Newfoundland and Labrador. Curiously there is often a telltale growth of orange lichens below their rocky aeries. The entire population is migratory. Their core of their wintering range virtually IS the area of the West Virginia mountains.

The team's research dispels notions about Golden Eagles primarily using expansive open areas here, as in the west. It was newly found that they winter in high-elevation forests

and use the forest as well as small open spaces, in their winter roost and feeding locations.

There are multi-faceted conservation concerns for this bird. There is the expansion of human population that creates a number of problems, including habitat loss. There is also lead poisoning through ammunition-laden prey, persecution, and collision with human-made structures.

The narrower focus of this study was to determine the numbers and travel routes of Golden Eagles in high ridges of Pennsylvania and West Virginia. "We want to know how they are using ridges," Miller said. Also, "We want to know how weather and topography affect flight altitude and position along ridge tops so that we can understand the potential impacts of wind power development on migrants."

Some eagles were captured and fitted with solar-powered satellite transmitters in Quebec and Pennsylvania. In West Virginia, bait for traps was road-killed deer. Surveyors were surprised at the number, usually 6-8 birds, that easily and quickly discovered bait stations. "This varied a lot with each site. The most surprising thing was when a single bird discovered a site within an hour of a carcass being dropped. At the most productive sites we counted a minimum of 15 individuals in a season (based on plumage differences)," Miller recalled.

The team developed new high frequency transmitters for this project, to determine fine scale movements and habitat use. With data resolution fine enough to detect the use of thermals by eagles, the study can show how

birds respond to topography differently. The telemetry will enable researchers to see the response of birds to the turbines of wind energy installations.

At wind facilities the risks may be the more obvious [turbine or blade collision] or less obvious [loss of habitat, loss of "lift" for migration, and "avoidance" behaviors. So, "... our goal is to model flight behavior in the ridge and valley province so that we can predict which individual turbines or which turbine facilities pose the greatest risk to migrants," Miller noted. "We can use the model to make recommendations to remove, move, or shut down individual turbines. In some instances entire facilities may be poorly sited in which case we would recommend that the installation not be approved. In other cases we may find that the facility as a whole poses little risk to eagles."

The team is hopeful that this study will be useful in planning and evaluating wind turbine facility sites. The home ranges (breeding grounds, not wintering locations) of eagles are being used to identify overlap with wind development. Because spatial pattern and land use appear to be consistent by the birds, and core use areas appear to be similar, predictions will be possible. Potentially even more helpful, models may be developed to identify strike probability in 3D and can be used to modify siting!

Miller noted that their studies point to the distinct probability of the presence of hundreds of Golden Eagles in West Virginia each winter and that we, regionally, have a high responsibility for ensuring the safety of them in that season and during migration. She spoke of her team's positive interaction so far with "game and non-game folks," and urged us to start thinking about "active" management.

I too was hopeful as I left the March meeting and began to take in this new information. Conservation-minded birders, like concerned folks everywhere, are scrambling to find out more about how our energy uses affect the environment that supports us. Studies such as this may help provide one part of solutions that can sustain us---and the birds.



**Golden Eagle with transmitter, along with Barb Sargent, WVDNR, and Trish Miller, Powdermill Nature Reserve. Photo courtesy of Barb Sargent**

*Note: Pennsylvania nature writer Marcia Bonta has a wonderful piece on her website about the banding of a Golden Eagle by Miller and Lanzone on Bonta's mountain property. <http://marciabonta.wordpress.com/category/birds/golden-eagles/>*



# GAS WELLS IN CHIEF LOGAN: AN UPDATE

By John McFerrin

The battle by the West Virginia Highlands Conservancy, the Friends of Blackwater and Cordie Hudkins (a retired Chief of the West Virginia State Park System in the West Virginia Division of Natural Resources) will be heard by the West Virginia Supreme Court of Appeals on Wednesday, September 22, 2010.

The action would also affect all other state parks as well, potentially clarifying the law to make it clear that state law prohibits oil and gas drilling in state parks. This is significant not only for Chief Logan State Park but for the other parks where West Virginia does not own the mineral rights--Babcock, Blackwater Falls, Canaan Valley, Cedar Creek, Pipestem, Twin Falls and Watoga.

The controversy began in late 2007, when Cabot Oil and Gas applied to the Department of Environmental Protection for a "well work permit" to drill within Chief Logan State Park. A "well work permit" normally addresses such things as roads to the well site, plans for casing the well, plans for sediment control, and other technical aspects of the well.

The Department of Environmental Protection denied the application for a well work permit based upon a statute that had always been considered to prohibit gas wells in State Parks.

The denial became controversial because protection of the Parks is most directly the responsibility of the Department of Natural Resources, not the Department of Environmental Protection. Cabot Oil and Gas, as well as the mineral owner Lawson Heirs, contend that only the Department of Natural Resources can enforce this statute. Cabot and the Lawson Heirs also contend that it has always been the policy of the Department of Natural Resources to allow gas well drilling on State Parks. They point to several instances of gas wells which are located on State Parks. From this, they conclude that the Department of Natural Resources must not object to the drilling of gas wells in Parks.

Based upon these arguments, in June, 2009, the Circuit Court of Logan County reversed the decision of the Department of Environmental Protection and ordered that the well work permit be issued. The Department has not yet issued the permit and no work has yet begun in the Park.

The Circuit Court in Logan based his ruling, in part, upon his understanding that the Department of Natural Resources had frequently allowed gas well drilling in State Parks. There is even an existing gas well in what is now Chief Logan State Park. From this, it is easy to infer that the DNR does not believe that such drilling was illegal.

It now appears that his understanding was based upon incomplete information. There are several instances of gas wells located on State Park land. Those wells were, however, drilled before the land became part of a State Park. This is true of the well in Chief Logan. The Department of Natural Resources routinely denies requests to drill on State Parks. It does so because it believes that drilling for oil or gas on a State Park would be illegal.

Now Mr. Hudkins and the citizens groups are going back to Court in order to make sure that the Court has all the facts necessary to make a correct ruling. They believe that, were the Court presented with all the facts, it would determine that oil and gas drilling on all State Parks—including Chief Logan—is prohibited by law.

The West Virginia Department of Environmental Protection and the West Virginia Division of Natural Resources both oppose the ruling and have appealed as well. The West Virginia Chapter of the

Sierra Club has also intervened in the case; it is appealing, seeking the same result as the West Virginia Highlands Conservancy, Friends of Blackwater, and Mr. Hudkins.

The case has drawn the attention of industry interest groups as well. The West Virginia Farm Bureau has filed a Motion for Leave to File Brief as *Amicus Curiae*. Translated literally as "friend of the court", *Amicus Curiae* is a legal term for a person or entity which believes it has some information that would help the Court make a wise decision. According to its filing, the Farm Bureau is a "grassroots organization that provides training, education, information, and economic services to its members." It seeks to protect "the rights and interests of every landowner in West Virginia regarding the sanctity and integrity of real property deeds and the conveyance thereof." It favors drilling in the Park.

The West Virginia Oil and Natural Gas Association has also filed a Motion for Leave to File Brief as *Amicus Curiae*. It wishes to make sure that the Court appreciates the importance of private property rights, particularly the reservation of mineral rights. It also favors drilling in the Park.

Court convenes at 10:00 a.m. although this case may not be the first on the docket. Arguments are broadcast on the internet. To learn how to watch go to <http://www.state.wv.us/wvsca/Webcast.htm>

**Note: The West Virginia Highlands Conservancy needs money to pay ongoing litigation expenses. Any donations may be sent to West Virginia Highlands Conservancy at P. O. Box 306, Charleston, WV 25321.**

## 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 \$12 total by mail; **long sleeve** is \$15. 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.



## Join Now !!!

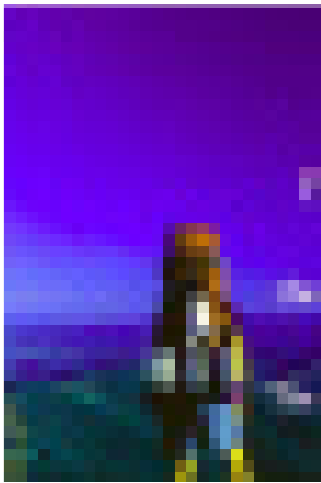
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Sustaining	\$100	\$ 150	\$ 200
Patron	\$ 250	\$ 500	\$ 500
Mountaineer	\$500	\$ 750	\$ 1000

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 \$24.95, plus \$3.00 shipping, visit the Conservancy's website, [wvhighlands.org](http://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 \$24.95, we are offering it as a premium to our members. Anyone who adds \$10 to the membership dues listed on the How to Join membership form (right up there ) will receive the history book for free. Just note on the membership form that you wish to take advantage of this offer.

This offer is available to current members as well as new members. Current members may add \$10.00 to the amount they pay when they renew their memberships and receive a book as well.

### HATS FOR SALE

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

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

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

Pictures of both appear on our website [www.wvhighlands.org](http://www.wvhighlands.org). Both are soft twill, unstructured, low profile with sewn eyelets, cloth strap with tri-glide buckle closure. Cost is \$15 by mail. West Virginia residents add 6% tax. Make check payable to West Virginia Highlands Conservancy and send to Jaames Solley, P.O. Box 306, Charleston, WV 25321-0306



# BOARD HIGHLIGHTS

By John McFerrin

The Highlands Conservancy had a day of greeting new members, plodding through the mundane, and hearing a lot about issues.

We welcomed new members Beth Baldwin, Wayne Spiggle, and Mike Withers. Beth is the representative of TEAM (Taylor Environmental Advocacy Membership). Wayne is the representative of Allegheny Highlands Association. Both of these groups were recently granted a seat on the Board. Mike Withers was elected as a member at large at the annual meeting in October, 2009.

Among the mundane stuff, treasurer Bob Marshall reported that we are doing well enough. We had a successful fund appeal.

Webmaster James Solley reported that 6-7,000 different people visit our web site each month. What he needs now is content. We have all these pages but not enough content to fill them up. He knows plenty about bits, bytes, and such but he needs people to send him material.

On issue reports, Don Gasper reported on a national Trout Unlimited initiative to *Bring Back the Brookie*. They want to help connect brook trout streams and support measures to cool off stream segments below headwater streams so that they will be more hospitable to brook trout. The United States Forest Service is also interested in working to recover brook trout streams.

On matters legislative, Don Garvin reported that there is something brewing on forestry. The West Virginia Division of Forestry is supposed to re-do its forest management plan but it has not gotten it done. The legislature is concerned so something will probably happen.

Don also reported that the legislature is doing a review of the oil and gas industry, a review that the Governor supports. This effort is in large part a reaction to the increased activity in the Marcellus Shale. A group of people who have an interest in this issue has been

assembled and we have been active in that. Don thinks there will be a bill addressing problems with oil and gas in the 2011 legislature.

The Department of Environmental Protection is doing its triennial review of water quality standards. Proposed are weaker iron and mercury standards.

On other matters legislative, Frank Young talked about the Fall Conference of the West Virginia Environmental Council, expected to be scheduled for September or October. Because the West Virginia Highlands Conservancy is a member of the Environmental Council, it has an opportunity to make suggestions about its legislative agenda for the 2011 legislative session. Frank would like to have suggestions by July on what we want.

On matters mining, Cindy Rank reported on various pieces of litigation in which we are involved. Some of these were described in the June, 2010, issue of *The Highlands Voice*. We also talked about the United States Environmental Protection Agency's proposed veto of the Spruce #1 permit for the Blair area of Logan County, WV. At the time of the meeting EPA was still accepting public comments on that veto. Cindy suggested that we all make comments supporting the veto.

Frank Young reported on the progress (or lack of progress) of PATH, the proposed electrical line stretching from West Virginia to the east. As things have turned out, the companies seeking to build the line do not have the evidence that there is sufficient demand to justify building it. They have asked for a delay in the Public Service Commission proceedings until they believe they can show that the line is necessary.

**Note: The meeting was in May as part of the Spring Review. There was not enough room to report on it in the June issue of The Highlands Voice so here it is now.**

## Our Readers Write

### Nothing new under the sun

Dear Mr. McFerrin:

Reading the lead-off piece in the June issue of *The Voice* written by President Hugh Rogers was like re-watching a bad movie I had seen many years previously. Same plot, same dialog, same setting; the only thing different is that there were new actors. It was as if Hollywood was running out of new ideas and was issuing a remake of an old horror film some 43 volumes later.

"A miner should not have to choose". Indeed, he should not have to. He should not have had to chose today at the May 18, 2010 EPA hearing just as he should not have had to make that choice back in the late 60's when I first heard the plaint at a public hearing in which I was present. The present, poignant remark uttered by a Pike County KY miner, "This is our livelihood and our way of life. This is all we know" differs not from the comment I heard oh so many years

ago when another miner in another locale at another public hearing said similarly, "I don't want to bulldoze the mountainside, but show me something else to do to make a living here and show my boy something to do so he doesn't have to move away." You really can not argue with either man.

But whether it is a clear cut across the gorge from (then) Grandview State Park to Massey's plans for eradicating the Blair Mountain battlefield, the real problem is the same. The present WVHC faces the exact same problem as that we faced decades ago. And THAT is the real problem.

After so many years, why hasn't anything been done to solve the crux of this problem? No Byrds, Randolph's, Rockefellers, Rahalls, Mollahans, Moores, Manchins, or any others we elect to public office have done much to wrestle with this dilemma and I do not expect anything

from the new crop riding their white horses smeared with the mud slung around the recent primaries.

But then neither have we. I regard this predicament, together with the increased demand for our resources brought about by the needs of more and more of our people, as the two most important problems facing conservationists in the 21<sup>st</sup> Century.

May you present activists acquire greater wisdom than your immediate predecessors.

Sincerely,

Bob Burrell

Founding Editor, *The Highlands Voice*  
Morgantown, WV

# West Virginia Mountain Odyssey



## Outings, Education and Beyond 🇺🇸

**Saturday-Monday, July 10 to 12, 2010. Cranberry Wilderness Backpack, MNF, WV.** 18 miles total. Hike in 5 miles and set up camp at Big Beechy Falls. On the second day we'll climb steeply up to the plateau, hiking about 10 miles. Extra water will be required for that day. The final day will be an easy 3 miles back to the cars. Pre-registration required. Contact Mike Juskelis at 410-439-4964 or [mjuskelis@cablespeed.com](mailto:mjuskelis@cablespeed.com).

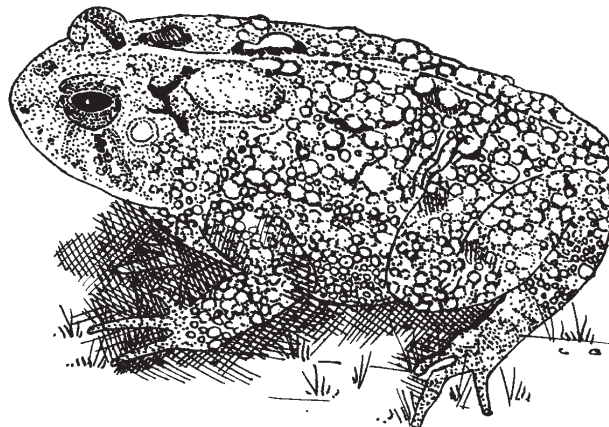
**Saturday-Monday, September 04 to 06, 2010 (Labor Day Weekend).** Roaring Plains Base Camp Backpack and Day Hike, MNF, WV. Backpack in 2.5 miles and set up a base camp at the Hidden Passage. Day 2, strenuous 12-14 mile day hike along the canyon rim. Lots of boulder fields and fantastic views. Day 3, Backpack back out the way we came in. Pre-registration required. Contact Mike Juskelis at 410-439-4964 or [mjuskelis@cablespeed.com](mailto:mjuskelis@cablespeed.com).

**Saturday-Tuesday, September 18 to 21, 2010. Lake Sherwood, MNF, WV.** Car Camping and Day Hiking. The first hike (11 miles/moderate) will start at the campground and will follow the eastern shore of the lake and the western ridge of the valley. A short drive will be required to set up an 11 mile, moderate shuttle hike through the newly proclaimed Big Draft Wilderness Area featuring the beautiful Anthony Creek. Pre-registration required. Campsites are first come, first served. Contact Mike Juskelis at 410-439-4964 or [mjuskelis@cablespeed.com](mailto:mjuskelis@cablespeed.com).

**Saturday September 25: Red Spruce Restoration volunteer opportunity,** 10 am at Canaan Valley National Wildlife Refuge. Join us and help plant 5,000 red spruce seedlings. Contact Dave Saville at (304) 284-9548 for more information.

**Saturday-Monday (or Tuesday), October 09 to 11 (or 13), 2010. Cooper's Rock State Forest, WV.** Car Camping and Day Hiking. As of now this is a three day trip with an 8 mile circuit hike within the park to visit the Cheat River and a vista. It is possible this will be extended an extra day if more good hiking is close by. Pre-registration and campsite reservation is required. Contact Mike Juskelis at 410-439-4964 or [mjuskelis@cablespeed.com](mailto:mjuskelis@cablespeed.com).

**Open Dates: Visit Kayford Mountain south of Charleston to see mountain top removal (MTR) up close** and hear Larry Gibson's story about how he saved his mountain, now almost totally surrounded by MTR. Bring lunch for a picnic on Larry's mountain. Call in advance to schedule. Julian Martin (304) 342-8989; [martinjul@aol.com](mailto:martinjul@aol.com) or Larry Gibson (304) 542-1134; (304) 549-3287.





# DEP PROPOSES “TIER 3” STATUS FOR STREAMS ON PRIVATE LAND

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

On May 12 the West Virginia Department of Environmental Protection published official notification in local newspapers that it is proposing to add three streams located primarily on private land in Preston County to the Tier 3 stream list.

The three streams are all located in Preston County. They are classic, pristine West Virginia native brook trout streams that fully deserve to be protected from future degradation.

Tier 3 designation would provide these streams on private land the highest level of protection under the antidegradation provisions of the federal Clean Water Act. The three streams would be the first private-land streams designated as Tier 3 since the Legislature adopted the new antidegradation provisions in 2008.

This proposal is based upon a nomination the DEP received on November 23, 2009, to add the entire lengths of Watkins Run, Fill Hollow Creek, and an unnamed tributary of Fill Hollow Creek to the Tier 3 list. The nomination was made by Ladd Williams on behalf of Friends of Laurel Mountain.

In his nomination, Mr. Williams documents that the streams are “abundant with aquatic insects and native brook trout.” The nomination also documents, among other things, excellent water quality in the streams, and includes petitions signed by an overwhelming majority of the adjacent landowners in support of the designation. The entire nomination package may be viewed by visiting the Water Quality Standards home page on the DEP’s Web site: <http://www.dep.wv.gov/wqs>.

Watkins run was previously nominated and adopted as a Tier 2.5 (Waters of Special Concern) stream by the West Virginia Legislature in May, 2005. EPA approved this nomination in September, 2006 and Watkins Run was the state’s only Tier 2.5 stream from September, 2006 to September, 2009, at which time EPA approved the DEP’s recommendation to eliminate the Tier 2.5 designation from its water quality standards rule and adopt the new Tier 3 provisions.

Tier 3 waters are also known as “Outstanding National Resource Waters” and are afforded a higher level of protection than Tier 1 and Tier 2 waters. Most native brook trout streams on public lands automatically qualify for Tier 3 protection. But streams primarily on private lands must be nominated for protection. Any interested party may nominate a water to be listed as an Outstanding National

Resource Water. And DEP’s decision to list streams as Tier 3 waters no longer requires legislative approval.

There are eight qualification criteria to be considered in determining whether to assign an Outstanding National Resource Water designation to a stream, as follows:

- 1) Impact on private property owners
- 2) Whether the interests of all affected parties have been adequately represented during the nomination and designation process
- 3) Location of the water
- 4) Previous special designations
- 5) Existing water quality
- 6) Factors that indicate outstanding ecological value
- 7) Factors that indicate outstanding recreational or aesthetic value
- 8) Other factors determined by the Secretary, when applicable

Generally, nominations that fail to address at least three of the qualification criteria will be considered insufficient. The DEP has determined that Mr. Williams’ Tier 3 nomination satisfies the minimum criteria.

Streams granted Tier 3 status are to be maintained, protected, and improved where necessary. Any proposed new or expanded regulated activity that would degrade the water quality, other than temporarily, is prohibited. This requirement only applies to point source discharges, such as sewage treatment plant and industrial discharges. It does not apply to non-point source activities, such as timbering, farming, and oil and gas drilling, as long as best management practices are implemented and maintained.

Since our beginnings in 1989 the West Virginia Environmental Council and our member groups have fought to protect the water quality of all the state’s rivers and streams. In 2008 we succeeded in getting the Legislature to eliminate the ridiculous Tier 2.5 stream category, that allowed degradation of those waters.

WVEC has sent DEP a letter in support of this Tier 3 stream nomination. DEP will announce its final decision sometime after the end of the public comment period on July 12.

(Acknowledgment: much of the material in this article was provided by DEP staff.)

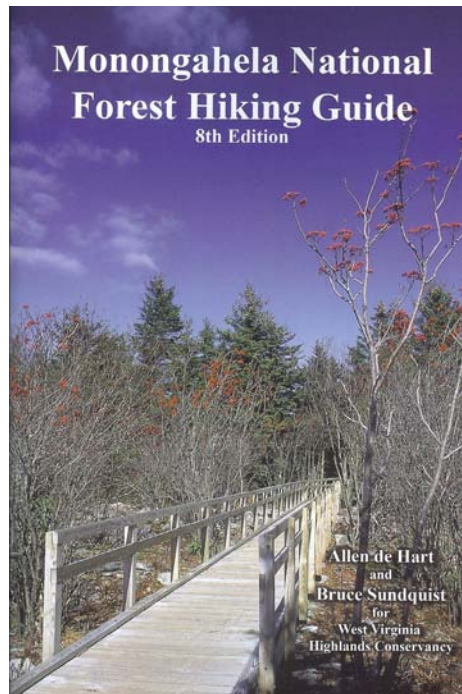
## BROCHURES

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

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

## **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)

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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.

## MORE FROM PRESIDENT HUGH (Continued from p. 2)

state. Why would he want that? We can only suppose that early in his incumbency he was still learning to play the game, and for his mentors, including the late Senator Jennings Randolph, securing a multi-million-dollar dam for your state was a traditional way to run up the score.

It's to the Senator's credit that he eventually backed off from Rowlesburg. Early leaders of this organization had persisted long after the game was said to be over, and we had a dedicated ally in Congressman Ken Hechler—plus a statutory ally in the brand new requirement for an Environmental Impact Statement.

However, the stymie on the Cheat practically guaranteed a dam on the West Fork. The Stonewall Jackson Dam became a priority for Byrd. Never mind that the rules for cost-benefit analysis would not have allowed that project to go forward—the Senator would change the rules. Never mind that the Congressman from that district opposed the dam—the Senator would reach across the Capitol and threaten retaliation against any in the House of Representatives who voted for Bob Wise's anti-dam amendment. One Hechler was more than enough!

That was the Senator we had to confront over Corridor H. In 1990, he left his position as Majority Leader to become chair of the Appropriations Committee. "I hope to become West Virginia's billion-dollar industry," he told reporters. One of his first steps was to revive the last piece of the Appalachian Highway system in the state.

There were good reasons why Corridors D, E, G, and L

had been built before the last hundred miles of H. Any way it went between Elkins and the Virginia line would carve through the heart of the Highlands. Its cost in dollars and damage would be greater and its benefits less than all the others. Over twenty-five years, our Highway Committee had parried each version of Corridor H until it was again put on the back burner. But now the Senator was at the stove. He repeatedly said he had nothing to do with the route it would follow; once that was chosen, he would make it happen.

In April 1994, Bonni McKeown, President of Corridor H Alternatives, and I were granted an interview—a favor for Bonni, who had worked with him on saving the Cardinal, the only passenger train through West Virginia. This was not in the senate office building but in S-128 at the Capitol, the Appropriations Committee's spread of reception areas, august office and conference room, all overlooking the Mall. A general hush announced the Senator's entry. His hair had gone completely white. His movements had slowed. When he told us that his staff had already expressed his position exactly, but he had decided to tell us himself, we understood the toll on him.

In the conference room, the table stretched into a dim distance. Each committee member's name was engraved in antique script on a brass plate at his place; there was room for twenty-nine members and uncountable staff. The Senator arranged himself at the head of the table and fixed his gaze on us. "Go ahead, Bonni," he said. "You

**(Hugh's on a roll, more on the next page)**



## HUGH FINISHES UP (Continued from page 10)

say what you want to say.” Bonni reviewed the history and extent of opposition to the project, and turned to me for the economic arguments.

Thirty years of experience with the Appalachian corridors had demonstrated which four-lanes fulfilled their economic purpose and which had little effect. I wanted to say that corridors could be different, indeed should be different in different landscapes. Reaching for a rhetorical flourish, I addressed him as a historian, author of a multi-volume history of the Senate; I quoted Abraham Lincoln’s message to Congress in December, 1862: “As our case is new, so we must think anew, and act anew. We must disenthrall ourselves . . .”



The Senator’s eyes widened, he leaned forward and said with great conviction, “The case is NOT new!”

The Byrd I knew was ever the jealous protector of the legislative branch from the co-equal branches. He considered the most important function of the legislative branch was the power of the purse. He had attained the seat of that power—evident in the majesty of the rooms at S-128. And he would use that power in traditional, concrete ways. Dams. Highways. Buildings. If he could have, he would have moved all the administrators—bureaucrats—out of Washington to West Virginia, where they might not act any better but at least they’d pay state taxes.

The year after our interview, opposition to the corridor reached its high water mark. The Environmental Protection Agency (EPA) rated the project “Environmentally Unsatisfactory”. Senator Byrd was incensed. He made sure the regional administrator was fired, and the rating was modified.

We turned to the third branch of government, the judiciary, and again we had some success. But that’s not part of the story of the Senator and us. As far as I know, it didn’t matter to him that we emerged after

trial, appeal, and mediation with an altered route and with some issues that may not be resolved for twenty more years. As long as construction went forward, he was still West Virginia’s billion-dollar industry.

Now we come to coal. On our long campaign against the abuses of that industry, Senator Byrd offered neither significant help nor hindrance until relatively recently. In 1999, four years after the EPA’s Corridor H rating, Judge Haden announced his decision in *Bragg v. Robertson*: valley fills were illegal; mountaintop removal mines should no longer be permitted. A calculated hysteria swept the state capitol, and although he surely didn’t have to, Byrd went along. The exaggerations in both cases were almost comically similar: No highways can be built! All mining will cease! The state’s finances are in crisis! The sky will fall! But this time, the Senator’s power fell short of his grasp. His legislative rider to circumvent the Surface Mine and Clean Water Acts failed.

It’s no surprise that the melancholy history of coal continued after that pause. The judge’s decision was reversed, the regulations were perverted, the mountains were blasted away. What surprised us was Senator Byrd’s change of heart in his last year. It was as if, having turned completely around on civil rights and Presidential wars, he was finally ready to really look at the industry that had shaped where he grew up, “one of the rock bottomest of states.”

This time, when the EPA announced that from now on mountaintop removal mines would be both fewer and smaller, he refused to join the hysterical chorus. Instead, he offered this wisdom:

*It is also a reality that the practice of mountaintop removal mining has a diminishing constituency in Washington. It is not a widespread method of mining, with its use confined to only three states. Most members of Congress, like most Americans, oppose the practice, and we may not yet fully understand the effects of mountaintop removal mining on the health of our citizens. West Virginians may demonstrate anger toward the Environmental Protection Agency (EPA) over mountaintop removal mining, but we risk the very probable consequence of shouting ourselves out of any productive dialogue with EPA and our adversaries in the Congress.*

*Some have even suggested that coal state representatives in Washington should block any advancement of national health*

*care reform legislation until the coal industry’s demands are met by the EPA. I believe that the notion of holding the health care of over 300 million Americans hostage in exchange for a handful of coal permits is beyond foolish; it is morally indefensible. It is a non-starter, and puts the entire state of West Virginia and the coal industry in a terrible light.*

--December 3, 2009

### Speakers Available !!!!!

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

### 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](mailto:blittle@citynet.net). Electronic copies arrive as e-mail attachments a few days before the paper copy would have arrived

### Send us a post card, drop us a line, stating point of view

Please email any poems, letters, commentaries to the VOICE editor at [johnmcferrin@aol.com](mailto:johnmcferrin@aol.com) or real, honest to goodness, mentioned in the United States Constitution mail to John McFerrin, WV Highlands Conservancy, PO Box 306, Charleston, WV 25321.



# RAMSEY'S DRAFT-EAST BACKPACK

By Mike Juskelis

I was joined by Dr. Mike, Short Stack, The Oscillator, Gadget Gyrl, Heidi and Bubbles. We donned our packs and headed up the Draft. In the five years since I hiked the western loop things have really changed. Before, most of the mammoth Hemlocks were dead. Now all but a handful are surviving the attack of the Woolly Adelgid. There are young trees all over the place but a quick examination of the underside of their needles revealed that they would also succumb to this parasite. I remember having to climb over a few of these giants that had fallen to the ground but the number has increased dramatically. In places there were blowdowns on top of blowdowns.

We didn't mind it too much as we hiked along the sections that were once an old CCC road. The trail here was wide, smooth and nearly flat. But when the trail diverted to a recently constructed sidehill path or turned into the narrow, steep and rocky climb near the end of the first day the blowdowns really sucked the strength out of a person. Still, even with these obstacles it was a good hike .... tough but good.

To help ease the extra effort the trail was lined with plenty of wildflowers. There were the usual violets and wild geraniums but also Golden Ragwort, Painted Trillium, Canada Violets, Wood Anemone and more. We reached camp around 4:30. With the weather turning south in a hurry and no one wanting to risk a fire with the high winds we all quickly ate and rode the wind out in our tents. We climbed 2000 feet over 7.4 miles

today.

We were ready to go by 8:20 so up the Hiner Spring Trail we went. Except for a couple of initial blowdowns the route was 180 degrees different from the previous day. A large part of the trek was just outside the Wilderness so was better maintained. The hiking was much easier. There were several climbs but although the cumulative gain was around 1500 feet most of them were pretty



gradual. Fortunately, most of the time, there was just enough tree cover to shelter us from the brunt of the wind.

There were several nice views of the mountains to the east with hardly a sign of civilization of any kind. We dipped down into a saddle between two ridges and then climbed up to Bald Ridge and the junction

with the Wild Oak National Recreation Trail and turned south onto it. We found the wildlife pond easily enough but we had to walk around for a few minutes before Doc found the turn off onto the Bald Knob Trail. (I think that is what it is called. There is no sign for it and the USFS map doesn't give it a name.)

This ridge walk was also surrounded by flowers but besides what we had seen yesterday there were also Pussy Toes, Golden Alexander, Yellow Pimpernel, Turkey Beard, Fly Poison (Just starting to bud), Beards Tongue Fly Pink, **Small Flower Phacelia** and Gay Wings.

We took a break about four miles into the hike and then another at about six miles in. At one point the trail left the ridge and followed a nasty little sidehill until the ridge came back down to join it. From this sidehill to the end the route was outside of the wilderness. Yellow diamond blazes and signs would mark the rest of the way to the end.

We turned right onto the Bridge Hollow Trail and followed it down to the Draft. At the end of the trail we found a set of stone steps that were apparently built back in the 1930s by the CCC. Building the cribbing that held them up must have been a very labor intensive task, all done by hand. After one last ford we soon found ourselves back at our vehicles. We quickly freshened up and headed to T-Bone Tooter's for an early dinner. Today we hiked 9.5 miles and climbed 1200 feet.

## 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.)



WEST VIRGINIA HIGHLANDS CONSERVANCY, PO BOX 306, CHARLESTON, WV 25321-0306 • www.wvhighlands.org



# BACKPACKING THE CRANBERRY BACKCOUNTRY

By Mike Juskelis

[Frosty Gap-Cowpasture Backpack](#), MNF, WV.

Last August Precious and I did 2 long day hikes, [The Pocahontas-Cowpasture Loop](#) and [Frosty Gap-Pochahontas Loop](#), with the intention of melding the two to form a 25 mile, 3 day backpack, something that might be short on scenery but high on solitude. In other words, a good holiday weekend trip away from the hordes that would be descending upon the usual hiker magnets like Dolly Sods, Otter Creek and Seneca Creek. Once again we succeeded.

I was joined by Carol, Andrea, Tim, Janet, Gadget Gyrl, TreebeardIM, Hank, Bad Penny and Bubbles. Nine of us set off heading north on the Pocahontas Trail (Hank would catch up to us about 3 miles in.) The switchbacks that took us around the summit of Blue Knob made the climb near effortless. The hike down to RT 39 is typically a pleasant stroll on old jeep and haul roads but we encountered several large blowdowns that had to be negotiated.

The portion beyond Rt 39 is far less traveled and is very overgrown and hard to follow in places even though it is, for

the most part, also an old haul road. The frequency of trail blockages also increased. It seemed at times that we spent more effort on getting beyond these than we spent actually hiking. Still we managed to roll into camp around 5:30. Although very pretty, the ground surrounding the forks of Left Branch is not very good for camping. Our tents were nearly on top of each other but we managed to squeeze them all in. Eight o'clock found us all heading to bed in anticipation of an eleven mile second day.

We got on the trail by 8:30 the next morning, wanting to get the majority of the elevation gain out of the way before the sun got high in the sky. It took us less than an hour to reach Frosty Gap Road. After a brief break we started the 5 mile forest road walk, each at our own pace. Just as drudgery and boredom began to set in we reached the gate marking the end of the road and found a shady spot for lunch.

The descent down the remainder of the Frosty Gap and Kennison Mountain Trails was pretty pleasant but trail conditions degraded rapidly after we turned onto the South Branch Trail. Not only were the

blowdowns many and difficult to negotiate but portions of the trail were quite wet, more than I remember the previous two times I used it. After crossing the Cranberry Forest Road it was a much easier walk to our camp. Tonight we settled down in a palatial Red Spruce grove off of the Cowpasture Trail. Our hiking day was finished by 3:00.

Monday proved to be the best hiking day of the weekend, not just because it was short at 5.5 miles but because the trail was mostly old railroad grades in deep forest with exceptional views of Cranberry Glades. We were on the trail by 8:10. I think that's the earliest we've ever gotten on the trail.

Perhaps visions of brunch at the Biscuit World in Lewisburg provided some extra impetus. Whatever it was that put an extra spring into our steps got us back to the Nature Center by 10:30. We cleaned ourselves up, said goodbye to Gadget Gyrl (who was heading in the opposite direction) and soon found ourselves sitting in a cool restaurant and chowing down on some of (at least for the moment) best food around.

## LOGGING IN BLACKWATER CANYON THREATENS ENDANGERED SPECIES

The West Virginia Highlands Conservancy has joined with the Friends of Blackwater and several other groups in a notice to the United States Department of the Interior, the United States Fish and Wildlife Service, and Allegheny Wood Products, Inc. of the groups' intention to take legal action pursuant to the Endangered Species Act.

The controversy arises out of timbering in Blackwater Canyon and the danger it presents to species that are protected by the Endangered Species Act. According to the letter, the logging imperils the habitat of the endangered Indiana bat (*Myotis sodalis*), the endangered Virginia big-eared bat (*Corynorhinus townsendii virginianus*), and the threatened Cheat Mountain salamander (*Plethodon nettingi*). The area in controversy is also home to the Virginia northern flying squirrel (*Glaucomys sabrinus fuscus*), which was recently removed from the list of endangered species.

The Endangered Species Act makes it illegal to "take" an endangered species. "Take" means to harass, harm, or kill the species. This includes habitat destruction.

A determination that the facility will harm the endangered Indiana bat is not necessarily a death sentence for the timbering. The Endangered Species Act allows the issuance of what is called

an "incidental take permit." Such a permit allows a person or other entity to lawfully take an endangered species, without fear of incurring civil and criminal penalties, "if such taking is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity."

An "incidental take permit" must be issued by the United States Fish and Wildlife Service but only when the Fish and Wildlife Service attaches strict and enforceable conditions designed to minimize the impact on imperiled species. The application for such a permit is required to contain information on steps the applicant will take to protect the species. The application for such a permit must be published and comment solicited from interested persons.

The Fish and Wildlife Service has previously determined that logging will present a threat to some or all of these endangered species. In spite of this, Allegheny Wood Products has decided to continue logging.

The groups have asked that Allegheny Wood Products cease all logging until there is a plan in place for protecting endangered species. If it fails to do so, the groups have by this letter announced their intention to take legal action.

## BIG UGLY TO HAMLIN

By Lenore McComas Coberly

My mother was twenty-nine and six months pregnant with my younger sister and I was four years old when my father was killed in a gas drilling accident. Somehow Mother, Ida Hager McComas, kept herself together and delivered a healthy baby but her own health never fully returned. Sometimes I was sent to visit my Hauldren cousins on Big Ugly Creek where my mother was born and spent her childhood.

I loved Big Ugly and playing with my cousins. There was the creek with minnows and cool deeper pools where sunfish could be caught with a worm for bait on a bent pin. Wild flowers bloomed on the hillsides and the sulphur water was cool from a well behind the log house. Best of all was sleeping in the bed with two cousins and talking late into the night. It was probably before nine o'clock but we thought it was late!

Once, when I became very homesick, almost immobile, my aunt, Edna Hager Hauldren, my mother's sister, explained to everyone that I needed to rest on the wicker couch in the front room and I was not to be bothered. The life of the busy/house moved around me. Great Aunt Lena Ferrell allowed her battery radio to be played on Friday night and the room was full of relatives from up and down the creek. I recovered, feeling no embarrassment because everyone was happy that I was better.

It is clear to me now that these journeys of mine on the C&O train to Fry and over Green Shoal Mountain on a mule behind Great Uncle Glint Ferrell were designed to help my mother. Sometimes caring for my baby sister was all she could manage but at other times she took a leadership role in our small town activities, particularly in the church,

Mysterious boxes would be stored in our unheated dining room at Christmas time. When, on Christmas Eve, Santa would bring boxes of candy for all the children at the church the boxes would disappear. We learned at a young age that Santa was really Mr. Garfield Pauley, Sunday School superintendent and principal of the grade school.

As I grew older I helped to pack the little boxes with candy bought in bulk. There were bright ribbon candies, creamy Christmas trees, peanut butter filled pillows, cinnamon red hots, and, best of all, malted milk balls. The boxes had pictures of the manger scene on the front and a quote from the Biblical Christmas story on the back.

Mother also chaired the tuberculosis

campaign in our county. We sold Christmas seals for a penny each and small red pins for a dime. Keeping that account straight could not have been an easy job. I grew up knowing that our mother was much loved and that our father had been as well.

It was during those years that I would come home from school and find Mother resting on the couch with a wet cloth on her head. These were the days when her headaches were worst and they became more and more frequent. I would boil eggs or make potato soup for our supper and Ovaltime before we went to bed. Grandpa Charlie McComas, my father's father, came often to see that we were all right and tried several times to make a match between Mother and a local bachelor. We laughed about that.

When I was ten years old, my lifelong friend, Geraldine Hall, who lived with her grandparents in the next house down the hill, died of tuberculosis. I thought that I would die also. The fact that I did not die showed me the reality that my heart could break but that I would not die. I know now that Grandpa Philip Hager reinforced this toughness in me. He knew all about living with a broken heart.

His wife, my Grandmother Sarah Ferrell Hager, died when she was twenty-eight years old. They lived on Big Ugly Creek and her sister, Lena Ferrell, helped to raise his four daughters before he moved to Hamlin where they could go to school. My Aunt Madge Hager Adkins was only eight when her mother, Sarah, died and she was to be the mother for the rest of her life. When the time came that I had to assume an adult role, they did not doubt that I could do so.

When Mother was thirty-eight, my sister, Ruth Elaine, and I were told that surgery for a brain tumor had been only partly successful. We had gone on the train with Grandpa Hager and Mother to Richmond where she could be treated. The doctor in West Virginia had told us this was necessary. We stayed in a rooming house on Monument Avenue near the University of Virginia Hospital where many resident doctors and interns also boarded. The owner of the house, while something of a southern snob regarding hill folks, was unfailingly kind to us and the other roomers often took us on little journeys, trying to help us forget our fear and grief. I will always consider southern civility to be one of God's great gifts to a disgruntled world.

In spite of the operation and great care,

the prognosis was grim. Mother was sent home on strong pain medication and we were told that she would soon become blind and die. They did not understand the strength of character

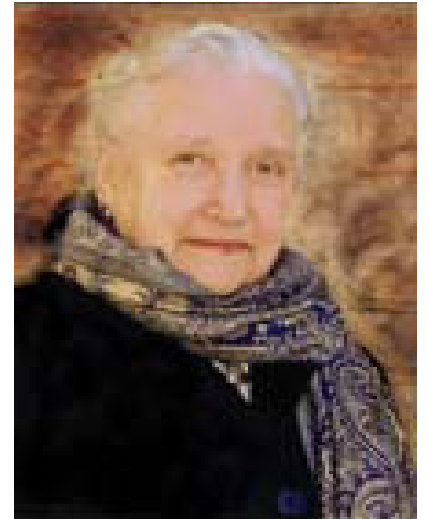
in her frail body. She decided for herself that she would quit taking the medication and she was determined to live for her children. We were never able to forget that we were on borrowed time with our mother but Ruth Elaine and I had a good three years left with her. They would be years of accelerated growing up.

In the spring of my freshman year at the university at Morgantown I was called to the Dean of Students office and told that my mother had been killed in an automobile accident. An elderly neighbor who survived the crash told us Mother said, "I can't see," just before they went over the mountainside.

My sister and I cleaned the house with the help of our neighbor, Mrs. Roberts. The Walter Hauldrens bought the house. One day Uncle Walter Hauldren, kindly father of five, sat down by me on the front porch steps and told me I could not take Ruth Elaine to Morgantown with me. Our mother had arranged for her to go to Aunt Madge Adkins' in Huntington. I appealed to Grandpa Hager and he said there was nothing I could do. I was not "of age."

I returned to Morgantown just before final exams began. I focused so completely on those exams that my grades were extraordinary. My chemistry professor, Lillie Belle Dietrich, may have been responsible for this focus. When I went to her and asked to take the exam late she told me about how she had left Hitler's Germany leaving all her friends behind. She pointed out that I had lots of friends and that one was waiting in the hall for me right then. I could expect no special treatment from her.

Furious, my friend, Mary Louise Elmore, and I decided to show her. We virtually memorized the freshman chemistry



**(A little more on the next page)**



## BIG UGLY CONTINUED

text, committing to memory examples of gas law problems which we knew would be included in the test.

An old woman now, I am still grateful to those who guided me to maturity. After long experience writing and teaching writers, I have written the story of my mother and her sisters and their journey from Big Ugly to Hamlin. It is called SARAH'S GIRLS: A Chronicle of Big Ugly Creek and is available from Ohio University Press. This book is my tribute to the character and strength to be found in the people of Lincoln County.

**Ms. Coberly's book, *Sarah's Girls* was reviewed in the May, 2007, issue of *The Highlands Voice*. The December, 2006, issue of *The Highlands Voice* had a description of the destruction of the Big Ugly area which is referred to in this essay.**

### A friend from afar

Dear John McFerrin

I am emailing from England. Quite by chance I caught the film 'Black Diamonds'. I love the music of Appalachia. (I play the 5-string banjo). I saw a TV programme with West Virginia in its synopsis showing in the early hours of the morning and recorded it, not realizing what it was about. Now I've seen it, I'm absolutely horrified. . You seem to be up against such powerful vested interest. You are admirable people. Obviously there's not a lot I can do from over here but wish you well. Although I would be interested to know if any of the Coal Companies involved are British owned.

Very best wishes

Vic Wood

## Song of Thanks

Betsy Reeder

I remember Dad saying it's presumptuous  
To dream of a heaven better than this  
This earthly heaven we find a million ways  
To diminish

This time of year with its generous days  
Says turn your eye to the hayfield's fireflies  
Monarch rising  
Thunderhead  
Your ear to the meadowlark  
Wake to mornings drenched with dew and birdsong

Open the ground for baby plants:  
Coreopsis and butternut squash  
The dirt under my fingernails holds more life  
Than a whole shopping mall

There's a turkey in the woods with fourteen following puffballs  
A salamander under a sandstone slab that tumbled into this streambed  
Long before its water had a name  
I've heard the ladies slippers are showing off, both yellow and pink  
Amidst deep greens

I saw a knock-kneed fawn today  
An elderberry in bloom  
The moon in a blue morning sky

My dog ran through tassled grass higher than his head  
Decorated with daisies bowing to the wind  
Shadows of swallow wings flickered  
A killdeer called

I remember lying in the yard looking for four-leaf clovers  
Finding armored lady bugs  
Wild strawberries  
Acorn caps  
Resting my head on a bare, peach-fuzzed arm  
The comforting smell of sun-warmed skin

I'd like to tell Dad I know what he meant  
It's still a charmed life I live  
These mountains and a million million manifestations of beauty  
All around me.

# WATER QUALITY STANDARDS RULE FALLS SHORT

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

Every three years each state is required by the federal Clean Water Act to update its water quality standards. It's called the Triennial Review process, and it's an integral part of the Clean Water Act's attempt to ensure that state water quality standards are protective of human health and the environment.

Since the Legislature took rulemaking authority away from the Environmental Quality Board, the West Virginia Department of Environmental Protection has largely botched this process.

In 2007, DEP's first attempt at a Triennial Review failed to pass the Legislature, largely due to the antidegradation flap over Tier 2.5 and Tier 3. Because it failed to pass, it threw the three-year cycle for WV off a year.

So this year DEP has proposed several changes to the state's Water Quality Standards Rule (47 CSR 2) as its Triennial Review package for consideration in the 2011 Legislature. In the last two years, the agency held only two public meetings regarding these changes. Contrast that to the almost monthly discussions held by the EQB on water quality standards.

The process has broken down, and this year's proposed changes reflect that.

So what's included in this year's proposed rule?

1). **Total Dissolved Solids:** To its credit, DEP has finally proposed a statewide water quality standard for "total dissolved solids" (TDS). These are primarily chlorides (salts) and sulfates normally associated with mining and oil and gas drilling activities. This has been a high profile issue in the news lately due to the TDS problems in the Monongahela River basin (remember Dunkard Creek).

The problem is that DEP is proposing a standard of 500mg/l, which is **twice** as high as the 250mg/l that EPA recommends as the Human Health Standard for total dissolved solids. DEP has provided no explanation why West Virginia's standard should not be at least as stringent as the federal standard. In addition, DEP fails to propose in this rule aquatic life criteria for conductivity, with which TDS levels are closely associated.

In brief, DEP's proposal for a statewide TDS water quality standard falls short of being protective of human health and the environment.

2). **Narrative Water Quality Standards:** Again, to its credit, DEP is proposing to add "certain water withdrawal activities" and "algae blooms" as conditions not allowable in state waters. However, this additional language alone does not go far enough to protect West Virginia streams from either water withdrawals or algae blooms. This is of particular concern when considering the exponential increase of water withdrawals associated with Marcellus shale gas drilling in the state.

West Virginia currently has little regulation and no permit process for water withdrawals from streams, rivers and wells, to provide the water this new drilling activity requires. If we sit back and wait for the DEP to a statewide water resources protection plan in 2013, as mandated by the Legislature, streams will be de-watered and valuable resources lost.

In short, in order to be protective of both human health and aquatic life, DEP should draft legislation for immediate consideration by the West Virginia Legislature that will establish guidelines and a

permit process for water withdrawals.

3). **Iron Standard on Trout Streams:** DEP is actually proposing in this rule to weaken the water quality standard for iron in West Virginia trout waters. Simply because the agency can't figure out how to write clean up plans for streams with high amounts of this pollutant, DEP's answer is to lower the standard.

This rule proposes weakening the current water quality standard for iron on WV's Category B-2 trout waters by doubling the current limit of 0.5 parts per million of iron to 1.0 parts per million, which is the EPA recommended standard for iron on all waters. How our state ever got a water quality standard that is more stringent than the federal standard is another question altogether.

*Simply because the agency can't figure out how to write clean up plans for streams with high amounts of iron, DEP's answer is to lower the standard.*

DEP (and the EPA, for that matter) has few toxicity studies of iron on aquatic life to support its proposal. They have cited a more than 30-year-old study by a DNR fisheries biologist that said trout could survive iron levels as high as 1.37 parts per million. However, these lab studies were done using city water and altering the pH levels by adding vinegar. And the lab study

that led to EPA's recommendation of a federal standard of 1.0 parts per million, did not include pH as a variable.

None of the studies in the current literature take into account the unique characteristics of West Virginia trout waters: low pH, low conductivity, low ionic strength, and low acid neutralization capacity.

In brief, there is ample justification for retaining an iron standard for West Virginia trout waters that is more restrictive than the federal standard. At the very least, the standard should not be changed until more thorough studies are conducted that consider the unique water quality characteristics of WV's trout waters.

There are other proposed changes in this rule concerning nutrient standards and mixing zones that are fairly technical in nature, but are also not protective of human health and the environment.

A water quality environmental working group made up of members of the West Virginia Rivers Coalition, West Virginia Highlands Conservancy, West Virginia Sierra Club, West Virginia Environmental Council, and others, has prepared a set of "group comments" on this proposed rule. This group will be developing fact sheets and action alerts to assist others in submitting comments on the rule.

DEP will hold a public hearing on the Water Quality Standards Rule (47 CSR 2) on Monday, July 19, beginning at 6:00 PM, in the Cooper's Rock Training Room at DEP's Charleston headquarters located at 601 57th Street S.E., Charleston, WV 25304.

The public comment period closes at the end of that public hearing. Until that time you can submit written comments via U.S. mail addressed to the Public Information Office, 601 57th Street S.E., Charleston, WV 25304. You can also submit comments via email to [DEP.Comments@wv.gov](mailto:DEP.Comments@wv.gov)

The West Virginia Environmental Council will post a fact sheet and action alert about this rule on our web site at <http://www.wvecouncil.org/>