

Non-Profit Org.
U.S. Postage PAID
Permit No. 2831
Charleston, WV



The Highlands Voice

The Monthly Publication of the West Virginia Highlands Conservancy

Volume 47

No. 7

July, 2014

OLD MINE SITES—LANDOWNER PAYS

By John McFerrin

The front page headline in the December, 2013, issue of *The Highlands Voice* posed a question: LANDOWNERS AND OLD MINE SITES - WHO PAYS? That story contained some history of efforts to hold mining companies and landowners responsible for pollution from sites where mining is over. For more of that history, check out that story as well as another story in the June, 2013, issue.

If things worked perfectly, all mines permitted since 1977 would have somebody who is responsible for preventing pollution. Beginning in 1977, all permits required that the operator post a bond. While the mine was active the company would control pollution. If it didn't, it could be fined and ordered to do so. If it would not or could not, then the state could forfeit the bond and pay for the cleanup. When the mining was over and, at least in theory, all pollution had stopped, then the bond was released. The bonds have always been inadequate, leading to a whole other set of problems, but this was the way it was supposed to work.

But what of mines where the mining is over, the bond has been released, but there is still pollution? Who pays?

While the answer is never clear or easy and may vary according to the particular circumstances on site, the answer in at least one case is that the landowner pays.

The West Virginia Highlands Conservancy, the Sierra Club, and the Ohio Valley Environmental Coalition have reached an agreement with Hernshaw Partners LLC to settle a lawsuit over ongoing pollution from a valley fill at a strip mine in Mingo County. The agreement resolves a lawsuit which the groups had brought against Hernshaw, alleging the ongoing pollution.

At the Hernshaw Partners site, by at least 1997 the mining had been completed and the performance bond released. Were the system working perfectly, by that time the property would no longer be a source of pollution and the land would be ready for another use. Yet monitoring of the water leaving the site showed that it was still tainted with selenium. Selenium builds up in living organisms over time. Even small concentrations of the pollutant in the environment can accumulate dramatically in the tissue of fish and wildlife. Fish and birds are poisoned by eating selenium-laden food, including contaminated insects, smaller fish or and vegetation. In addition, selenium can cause reproductive problems in fish and wildlife as it's passed from parents to offspring in eggs. In fish, ingestion of toxic amounts of selenium can cause total reproductive failure, birth defects and damage to gills and internal organs.

Because the site was still discharging selenium even after bond release, the environmental groups sued the landowner, asking that it be required to address this problem.

In the settlement of that litigation just reached, Hernshaw Partners LLC agreed to submit a permit application to the state Department of Environmental Protection to cover discharges of toxic selenium from the former mine site in Mingo County. While the application was pending, it would monitor selenium discharges. The permit would set limits on how much selenium could be safely discharged from the site. Once the permit is issued, Hernshaw Partners would be responsible for ensuring that it does not exceed the permit limits.

Note: See related story on page 5.

What's inside:

Thoughts from President Cindy	2	How to join	7	Pipeline in Pocahontas	15
Roster of officers	2	Get a history book	7	Get stuff	16
Recipes	3	Climate change conference	8		
Planting trees	3	Court rules on conductivity	9		
Winning possibility	3	Poetry	10		
Who pays for pollution		Help with the new Hiking Guide	10		
from old mines	5	Get a Hiking Guide	11		
Board meeting coming up	5	Proposed pipeline	12		
What's up with Dunkard Creek	6	Legal updates	14		

Ramblin' the Ridges

By Cynthia D. Ellis

SIZZLE

Sunshine, and plenty of it, means summer to many of us in the Mountain State. And recently, there have been a multitude of stories about sunshine and its growing use; a source that is certainly different from coal in Appalachia. The news is that solar energy components and installation are cheaper than ever before.

Proponents say the benefits of a solar energy system are many:

- Uses a natural resource – the sun
- Can help get electricity to a remote location
- Is emission free
- Employs quiet and durable components with no moving parts and, usually, a 25 year warranty
- Offers rebates
- Requires very low maintenance
- Through usage, increases energy awareness
- Can increase property values
- Can have a small footprint or use existing structures
- Creates local jobs

Naysayers claim that there is too little sun and storing it is problematical, that the equipment is too costly, and that coal will always predominate here. They also cite seasonal and daily sunlight fluctuations and complications with storage batteries. Component production is not benign, they say.

Promoters and enthusiasts feel otherwise. Actually, West Virginia receives plenty of sunlight--just 5 percent less than Florida and 20 percent more than Germany, which can run its entire country on solar power on some days. And there are a growing number of local solar applications. It is fairly easy to find instances of West Virginians harnessing the sun instead of relying on coal-fired energy here now.



In Williamson, there are panels installed by laid-off coal miners

(More on p.6)

Roster of Officers, Board Members and Committee Chairs and Board of Directors

PRESIDENT: Cynthia D. Ellis, 3114 Steel Ridge Road Red House, WV 25168-7724 (304) 586-4135; cdellis@wildblue.net
 SENIOR VICE PRESIDENT: Larry Thomas, P.O. Box 194, Circleville, WV 26804, (304) 567-2602, larryvthomas@aol.com
 VICE PRESIDENT FOR STATE AFFAIRS: Frank Young, 33 Carnian Ford Road, Ripley, WV 25271, (304)372-3945, fyoung@mountain.net
 VICE PRESIDENT FOR FEDERAL AFFAIRS: Marilyn Shoenfeld, 167 Balsam Way, Davis, WV 26260, (304) 866-3484, marilyn.shoenfeld@gmail.com
 SECRETARY: John McFerrin, 202 Van Tassel Court, Morgantown, WV 26508, (304)291-8305, johnmcferrin@aol.com
 TREASURER: Bob Marshall, 2108 Emma Road. Kenna WV 25248; (304)545-6817, woodhavenwva@aim.com
 PAST PRESIDENT: Hugh Rogers, Moon Run, Kerens, WV 26276, (304)636-2662, hugh.rogers@gmail.com

DIRECTORS-AT-LARGE (Terms expire October 2014)
 Sara Bird 127 East Main St., Buckhannon, WV 26201, (304) 545-5695; sarapearlbird@hotmail.com
 Jackie Burns jackie.burns@frontier.com .
 George Beetham, 2819 Mt. Carmel Avenue, Glenside, PA 19038, (267) 252-3748, geobeet@hotmail.com
 Bill McNeel, 1234 Jerico Road, Marlinton, WV 24954, (304)799-4369; wpmcneel@gmail.com
 Peter Shoenfeld, 167 Balsam Way, Davis, WV 26260, (304) 866-3484, (301) 642-2820; PShoenfeld@gmail.com

DIRECTORS-AT-LARGE (Terms expire October 2015)
 Bob Henry Baber, 207 Howard St., Glenville, WV 26351, (304) 462-0320, mayorbobhenrybaber@yahoo.com
 Dave Fouts, HC 80, Box 993, Maysville, WV 26833, (304) 749-8172, foutsberg@citlink.net
 LeJay Graffious, P. O. Box 69, Bruceton Mills, WV 26525; lejay@oldhemlock.org.
 Mike Withers, Rt 2, Box 328, Grafton WV 26354, 304-265-3750, 1nastynash@frontier.net

ORGANIZATIONAL DIRECTORS
 NATIONAL SPELEOLOGICAL SOCIETY:
 PITTSBURGH CLIMBERS: Buff Rodman, 32 Crystal Dr., Oakmont, PA 15139; (412) 828-8983; buffrodman@hotmail.com
 BROOKS BIRD CLUB: Cindy Ellis, 3114 Steel Ridge Road, Red House, WV 25168-7724 (304) 586-4135; cdellis@wildblue.net
 MOUNTAINEER CHAPTER TROUT UNLIMITED: Chris Byrd, 292 Magnolia Ave., Clarksburg, WV 26301 Tel. (304) 622-3023 <cbyrd@ma.rr.com>
 WEST VIRGINIA RIVERS COALITION: Don Garvin, P.O. Box 666, Buckhannon, WV 26201; (304) 472-8716; DSGJR@aol.com
 FRIENDS OF THE LITTLE KANAWHA: Cindy Rank, 4401 Eden Road, Rock Cave, WV 26234, (304)924-5802; clrank2@gmail.com
 TEAM (Taylor Environmental Advocacy Membership): Beth Baldwin, 2594 Knottsville road Grafton, WV 26354, 304-265-3029, elbrn6e21@msn.com
 ALLEGHENY HIGHLANDS ALLIANCE: Wayne C. Spiggle, RR 2 Box 97, Keyser WV 26726, 304-726-4868, wspiggle@mac.com
 SHAVERS FORK COALITION: Jim Van Gundy, 240 Boundary Avenue, Elkins, WV 26241; (304) 636-4736; jjvg01@gmail.com

COMMITTEE CHAIRS
 MINING COMMITTEE: Cindy Rank, 4401 Eden Road, Rock Cave, WV 26234, (304)924-5802; clrank@hughes.net
 PUBLIC LANDS MANAGEMENT COMMITTEE: Marilyn Shoenfeld, 167 Balsam Way, Davis, WV 26260, (304) 866-3484, (304) 704-9067 (301) 642-2820; Marilyn.Shoenfeld@gmail.com
 LEGISLATIVE COMMITTEE: Frank Young, 33 Carnian Ford Road, Ripley, WV 25271, (304)372-3945; fyoung@mountain.net
 WIND ENERGY COMMITTEE: Peter Shoenfeld, 167 Balsam Way, Davis, WV 26260, (304) 866-3484, (304) 704-9067pshoenfeld@gmail.com
 ENDOWMENT FUND COMMITTEE: John McFerrin, 202 Van Tassel Court, Morgantown, WV 26508, (304)291-8305, johnmcferrin@aol.com
 RIVERS COMMITTEE: vacant
 HIGHWAYS COMMITTEE: Hugh Rogers, Moon Run, Kerens, WV 26276, (304)636-2662; hugh.rogers@gmail.com
 OUTINGS COMMITTEE: Dave Saville, PO Box 569, Morgantown, WV 26507, (304)284-9548; daves@labyrinth.net
 MISCELLANEOUS OFFICES
 SPEAKERS BUREAU: Julian Martin, 1525 Hampton Road, Charleston, WV 25314, (304) 342-8989; martinjul@aol.com
 WEB PAGE: Jim Solley, 51 Wanshop Road, Reading, PA 19606, jamessolley@comcast.net
 ADMINISTRATIVE ASSISTANT: Beth Little, 214 Black Gum Lane, Hillsboro, WV 24946 (304) 653-4277; blittle@citynet.net
 HIGHLANDS VOICE EDITOR: John McFerrin, 202 Van Tassel Court, Morgantown, WV 26508, (304)291-8305, johnmcferrin@aol.com

TIME TO PLANT SOME TREES

September 13, 2014 - Red Spruce Ecosystem Restoration, Canaan Valley National Wildlife Refuge. Join us as we continue our efforts to restore the red spruce ecosystem in the West Virginia Highlands. This tree planting event will take place on the Canaan Valley National Wildlife Refuge. We will meet at the Refuge Headquarters and Visitor Center at 9 am. Following an orientation about the red spruce ecosystem and our work to restore it we will car pool to the restoration site. Come dressed for the weather, wear sturdy shoes or boots and bring gloves. Lunch will be provided. Please RSVP! For more information, visit www.restoreredspruce.org, or contact Dave Saville at daves@labyrinth.net, or 304 692-8118.



IF YOU CAN'T BEAT 'EM, EAT 'EM

The May, 2014, issue of *The Highlands Voice* suggested groundhogs as a tool for dandelion control. Because groundhogs appear to like to eat dandelions, having them around should help control what many people consider a noxious weed.

In response, a reader suggested a different approach: eat what you want to control. Many people don't like dandelion greens because they are bitter. However, here's a fun treat. Pick fresh dandelion flowers and dip them in tempura batter. Deep fry and enjoy! The taste is light and delightful. Another tasty treat is to dip elderberry flower sprays in the same batter, deep fry, drain, dip in confectioner's sugar and you have a frilly, tasty donut!

For the tempura batter, try this: ½ cup self-rising flour (or plain flour and appropriate amount of baking powder or soda), ¼ cup cornstarch, 1 tablespoon beaten egg, ½ cup minus 1 tablespoon water, 1 teaspoon oil.

GET YOUR SCULPTURE TICKETS NOW!!!

We are having a donation drawing 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.



The Highlands Voice is published monthly by the West Virginia Highlands Conservancy, P. O. Box 306, Charleston, WV 25321. Articles, letters to the editor, graphics, photos, poetry, or other information for publication should be sent to the editor via the internet or by the U.S. Mail by the last Friday of each month. You may submit material for publication either to the address listed above or to the address listed for Highlands Voice Editor on the previous page. Submissions by internet or on a floppy disk are preferred.

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.

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.

WHITE NOSE SYNDROME UPDATE

Craig Stihler, West Virginia Division of Natural Resources

White Nose Syndrome (WNS) first appeared in New York in 2006 and was first observed in West Virginia in 2009; in that year it was documented in four caves in Pendleton County. Since that time, it has been found in additional counties and by 2012 was present throughout the major karst regions of the state. On a continental scale, WNS has now been confirmed as far west as western Missouri, south to northern Alabama and Mississippi, and north to southern Canada.

WNS, a disease which affects bats during hibernation, is caused by the fungus *Pseudogymnoascus destructans*. This fungus is not native to North America. The fungus is cold-loving and grows on the bats' skin while they hibernate. The skin of an active bat is too warm for the fungus to grow on it, but the fungus thrives on hibernating bats which are cooled to cave temperatures. Unlike most fungi that attack skin, this fungus does not just colonize the skin surface, but grows into and erodes the skin. This leads to tissue damage, especially to the wings. The damage affects a bat's ability to fly, but it also results in water balance problems (such as dehydration) and changes in electrolyte balance. Bats with White Nose Syndrome also arouse from hibernation more frequently than do non-affected bats resulting in early depletion of fat stores they need to survive the winter. Mortality rates from WNS often exceed 90%.

The impact of White Nose Syndrome varies with bat species. The species which appear to be hit the hardest are: little brown bats, northern long-eared bats, and tricolored bats (formerly eastern pipistrelles). These were among the most common bats in the state prior to the arrival of WNS. However, northern long-eared bats were never abundant in caves in West Virginia, so we have little winter data on which to base population trends. Endangered Indiana bats are declining almost as dramatically as little brown bats.

Big brown bats appear to be less affected than the other species, and numbers are staying at near pre-WNS levels. The number of eastern small-footed bats has increased in recent years. While this is encouraging, it is based on a small number of bats seen in winter surveys. The one bit of good news is that endangered Virginia big-eared bats appear not to be affected by the fungus, and their numbers have actually increased significantly since 2009 (the increase in winter numbers indicates an increase of 39%, but for this species, our summer counts are believed to be more accurate and put the increase at around 25%). To date, no Virginia big-eared bat has been observed with the fungus or the associated wing damage. Migratory bats species, such as the red bat and hoary bat, move south in winter and do not hibernate, so they are not affected by WNS.

WV Division of Natural Resources biologists and others have been monitoring bats in caves for decades. Prior to WNS, the little brown bat was the most abundant bat hibernating in caves in West Virginia. Declines of little brown bats at most sites have been over 90% and sometimes over 99%. Overall mortality rate for this bat in West Virginia is 96.3%. Of all our sites that had 100 or more little brown bats prior to WNS, our sites with the "best" survival still exhibited a decline of 91.2%. Tricolored bats have declined nearly

90%. Our "best" site for tricolored bats had a decline of "only" 77%. Declines for Indiana bats have been around 80%, but populations of this species were quite low before WNS appeared, so the total number of this species is quite low. At most sites, the number of remaining Indiana bats is lower than counts in the early 1980s when most of these surveys began. As bad as these numbers are, at this time we do not know if the remaining bats are likely to be survivors or if declines will continue.

When we conduct a bat survey in a cave that has been affected by WNS for a few years, nothing looks wrong. Without knowledge of how many bats used to hibernate there, one would not think there was a problem. In general, most bats affected with WNS left the caves in winter to die somewhere on the landscape; the WVDNR received many reports of bats flying in the daytime in mid-

winter when WNS first started to take its toll. Carcasses of bats that died in the caves have likely been scavenged by raccoons. Inside the cave there are no large piles of bat bones or other signs of the bats that are missing other than scattered guano on the cave floor. The few bats that remain show little or no sign of the fungus, and the fungus-covered muzzles so characteristic of WNS during the first two winters of infection are rarely seen these days. We are hoping this is a good sign, and the WVDNR is working with researchers to monitor the amount of fungus on the bats in the years following the population crash. For now, we like to think that the surviving bats have some ability to fight the fungus and hope

they will produce a new generation of WNS-resistant bats. Only time will tell.

Where do we go from here? Our first concern should be to ensure we do not spread the fungus. Any gear (boots, coveralls, lights, etc.) that is potentially contaminated with the fungus should not be used in WNS-free areas. Cleaning and decontaminating gear between trips is probably something we should have been doing before WNS and should continue to do. There is no silver bullet to fight WNS looming on the horizon, so we need to focus on what we can do to help the remaining bats survive. Now more than ever it is important to limit disturbance during the winter. This may mean not scheduling winter trips into caves that have even small numbers of bats; most cave trips can be done during other times of the year. During the summer, some species could benefit from having a bat house provided for them; this will give them a home they can use for years without getting evicted. Land managers can provide a water source for bats in areas where water is scarce as even small water holes on ridges receive a great deal of use by bats and other wildlife. However, even if all the bats that remain today and all their offspring were to survive, recovery will take decades. Most bats produce only one "pup" each year, and many young bats do not make it to their second year. A slow recovery, however, is better than no recovery, and the fact that there are still bats in New York provides a glimmer of hope for West Virginia's bats. For more information on White Nose Syndrome visit www.whitenosesyndrome.org.

Note: This article previously appeared in *West Virginia Caver*.



WHAT HAPPENS WHEN THE MINING IS OVER—A LITTLE HISTORY

By John McFerrin

Coal mining can be the gift that keeps on giving. Years and decades after the coal is mined the pollution from that mine can continue. In some parts of West Virginia—particularly the northern and central parts—we have mines which produce acid mine drainage decades after the last of the coal was mined. In other parts of the state, we have mines which are still producing selenium long after the mining was over.

The federal Surface Coal Mining Reclamation Act of 1977 was supposed to fix this. It did it by two separate tools. Which of the tools applies depends upon whether the coal was mined before or after 1977.

The Act divided the world into two eras: the Bad Old Days (known as pre-Act) and the Good New Days (known as post-Act). The Act would make anyone who wanted to mine get a permit. The permit would require that the land be reclaimed and require that operators post a bond to make sure that it actually was reclaimed. The Act assumed that, under this system, all future mine sites would be reclaimed and that there would be no more long term pollution problems.

The Act also recognized that, at the time it passed, there were already mines that were no longer producing where there had been no reclamation and which were an ongoing source of pollution. Congress had to deal with those sites too.

To deal with those, the Act created the Abandoned Mine Lands program. It imposed a per ton tax on all coal mined after the 1977 Act. That money went into a fund that would pay to clean up sites that were mined before 1977. The federal Office of Surface Mining would collect the tax and give the money to the states. The states would identify sites abandoned before 1977 and pay to have them cleaned up.

It was all a tidy package. Atone for sins of the past by paying to fix old, pre-Act sites. Turn over a new leaf, follow reclamation standards, post bonds, etc. to prevent new sources of pollution from being created. Problem solved.

So what happened? If we solved this problem 37 years ago, in 1977, why do we still have old mine sites polluting our waters every single day?

For the old mines, abandoned before 1977, we just haven't gotten around to it. The Abandoned Mine Land fund still exists. There is a list of proposed projects, divided into high priority, not so high, etc. Eventually we will get around to most of the projects. The program is scheduled to expire in 2021 so we will probably never get around to them all but we are still plugging along. It has taken this long because there were more sites than anybody thought of at the time. Toss in some budgeting disputes, some bureaucracy, and a dash of politics and you have the explanation of why pre-Act sites still need to be fixed.

For the post-Act sites, there are several explanations. The bonds always were inadequate. It always costs more to clean up sites than the amount of the performance bond.

West Virginia has a Special Reclamation Fund that is supposed to address the problem of inadequate bonding. All mining companies pay into that fund; it is supposed to be available for sites where the bond has been forfeited but the bond was inadequate to clean up the site.

The Special Reclamation Fund is chronically insolvent. There are periodic attempts to fix it, or at least discussions of attempts to fix it. The West Virginia Highlands Conservancy has been in more meetings about this than anyone would care to remember. There have been times of progress and times of regress but the problem never gets fixed.

The other reason post-Act sites are still polluting is that bonds were released prematurely. That is what happened at the Hernshaw mine (see story on p. 1). There the bond was released yet it was still producing pollution years afterward.

The largely invisible—at least up to now—players is all this have been the landowners. The Surface Coal Mining Reclamation Act didn't give them a free pass, absolving them of liability. It just assumed that, for pre-Act sites, there was nobody who could be held responsible. Since it assumed nobody was available and that the problem of abandoned mines had to be addressed, the Act created the Abandoned Mine Land to address it.

The Act assumed that, with the reclamation and bonding requirements, there wouldn't be any more chronically polluting mines after 1977. Nobody had to think about landowner responsibility.

Now that the tools that the Surface Coal Mining Reclamation Act created are not working as intended, people are looking again at landowners and considering landowner responsibility. The Hernshaw mine (story, p. 1) is one example. There may be others in the future.

WEST VIRGINIA HIGHLANDS CONSERVANCY BOARD MEETING COMING UP

The summer Board meeting will be at 9:30 a.m. on Saturday, July 26, 2014, at Old Hemlock Foundation in Bruceton Mills. All members are welcome. Although only Board members are allowed to make motions and vote, any member is free to join in the discussion. For directions or more information, contact President Cynthia D. Ellis, 3114 Steel Ridge Road, Red House, WV 25168-7724 (304) 586-4135; cdellis@wildblue.net.

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

on a doctor's office. There are those statewide who live off the grid or some form of solar. There is a solar array powering pumps at a wastewater treatment facility in Hurricane--- free to the city due to a federal grant. The largest installation in West Virginia is a solar array for an online university at Charles Town in the Eastern Panhandle. It supplies half the energy needed for the building and also powers 15 charging stations for electrical and hybrid vehicles. There's solar on top of the Morgan County Courthouse, on Berkeley Springs High School, and a small system on the Beech Bottom Municipal building in Brooke County. Recently a Parkersburg high school student came home fired up from WV Boys State [a civics camp] and started a slew of activities at his school, including a solar energy club and photovoltaic roof panels. In Martinsburg, Mountain View Solar of Berkeley Springs installed its seventh West Virginia Habitat for Humanity solar energy system. The new owner is a formerly homeless U.S. military veteran who served in the Iraq War and is a single mother of two. A new group "Solar Holler" is working on crowd funding projects for a Shepherdstown church and Lewisburg City Hall.

Although hardly solar boosters, the lawmakers of West Virginia did enact a \$2,000 tax credit for residential solar water heating, solar space heating and photovoltaics. Subsequently, however, the state government did not implement the tax incentives for renewable projects that were legislated, so that expired in 2013.

The federal government, though, offers a tax credit, available at 30 percent of the cost, with no upper limit, through 2016 for renewable, including solar panels and water heaters.

And West Virginia does recognize Net Metering. This allows grid customers with solar generation to "sell" surplus energy to the system.

Homeowners can generate "Solar Renewable Energy Certificates" [SRECs]. These are credits which may also be "sold" to utility companies, although currently they may not be used within the state but may be sold to companies in Pennsylvania and Ohio.

Also, West Virginia does not employ Virtual Net Metering. Virtual Net Metering allows multifamily residents to receive equal and direct benefits of their building's renewable energy facility.

Downstream Strategies, an environmental consulting firm and ally of the West Virginia Highlands Conservancy and the Mountain Institute collaborated to produce a white paper, "Using Solar PV to Create Economic Opportunity and Energy Diversity in West Virginia," with 5 recommendations.

1. Binding Renewable Portfolio Standard with a Solar Carve Out (require that utility companies obtain a certain % of electricity from solar projects within the state)
2. Tax Incentives
3. Third party financing
4. Expand net metering; include virtual net metering
5. Feed in Tariffs and Time-of-use pricing

West Virginia sizzles with sunshine in July, August, and beyond. Some here are working to make energy collection from that sizzling sun generate clean heat and power throughout the year.

WHAT'S UP WITH DUNKARD?

A few years ago much ado was made about the discharge that caused a deadly golden algae bloom that destroyed fish and other aquatic life in a 30+ mile stretch of Dunkard Creek, a tributary to the Monongahela River.

The following is a recent disturbing observation and plea by Betty Wiley, one of the stalwart protectors of the Dunkard Creek watershed that encompasses portions of both West Virginia and southwest Pennsylvania near Morgantown.

"Recent reports about fishing in Dunkard Creek, both Pennsylvania and West Virginia, are very bleak. A year after the 2009 Kill, anglers were catching bluegill and bass easily; there were a lot of fish in the creek. More of bluegill and bass but also catfish, suckers, etc.

Now, four years later, honestly the creek looks frighteningly dead with a level "landscape" of silt unbroken by anything. No rocks and gravel to speak of where crayfish and bugs could live. Riffles and pools are diminished and silted.

And there are very few fish, not like the aquatic population of the recovering stream in 2010. Go ahead and try it yourself and/or talk to people who are fishing. Expect to hear some fish stories! I know of someone who caught a big muskie. There are SOME fish. But why has that prolific population declined? In 2010 there were no muskie to speak of. Now there are. Could muskie eat that many bluegill and small bass? The water quality has seemed to be acceptable.

Let's do some research on this!"



Join Now !!!

Name _____

Address _____

City _____ State _____ Zip _____

Phone _____ E-Mail _____

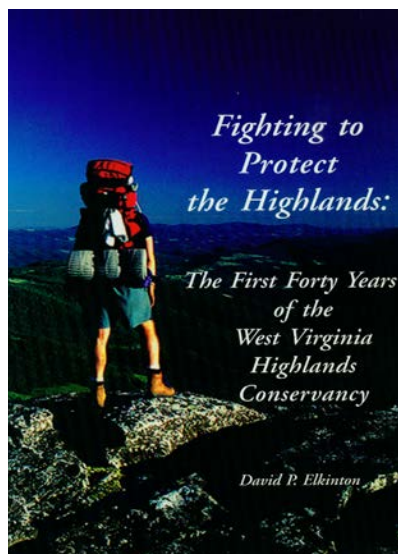
Membership categories (circle one)

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

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

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

GREAT HISTORY BOOK NOW AVAILABLE



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

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

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

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

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

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

SUCH A DEAL!

Book Premium With Membership

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

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

MOUNTAINTOP REMOVAL UP CLOSE AND PERSONAL

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

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.

SCIENTISTS, PUBLIC DISCUSS IMPACT OF CLIMATE CHANGE IN WEST VIRGINIA

By Rachel Molenda

A roomful of scientists, policymakers and environmental advocates didn't need to be convinced that the climate is changing, but they spent Saturday discussing ways to address climate issues even in communities where those conversations seem difficult to have.

"What we found about two or three years ago — we were frustrated, as were many folks who care about this issue and care about our environment deeply — was that you couldn't say the words 'climate change' without invoking a very polarized response," said Angela Anderson, director of the Union of Concerned Scientists' Climate and Energy Program.

Anderson said her organization is focused on altering the conversation about climate change throughout the nation, and this particular meeting, organized by the West Virginia Allegheny Highlands Climate Change Impacts Initiative, was, in part, about "changing the conversation about climate change in your state."

About 165 scientists, students, activists and concerned community members gathered at Blackwater Falls State Park to discuss "Climate Change and the Highlands: What's at Stake — What's at Risk?"

"The economy and the ecology of the highlands is very much tied to this unique climate we have up here," said conference organizer Tom Rodd. "Species that are rare and endangered, the ski industry, outdoor recreation, timber and forestry — all those things are going to be dramatically affected by climate change."

West Virginia's Allegheny Highlands are an ecologically diverse area spanning multiple counties in the Eastern part of the state.

Conference attendees heard from scientists about the global impact of climate change: rising sea level, groundwater challenges and potential disasters related to the breach of glacial lakes throughout the world.

But Anderson said effective conversations about climate change need to start with the local effects.

Scientists at Saturday's conference shared data related to the effect of rising stream temperatures on brook trout, as well as projected temperature changes that could lead to the disappearance of the sugar maple, West Virginia's state tree. Potential increases in rainfall caused by climate change could make major flooding very real for people in the state, Anderson said.

"We have to start talking with people about what they're seeing all around them," Anderson said.

"Folks that aren't like all of us but like to be outside and love nature may care a lot about the increase in the heat waves that are going to happen, particularly in cities like Charleston and Huntington," Anderson said. "What are going to be the impacts of those heat waves on the people, particularly those who can't afford central air-conditioning?"

Panelists also said the nation and West Virginia need to acknowledge present and future challenges brought on by climate change.

Downstream Strategies, a Morgantown environmental consulting firm, is collaborating with the West Virginia University College of Law Center for Energy and Sustainable Development on a project related to the new carbon rules for coal-fired power plants,

announced last week by the Obama administration.

The U.S. Environmental Protection Agency's "Clean Power Plan" proposal seeks to curb emissions of carbon dioxide while maintaining "fuel diversity," with coal and natural gas each expected to continue to provide nearly a third of the nation's electricity.

Evan Hansen, president of Downstream Strategies, called the rules "flexible," and said that even though the EPA set state-by-state emission limits, "they leave it to the states to figure out how to meet that limit."

"While our political leaders have decided, even before they read the rule, that they're going to sue, what we're going to do is actually look and read the rule and think about what the options are in West Virginia and what could be most cost-effective," Hansen said of the project. "How we could meet those requirements with the most jobs in West Virginia, do the most for the environment and get side benefits, as well?"

Last week, Gov. Earl Ray Tomblin said the rule realizes "some of our worst fears," although the state Department of Environmental Protection hadn't yet finished reviewing the proposal. Tomblin was joined at a news conference in opposition to the rule by Rep. Nick J. Rahall, D-W.Va., Rep. Shelley Moore Capito, R-W.Va., Attorney General Patrick Morrisey and officials from the United Mine Workers union and the West Virginia Coal Association.

"If you ever want to unify Republicans and Democrats in West Virginia, just have the EPA announce some new rules that involve the coal industry," Hansen said.

Downstream Strategies and the center plan to release a report for use by the state's leaders and also for the public, "so that they can hold our state leaders accountable."

Rodd said he believes the conference was a first for West Virginia and sought to share climate change research not only between scientists, but also with the public.

"The climate is changing with great variation all over the world," Rodd said. "I think it behooves anyone concerned about the problem to understand the impacts of climate change in their area."

Note: This article first appeared in *The Charleston Gazette*.

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. With electronic delivery, you will receive a link to a pdf of the Voice several days before the paper copy would have arrived. The electronic Voice is in color rather than in black and white as the paper version is.

JUDGE FINDS ALPHA MINING 'CONDUCTIVITY' POLLUTION DAMAGED WATER QUALITY

By Ken Ward Jr.

Citing what he said was “extensive scientific evidence,” a federal judge has ruled for the first time that conductivity pollution from mountaintop removal mining operations is damaging streams in Southern West Virginia.

U.S. District Judge Robert C. Chambers concluded that mines operated by Alpha Natural Resources in Boone and Nicholas counties have “caused or materially contributed to a significant adverse impact” to nearby streams, giving citizen groups a major victory that also supports Obama administration efforts to reduce mountaintop removal impacts.

In a 67-page ruling in early June, Chambers found that mining discharges had not only altered the chemistry of the streams, but also “unquestionably biologically impaired” them, leaving both the diversity and abundance of aquatic life “profoundly reduced.”

“Losing diversity in aquatic life, as sensitive species are extirpated and only pollution-tolerant species survive, is akin to the canary in a coal mine,” the judge wrote.

“As key ingredients to West Virginia’s once abundant clean water, the upper reaches of West Virginia’s complex network of flowing streams provide critical attributes — functions, in ecological science — that support the downstream water quality relied upon by West Virginians for drinking water, fishing and recreation, and important economic uses,” Chambers wrote. “Protecting these uses is the overriding purpose of West Virginia’s water quality standards and the goal of the state’s permit requirements.” The judge ruled in a case brought in U.S. District Court in Huntington by the Ohio Valley Environmental Coalition, the West Virginia Highlands Conservancy and the Sierra Club. The groups were represented by lawyers from the Sierra Club, Public Justice, and Appalachian Mountain Advocates.

Environmental groups had sued over pollution in two streams, Laurel Creek and Robinson Fork. They alleged violations by Alpha subsidiary Elk Run Coal’s East of Stollings Surface Mine and White Castle No. 1 Surface Mine had damaged Laurel Creek in Boone County, and that violations by Alpha subsidiary Alex Energy’s Robinson North Surface Mine and the Wildcat Surface Mine had damaged Robinson Fork in Nicholas County.

Cindy Rank, mining chairwoman for the Highlands Conservancy, said that the ruling “makes it clear that the integrity of our streams must be protected from the real danger of being destroyed by the millions of tiny cuts made by activities like coal mining operations.”

“Pollution such as the high conductivity discharges addressed in this litigation represents the steady degradation of streams that is stealing the future from generations to come,” Rank said. “Passage of the Clean Water Act over 40 years ago was a wise and prescient recognition that waters of the U.S. can support a healthy human population and economy only when those waters are healthy themselves.”

Chambers ruled after a two-day trial in December. He found that the coal operations had caused water quality violations, but has not yet decided what sort of penalty or other injunctive relief he will order.

Ted Pile, a spokesman for Alpha Natural Resources, said that the judge’s decision “flies in the face of determinations by all three branches of West Virginia government,” citing state Department

of Environmental Protection policies, a resolution from the state Legislature and a May 30 state Supreme Court decision.

Decisions and policies by those state agencies all “point to the fact that conductivity by itself has not been proven to cause loss of sensitive mayflies, and that further evidence is needed beyond a set of bad bug scores to prove violation of state water quality standards,” Pile said.

Pile said last week’s 3-2 state Supreme Court decision, in a case involving a Patriot Mining permit in Monongalia County, “spells it out clearly, ruling that there is not adequate agreement in the scientific community that conductivity causes harm to aquatic life.

“We fully intend to appeal this ruling and expect to see it reversed,” Pile said in an e-mail message.

The ruling comes as a federal appeals court continues to consider a case over a U.S. Environmental Protection Agency effort to crack down on conductivity pollution from mountaintop removal. A district court judge had thrown out new EPA guidance on the issue, and the agency appealed. Oral argument was heard in February. Citizen groups have encouraged the EPA to taken an even more active role, by writing specific water quality regulations on conductivity.

Scientists used electrical conductivity as a key indicator of stream health and the presence of other important pollutants such as chlorides, sulfides and dissolved solids. Recent research has found increased conductivity downstream from mining operations in Appalachia, and scientists have linked impaired aquatic life to those increased conductivity levels.

In his ruling, Chambers said that he was not basing his ruling on the EPA’s formal permit guidance, but on scientific findings that supported that guidance and to testimony presented at trial by experts who described the importance of those scientific findings. The judge cited numerous scientific articles published in peer-reviewed journals that backed the finding that conductivity pollution damages stream chemistry and harms aquatic life.

Chambers called the scientific evidence connecting conductivity pollution from mining to water quality impairment “overwhelming.”

“This decision further confirms that the science overwhelmingly shows that coal mines in Appalachia are harming streams due to conductivity pollution,” said Aaron Isherwood, managing attorney for the Sierra Club. “The court’s ruling further underscores the need for EPA to engage in rulemaking to protect Appalachian streams from conductivity pollution that is very harmful to aquatic life.”

Note: This story originally appeared in *The Charleston Gazette*.

Questionnaire

By Wendell Berry

How much poison are you willing to eat for the success of the free market and global trade? Please name your preferred poisons.

For the sake of goodness, how much evil are you willing to do? Fill in the following blanks with the names of your favorite evils and acts of hatred.

What sacrifices are you prepared to make for culture and civilization? Please list the monuments, shrines, and works of art you would most willingly destroy

In the name of patriotism and the flag, how much of our beloved land are you willing to desecrate? List in the following spaces the mountains, rivers, towns, farms you could most readily do without.

State briefly the ideas, ideals, or hopes, the energy sources, the kinds of security; for which you would kill a child. Name, please, the children whom you would be willing to kill.

PLANS FOR PUBLICATION OF THE 9TH EDITION OF THE MONONGAHELA NATIONAL FOREST HIKING GUIDE

From September, 2012 to December, 2013 I have been researching, hiking or re-hiking some old trails and new trails, and visiting district offices in the Monongahela National Forest. The purpose is to prepare for publication of the 9th Edition of the Monongahela National Forest Hiking Guide in 2015.

Readers of *The Highlands Voice* can be of assistance in the new edition by submitting photographs made in the past two years. Of particular need is a professional color photo for the front cover. It should be a photo not used in any past editions and should be either of outstanding scenery or hiking action. A stipend will be available.

Other assistance from past readers is to comment on changes they have noticed in trail conditions. My research shows only a few new trails, a few renewable trails from past closures, and a number of trails being considered by the forest service to drop. An example for closures in the Greenbrier District are South Branch Loop Trail, Grants Branch Trail, Middle Mountain Trail, Beulah Trail, Forks Trail, McCray Run Trail, County Line Trail, Little Mountain Trail, North Fork Deer Trail, Spring Box Loop Trail, and Strip Mine Trail.

The forest service has also listed some trails as "in the grey" meaning more public involvement is needed before deciding what to do about closure. Examples in the Shavers Area are Stonecoal Ridge Trail, Whitmeadow Ridge Trail and Crouch Ridge Trail.

Among the new trails is the unique Honeycomb Rocks Trail on the Highland Scenic Highway in the Marlinton Ranger District.

For more information on plans for the 9th Edition and for selection of photos, please use addresses below:

Allen de Hart
3585 US-401 South
Louisburg, NC 27549

Tel: 919-496-4771
email: adh4771@aol.com



© Terry Sofil

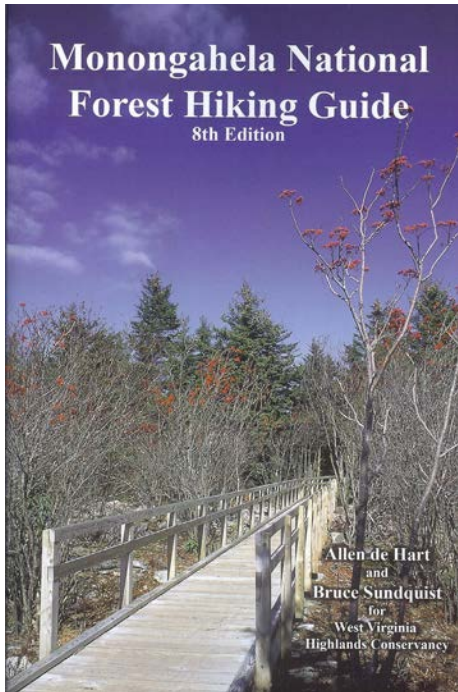
Species visible out the window during the editing of this issue of *The Highlands Voice*.

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.

The Monongahela National Forest Hiking Guide

By Allen de Hart and Bruce Sundquist



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

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

New 8TH Edition Now Available on CD

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

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

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

Price: \$20.00 from the same address.

BUMPER STICKERS

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

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



OPPOSITION TO PROPOSED GAS PIPELINE GROWS ACROSS REGION

By John Bruce

Highlanders are just beginning to grapple with the potential effects of Dominion's proposed gas pipeline through the county. But elsewhere in Virginia, folks are taking a firm position and rallying in opposition.

There was an uptick last week in media coverage and opinions voiced in places where Dominion will soon survey for its proposed Southeast Reliability Project gas pipeline.

In West Virginia, the pipeline route could begin in Harrison and cross Lewis, Upshur, Randolph and Pocahontas counties. Dominion has so far met with elected officials in Lewis and Upshur. Clarksburg, W.Va., station WBOY reported the origin of the pipeline would be either southern Harrison or Northern Lewis counties.

Dominion spokesman Jim Norvelle explained the project is being considered to move natural gas from West Virginia through Virginia to North Carolina. "The natural gas industry is changing because of the abundance of natural gas in the Marcellus Shale field. Historically, natural gas pipelines were built to move gas from their production areas in Gulf Coast and Rocky Mountain states to the Eastern U.S. Now, because of the amount of natural gas in the Marcellus Shale field, producer and market demand have led to some of these pipelines being reversed, sending natural gas from the Ohio-West Virginia-Pennsylvania shale field to Gulf Coast and Rocky Mountain states," Norvelle said. "However, this project is being considered to move Marcellus Shale gas from Ohio, West Virginia and Pennsylvania to North Carolina in response to growing market needs both for power generation and for local distribution to consumers."

In addition to Highland County, Dominion's study area in Virginia encompasses a path through Augusta, Nelson and other counties to the southeast, including Buckingham, Cumberland, Prince Edward, Nottoway, Dinwiddie, Brunswick and Greensville counties.

Nelson resident Ernie Reed, president and conservation director of Wild Virginia, attended the meeting. Tuesday, he asked the Nelson supervisors to hold a public meeting on the proposal. He said The Recorder first brought the proposal to his attention.

"Because the proposed pipeline would bisect the George Washington National Forest, on the southern part of the Shenandoah Mountain complex, which is an area of highest conservation value and concern for Wild Virginia, it for us became an immediate and top priority," Reed said. "It appears that the pipeline could possibly impact areas south of Laurel Fork (The Nature Conservancy Laurel Fork Preserve or Galford Gap Potential Wilderness Area), Highland Wildlife Management Area, Crawford Knob Roadless Area, Elliott Knob Roadless Area, the special biological areas north of St. Mary's Wilderness, and perhaps the north end of Jerkentight Roadless Area. Plus, plenty of areas in the Monongehela National Forest.

"Wild Virginia will oppose this in any way we can," Reed told The Recorder. "We are familiar with the Federal Energy Regulatory Commission (FERC) filing, comment and review process. The proposed pipeline would have to go through the National Environmental Policy Act process to analyze its environmental impacts. Not only the impacts of its construction but also the cumulative impacts connected with other pipeline linkages: existing, proposed and those in the 'reasonably foreseeable future.' Wild Virginia will be involved in every step of these processes."

"The connection with the hydrofracking issue in the George Washington National Forest is obvious and a real concern," Reed continued. "The Shenandoah Valley and Virginia strongly support a fracking ban, proposed by the forest service in a draft plan in 2011. Ten local governments adjacent to the forest, Virginia's current governor, two U.S. Senators and other officials joined more than 70,000 members of the public to back the ban. The District of Columbia Water and Sewer Authority, which serves over 3 million people, opposes fracking in the GWNF," Reed said. "Supporters recognize that fracking threatens the unique and cherished resources on the George Washington National Forest – drinking water supplies, wildlife habitat, scenic values and outstanding opportunities to hunt, fish, hike, bike ride or simply enjoy a remote and wild landscape. A ban on fracking in the George Washington National Forest would ensure that the largest national forest in the East will remain a magnificent place enjoyed by more than one million visitors each year. Stopping the pipeline will, too," he said.

Reed is personally affected by Dominion's proposal, too. "I returned home a week after reading your article (in The Recorder) to find the (survey request) letter waiting for me," Reed said. "Having already done lots of research, and hearing from some of my friends in Nelson County, I was hardly surprised that my 120-acre property was proposed to house a stretch of the pipeline."

"Those in attendance expressed solidarity with other counties and communities in the path of the pipeline," he continued. "This is not a NIMBY issue. Stopping the pipeline, not moving it, is the focus of the group, which is now called Friends of Nelson County (against the pipeline). We are committed to working together with other communities to stop the pipeline."

He said the Friends group will ask Nelson supervisors for a public meeting to hear citizens' concerns so their comments would be part of the public record, and ask they adopt a resolution opposing the pipeline. "We will also be appealing to our state and federal representatives," Reed said.

While Highlanders for Responsible Development has stated its current position is to ask serious questions and await answers, a number of individuals and environmental group members outside Highland have spoken up with their own strong opinions and thoughts about the proposal.

John Roddy of Gaithersburg, Md., is a retired senior litigation attorney for FERC, with more than 30 years of experience in environmental impact statements. He said he felt compelled to address the pipeline proposal as a landowner in the affected area of Pocahontas for 45 years, and as a person deeply familiar with FERC.

"Because this proposal will entail the transportation of natural gas in interstate commerce, the FERC will assume jurisdiction, and its regulations will trump any state standards," Roddy told The Recorder. "In order to obtain FERC approval, the applicant will have to demonstrate that there is a supply of gas and a known market. In this instance, both are questionable. The source of the gas is an amorphous number of potential, not proven, reserves in the western part of the state. The markets are equally ephemeral. Balanced

(Continued on p. 13)

OPPOSITION TO PIPELINE BUILDS (Continued from p. 12)

against this is the near-pristine nature of that area of West Virginia, the Monongahela National Forest. Admittedly, I am an interested party, but I just don't see it."

Lynn Cameron, co-chair of the Mt. Crawford-based Friends of Shenandoah Mountain, described the proposed pipeline route as a poor choice.

"As a frequent visitor to Highland County, I cringe at the thought of a gas pipeline going through the Laurel Fork watershed," Cameron said. "The 10,000-acre tract of Laurel Fork that lies within the George Washington National Forest a short distance downstream is one of the most pristine and biologically rich areas in Virginia. It is home to at least 25 species of plants and animals ranked by the Virginia Division of Natural Heritage as rare in Virginia. Laurel Fork is known for its salamanders, birds, beaver ponds, spruce forest, and exceptional native trout stream. It provides the public with excellent opportunities for birding, hiking, backpacking, and fishing, all of which help support Highland County's tourism-based economy. "The pipeline route over Shenandoah Mountain is also a very poor choice," Cameron continued. "The Shenandoah Mountain area lies within a biodiversity hotspot identified by The Nature Conservancy and an outstanding ecological core identified by the Virginia Department of Conservation and Recreation. National forest land on Shenandoah Mountain is popular for mountain biking, hiking, fishing, hunting, camping, horseback riding, and nature study.

"The GWNF is a two-hour drive for about 10 million people," she added. "It serves a critical role for recreation. A pipeline would not only fragment the forest permanently but would also increase the likelihood of industrial gas development by fracking in our national forest and on private land along the route. Heavy industrial development by fracking would damage sensitive natural areas and displace the many recreational uses people now enjoy."

Tom Long, pipeline issues chair of the Virginia Chapter of the Sierra Club's Shenandoah group, said the chapter is strongly opposed to the proposed project.

Although Dominion has kept details about the Southeast Reliability Project quite vague, it is clear the construction and maintenance of such large-scale industrial pipeline would have devastating consequences for the environment, he said.

Long listed reasons for opposing the project, beginning with the proposed route across nearly 50 miles of hardwood forests of the Monongahela and George Washington national forests, threatening wildlife, water quality, and recreation.

"If the pipeline is built, gas producers will argue that drilling wells in the George Washington National Forest makes sense given the proximity of a distribution line. New wells and fracking will endanger the unique qualities of this magnificent Appalachian forest and further threaten clean water that is perhaps the great treasure of the GWNF," Long said in a statement.

"The pipeline would cross and blight the Blue Ridge Parkway and the Appalachian Trail, two of Virginia's great natural tourist attractions. It will also cross a portion of the McDowell Battlefield and other historically significant sites in the commonwealth."

Also, Long said, "The pipeline would not be totally underground and invisible, as some believe. There would be cuts and disturbance of the natural environment. Warning signs, valves, crossings, service roads, and compressor stations would scar the landscape. In just Highland and Augusta counties, the pipeline would cross dozens of streams and rivers, including the Bullpasture, the Cowpasture and,

depending on the actual route, the waters or headwaters of the Middle and South rivers. In Virginia, the trunkline and laterals would cross an astonishing 448 bodies of water plus wetlands. Every cut promises increased erosion, runoff, sediment and potential pollution," he said. "Our farmlands, forests, and conservation easements will be marked forever. Passing through the karst limestone topography typical in western Virginia, the pipeline may fall victim to sink holes or natural caves that could cause leaks or a catastrophic failure."

Long believes relying further on natural gas will increase greenhouse gas pollution from Virginia power plants. "Exports of natural gas will increase energy costs at home and greenhouse gas emissions abroad," he said. "At a time when we need to take significant steps to reduce global warming, Dominion-Virginia Power is proposing a 22-37 percent increase of greenhouse gas emissions over the next 15 years. Instead of trying to apply 19th century solutions to our energy needs, we should be building the energy economy of the future. Other countries and some states are successfully demonstrating that a combination of energy efficiency and renewable energies can reduce energy costs, improve the quality of life, and reduce threats to our health and property caused by global warming. Dominion's proposal is a giant step backwards that puts company profits ahead of the health and wellbeing of Virginia and the rest of the world."

Long said the Sierra Club is adamantly opposed to the proposed pipeline "because it poses threats to our environment, the region's natural and cultural history, and our way of life that cannot be reduced or mitigated by slight changes to the route. The arguments also apply to the competing proposal by Spectra Energy." Beth Little of Eight Rivers Council in Pocahontas County, a group formed a few years ago because of concern about water, air and land, agreed. "Pipelines are extremely destructive of the natural environment causing erosion, massive disturbance of trout streams, ugly fragmentation of the forest, in other words, damaging all the things that are of value here with no economic benefits to the Highlands except possibly some temporary jobs during construction — if they don't all go to out-of-state workers — to offset the long term negative impacts. Furthermore, people's land, air, water, health, peace and quiet — basically their lives — are being ruined by fracking. So anything that would contribute to more fracking, such as a pipeline, is to be deplored."

Nelson County resident Joanna Salidis said her property is in the pipeline's path. "I wanted you to know about the Pledge of Resistance to the Dominion Pipeline Facebook page," she told The Recorder. Nearly 400 "likes" were recorded as of early this week.

Note: This is a slightly abbreviated version of a story that previously appeared in *The Recorder*, the newspaper of Bath and Highland counties, Virginia, and the Allegheny Highlands of Virginia.



LEGAL UPDATES: SOMETHING HAS HAPPENED BUT IT'S NOT OVER

STREAM BUFFER ZONE RULE

By John McFerrin

As reported in the April, 2014, issue of *The Highlands Voice*, The West Virginia Highlands Conservancy, Coal River Mountain Watch, Kentuckians for the Commonwealth, Kentucky Waterways Alliance, Ohio Valley Environmental Coalition, Save Our Cumberland Mountains, Sierra Club, Southern Appalachian Mountain Stewards, and Waterkeeper Alliance have asked the United States Court of District Court to reconsider its ruling on the stream buffer zone rule.

Background

The stream buffer zone rule prohibits mining within one hundred feet of a stream. The West Virginia Highlands Conservancy, as well as many others, has always believed that this would prohibit valley fills. The Department of Environmental protection apparently thinks it means something else since there are valley fills and the Department has never applied this rule to prohibit them.

In 2008 the federal Office of Surface Mining began the process to change the rule in a way that would effectively eliminate it. There followed public hearings, Congressional pontificating, litigation, etc. Finally the United States District Court for the District of Columbia ruled that the 2008 amendment was improper and threw it out.

This left the 1983 version of the rule in place, a substantial step forward for those who think that that it should be applied in such a way as to prohibit most valley fills.

From the plaintiffs' perspective, the difficulty was that the Court did not make any interpretation of the rule. The plaintiffs had alleged that the 2008 rule and the procedures the Office of Surface Mining followed in adopting it violated the Endangered Species Act. The Court agreed and threw that revision out on that basis.

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

The Court did not rule on these claims. It concluded that, since it had already vacated the rule based on the Endangered Species Act, it was unnecessary to rule on these claims.

This left the plaintiffs with a victory but it also left unanswered the question of what the rule means. The West Virginia Highlands Conservancy and the other environmental groups have gone back to court to ask that the Court rule on the remaining claims and, in the process, give some guidance on what the rule means. Having questions of what the rule means unanswered leaves the plaintiffs in the position of having a rule which they think means one thing while the Department of Environmental Protection, by its inaction, demonstrates that it must believe that it means something entirely different. To resolve these questions, the plaintiffs have asked that the Court review its ruling.

What's happening now

The general rule "It ain't over till it's over." has a corollary: when the judge says it's over, it's over. In most cases, judges consider cases they have decided to have been finally decided. Motions for reconsideration are seldom successful.

In this case, the Judge has asked that the parties submit arguments on why the Plaintiffs think she should reconsider her decision. They have submitted those briefs and the Judge is considering the matter. While this case may well be over, there remains a possibility that it is not.

Meanwhile, over in Congress

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

It passed the House on March 25, 2014. It has been sent to the United States Senate for consideration. The Senate has taken no action.

CHALLENGE TO PUBLIC FINANCING OF COAL EXPORTS

By John McFerrin

As previously reported (*The Highlands Voice*, August, 2013), The West Virginia Highlands Conservancy has joined with six other groups to sue the Export-Import Bank of The United States and its Chairman for failure to comply with the National Environmental Policy Act.

The suit alleges that the Export-Import Bank provided financing for coal exports by Xcoal, headquartered in Latrobe, Pennsylvania. The suit alleges that it did this without considering the environmental impact of its actions, a violation of the National Environmental Policy Act (NEPA).

The Export-Import Bank of the United States is a federal agency that provides credit for companies who export goods to foreign markets. One of the things it does is provide financing for coal exports.

In West Virginia, one of the mines involved in this loan is the Sentinel Mine along Rt 119 not far from Philippi and about 13 miles south of Grafton. It is owned by Arch Coal and its loading facility is alongside the Berryburg Road off Rt 119. The back of the huge refuse mountain

(More on the next page)

MORE ON THE EXPORT-IMPORT BANK

(Continued from previous page)

can be seen from the road leading up to the Adaland Mansion. The rust red iron laden water flows in the ditch line next to the coal piles at the loading facility along the Berryburg Road.

The Plaintiffs say that the exporting of coal has a substantial environmental impact, both in mining and transporting it. When financing its export, the Export-Import Bank is making a decision which affects this impact. The Plaintiffs contend that when a government entity makes a decision which has an environmental impact, the National Environmental Policy Act requires that it evaluate that impact.

The National Environmental Policy Act (NEPA) seeks to prevent the United States from inflicting environmental damage out of ignorance. It requires that governmental entities study any major action they take and determine its environmental impact. In addition, the agency must notify the public of its proposed actions and allow the public to comment on the fully-disclosed environmental impacts of those projects. The Act assumes, although it does not require it, that any agency whose study reveals that its actions would cause significant environmental harm would avoid taking that action.

NEPA only applies to federal actions. "Federal actions" include "new and continuing activities, including projects and programs entirely or partly financed, assisted, conducted, regulated or approved by federal agencies." Plaintiffs say that the financing is a major federal action. Because of this, NEPA would require that the agency evaluate its environmental impact before taking it.

The Export-Import Bank says that the Plaintiffs don't have "standing." "Standing" is a legal term for the idea that no one may pursue a case unless its interests or the interests of its members will be affected by the outcome. If the outcome of this case would not determine whether the exports of coal go ahead, then the Plaintiffs would lack standing.

The Export-Import Bank says that, if it does not finance the exports, there are other potential sources of financing. Even without Export-Import Bank financing, they may well go ahead. If this is the case, then even if the Court gave the Plaintiffs what they have asked for (no financing absent a NEPA review) the Bank says that the coal exports would go ahead. If this is the case, then the Export-Import Bank says that the Plaintiffs have no standing.

The Bank also says that the decision on financing is not a major federal action. NEPA does not apply on every single thing the government does. It only covers major federal actions. Here the bank says that the main decision on whether the exports go forward is that of the coal exporters themselves. The Export-Import Bank says that its role is tangential, preventing its decision from being a major federal action.

The case is now with the judge awaiting decision.

MEANWHILE, OVER IN POCAHONTAS COUNTY

The story on the pages 12 and 13 mainly focuses on Virginia based opposition to the proposed pipeline. While there is substantial opposition in Virginia, opposition is popping up in West Virginia as well.

At press time, "WV Wilderness Lovers vs. Proposed Pipelines" is on the agenda for the July 1, 2014, Pocahontas County Commissioners Meeting in Marlinton, WV.

The opposition focuses upon a proposed 42" pipeline that would begin somewhere in central West Virginia, in the vicinity of Lewis County. It would run from central West Virginia to power plants in North Carolina. On the way it would pass through parts of the George Washington National Forest and the Monongahela National Forest. According to a spokesman for Dominion Resources, the project is still preliminary and Dominion has not yet decided whether it will build anything. Because there are no firm plans, or at least none that are publicly available, it is impossible to know the exact route or the details of construction.

The group raised several concerns about the pipeline. It will be adjacent Civil War sights Camp Allegheny and Camp Bartow, and the proposed National Monument "Birth of Rivers" National Monument.

The line will also feature Compressor Stations which would be built every 10-40 miles to push the natural gas over the mountain ranges creating noise and air pollution. Dozens of huge two story turbines would run unmanned twenty-four hours a day and be lit up all night. The quiet dark nights of the wilderness would be destroyed along with wildlife. The group is also concerned about the impact of the pipeline on tourism in Pocahontas County, including excursion trains from Cass and Durbin, skiing, snowboarding, and mountain biking. People enjoy fly fishing at Elk River Inn and Restaurant in Slatyfork, along with hiking, caving and camping.

Spokesperson for the group Lauren Ragland found that water quality was the main concern of the residents of Durbin, Frank, Bartow, Boyer, Green Bank, and Cass. "During an eleven hour road trip from Huttonsville in Randolph County to Snowshoe, I spoke with over two hundred residents. As I handed out a flyer showing photos of blasting, drilling and stream and river destruction, it was clear that no one knew about these proposed pipelines. Many had seen the Pocahontas Times headline story on June 5th but were disgusted with the blurry map. When I explained that Dominion's spokesperson shared that the maps were intentionally out of focus as to not cause concern, residents were not pleased. The second rated concern is tourism. It is obvious that if Rt 250 is a construction zone and blocked for years with loaders and equipment, tourism would end."

For more information, go to the group's Facebook page or contact wv.wilderness.vs.prop.pipeline@gmail.com.

HIGHLANDS CONSERVANCY BOUTIQUE



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