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# *The Highlands Voice*

The Monthly Publication of the West Virginia Highlands Conservancy

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Should make mountaintop removal mining harder

## COURT VOIDS BUSH ERA STREAM BUFFER ZONE RULE

By John McFerrin

The United States District Court for the District of Columbia has voided the 2008 “buffer zone rule.” This rule would have allowed mining operations within 100 feet of streams, including the filling of streams with mine waste, with few restrictions.

This ruling came in a case brought by several groups, including the West Virginia Highlands Conservancy. There was also a separate case brought by the National Parks Conservation Association which made similar claims.

Although the plaintiffs had made several claims, the Court based its ruling on the Endangered Species Act. In making this rule, the Office of Surface Mining was required to consider the effect of the rule upon endangered species. In its rulemaking, the Office of Surface Mining had concluded that the rule would have no effect.

The Court thought otherwise. It said, *Faced with clear evidence that habitats within stream buffer zones are home*

*to threatened and endangered species and that mining operations affect the environment, water quality, and all living biota, OSM’s determination that the revisions to the stream protection rule encompassed by the 2008 Rule would have no effect on threatened and endangered species or critical habitat was not a rational conclusion.*

Based upon this view of the record before it, the Court vacated the 2008 rule.

### Background

Generally, the buffer zone rule - approved in 1983 - prohibited mining within 100 feet of streams. Coal operators could obtain waivers, but to do so they had to show that their operations will not cause water quality violations or “adversely affect the water quantity and quality, or other environmental resources of the stream.” The Office of Surface Mining wrote the buffer zone rule to implement a congressional mandate in the 1977 strip mine law that the agency “minimize



**Do this, but don’t get within 100 feet of a stream? Can they do that? (Photo by Vivian Stockman)**

**(More on p. 4)**

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## Ramblin' the Ridges

By Cynthia D. Ellis

### Yes We Do

Recently someone said, "I used to belong to your organization. But I let my membership lapse. It seemed to me that you were not FOR anything, just AGAINST lots of things."

I can see how it might seem that way. But the West Virginia Highlands Conservancy is for, and supports, many, many things.

\*We are for the mountains. Our name says so and we try to live it. We love to be outdoors in the mountains and try to provide opportunities for others to do that too. We breathe easier when we can look up at our embracing mountains and, equally so when we are on the summits gazing round.

\*We are for clean water. Indeed, we sprang from folks who cherished every part of their life or visits here, but primarily their enjoyment of our streams and rivers. We're for speaking out in defense of clean water and for working to restore and preserve the treasures of water resources we have here.

\*We are for mountain communities; our fondness and appreciation flows down to the foothills and valleys as well. We are gratified to live in or partake of the terrific sense of local warmth and pride, and we want to do all we can to help residents keep the best parts of their own kindred areas.

\*We are for learning. We believe in studying history and remembering mistakes and successes of the past. We want to do what we can to share with students, young and not-so, all that we've learned about the travails and triumphs that have shaped the highlands of today.

\*We are also for mountain individuals. We have a particular concern for folks who find themselves affected by large forces and who need the boost that we as an organization might provide.

\*We are for clean air. We support efforts to clean it up and keep it so.

\*We are for recycling.

\*We are for conservation.

\*We are for alternatives to fossil fuel energy. We support "Smart Wind" principles and favor strict examination of all alternatives as to their benefits and drawbacks.

\*We are for wildness. And for wilderness. We understand the serenity and restoration of the human spirit that comes from time spent in green quiet corners of our land...where a person can shed the constraints of time and obligation and simply be.

\*We are for raising a ruckus. This might seem to not be in accord with the belief above, but we feel that good can also come from speaking and acting forcefully, especially with our allies.

\*We are for fun. We support dancing on the grass, singing in the rain, skiing in the moonlight, wading in the creek, and watching bats fly in graceful arcs.

\*We are for good food. We know the joy gained from growing one's own and we support efforts to renew and sustain local cultivation. We know the pleasures of meals shared.

\*We are for work. As a volunteer organization, we know firsthand the gratification of hours spent and projects accomplished.

\*We are for truth. The West Virginia Highlands Conservancy has always strived for accuracy in anything connected to our name.

We are AGAINST...well, you know. You read it every month in The Highlands Voice. And we do realize that those matters that we oppose get the most attention. So I'm very grateful to the person who chatted with me. He ended by saying he might rejoin us. I hope so. We are grateful for all of you...including everyone who reminds us to reflect on what we are FOR.

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## At the Table

By Cynthia D. Ellis

On February 17<sup>th</sup>, we hosted a West Virginia Highlands Conservancy display table at the annual “E-Day” environmental celebration at the West Virginia legislature. We were set up in the long corridor near the Senate Chambers and there was a good view of everyone passing by.

At the display next to us was Lincoln County wood maker, Jim Probst, with “Citizens Climate Lobby.” Next was “Friends of Blackwater.” Across the aisle was “Friends of the Cheat,” with a large colorful paper fish leaping over the top of their display.

Passersby stopped to chat. One was a legislative staffer who had grown up at the Kayford community near Larry Gibson’s home place. Two librarians stopped and we agreed that funds were short for important projects everywhere. It was also Honor Veterans day, and vets in uniform-type garb were drawn to our offering of Ramp Seeds. Every WV vet on the premises that day must have gone home with a packet. [The Ramp Seeds are a new effort toward native plant propagation by Dave Saville of the West Virginia Highlands Conservancy and a project it helps sponsor, the Red Spruce Restoration project.]

A woman responsible in part for the young people’s Legislative Page program asked if she might have stickers for their welcome packet. We loaded her up with buttons, stickers, and pencils. Then we saw a young West Virginia Highlands Conservancy member who has been helping with water deliveries to areas beyond Charleston. He recounted that some waterless folks asked volunteers, “Do you need to see ID? Do we need to sign for this water?” Those restrictions had applied at some fire station water sites.

Next there was a scene custom made for any enterprising film maker.

Shelley Moore Capito, currently a Representative, and running for the U.S. Senate, came along the aisle. Dressed in red, she was in the center of, and essentially escorted by, a phalanx of black-shirted stern faced men...the West Virginia Citizens Defense League. Some were joined by wives and children; their issue this day was gun laws. Ms. Capito had not come to see the E-day displays and did not meet with those of us with environmental concerns.

She and the group flowed up the stairs to the Senate gallery.

The black shirts of the WVCDL were adorned on the reverse with the Greek phrase “*molon labe*” [roughly, “come and get me”].

We talked with a former miner. He said, “You were right. They raped us,” referring to the land and the jobs.



**WVHC Board member Frank Young chats with Delia [Del] Delgado an Appalachian Forest Heritage Area AmeriCorps member working with the Forest Service this year, on Wilderness issues and more in the Mon Forest.**

boxes were lashed to a little cart. Tugging along toward the big outer doors, there were reflections about another unique day in the halls of the West Virginia legislature...connecting with old friends, finding new ones and hearing stimulating comments...and perhaps introducing more than a few people to our group and to our vision for the mountains.



A dapper man with gear bag and notebook looked at the displays intently. He was a reporter with “The New Yorker” magazine and was pleased to be given one of our “Forty Years of Fighting” group history books. [We always think, “Thank you so much for writing the book, Dave Elkinton!”]

A former Charleston councilman confided that he’d warned years ago about the potential for a water crisis, but had been ignored.

Someone mentioned that there may be plans to make a “historic” airplane touchdown site for Blair Mountain; that probably falls in the unfounded rumor category.

People leafed through the photo book “Plundering Appalachia” at our booth. You might imagine that everyone has seen pictures of mountaintop removal mining, but you would be wrong.

Two of our “I ♥ Mountains” tot shirts were purchased by a smiling grandma.

At noon, our groups held a spirited rally. Three legislators spoke: Mike Manypenny, Barbara Fleishauer, and John Perdue.

I did not drink the water there in Charleston, that day. I brought mine from home... from my stash acquired from an alternate source...my “safe” water.

So, at the end, our display items were packed away and

## **COURT VACATES STREAM BUFFER ZONE RULE (Continued from p. 1)**

the disturbances to the prevailing hydrologic balance at the mine site and in associated offsite areas and to the quality and quantity of water in surface and groundwater systems both during and after surface mining operations and during reclamation.”

Although there has been a stream buffer zone rule since 1977, interest in the rule intensified with widespread mountaintop removal mining in the 1990s. While there had always been filling of streams, the strip mine operations were much smaller and the filling was not as extensive as it is today. A government study published in 2003 found that mine operators had buried 724 miles of Appalachian streams between 1985 and 2001.

Many (including the West Virginia Highlands Conservancy) had always believed that the rule would prohibit filling streams. The federal Office of Surface Mining and various state mining agencies allowed these fills by interpreting the buffer zone rule to not apply to the mining waste piles.

In 1999, then-U.S. District Judge Charles H. Haden II concluded that the rule did apply to valley fills, a decision Haden said prohibited all fills in perennial and intermittent streams.

On appeal, the United States Court of Appeals for the Fourth Circuit decided that Judge Haden did not have jurisdiction. While it did not say that the decision on the interpretation of the rule was incorrect, it overturned that decision on jurisdictional grounds. But the Clinton administration eventually adopted Judge Haden's view of the buffer zone, and once George W. Bush took office, federal regulators and the coal industry pushed to rewrite the rule.

The Bush administration did propose to rewrite the rule. There were public hearings, public comments, etc. but in December, 2008, the Office of Surface Mining finally adopted a new rule. The 2008 rule allows a surface coal mine operator to place excess material excavated by the operation into streams if the operator can show it is not reasonably possible to avoid doing so. The new rule effectively eliminated the buffer zone rule which had been in effect (if never fully enforced) since 1983.

The 2008 rule has never been put in effect on the ground. The 1977 Surface Mining Control and Reclamation Act gave states the option of adopting a mining regulation program that is as effective as the Act or sitting still and allowing the federal Office of Surface Mining to regulate mining in their states. The major coal producing states (included West Virginia) elected to adopt their own programs. States like Massachusetts, where there is no coal mining anyway, elected to let the Office of Surface Mining regulate mining in their states. The only real exception is Tennessee where there is both mining and a federal regulatory program.

States which operate their own regulatory program had not yet adopted the 2008 rule. The result was that the 2008 rule became effective on the ground only in Tennessee and a bunch of states where there is no mining or almost none.

### **What didn't happen**

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 issued the decision described above.

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 leaves unanswered a basic question: what does the stream buffer zone rule mean? The West Virginia Highlands Conservancy has always believed that a prohibition on mining within 100 feet of a stream must mean that filling streams is illegal. Since mining operations are willy-nilly filling streams all over southern West Virginia and eastern Kentucky, the West Virginia Department of Environmental Protection and the federal Office of Surface Mining must think it means something else. In this case the Court had an opportunity to help answer the question of what the rule means. Because of the route the Court chose, this case did not result in any clarification of what the rule means.

[Note: The route the Court took is a perfectly acceptable, and very common, one. Courts exist to decide cases. Once this Court had vacated the rule on the basis of the Endangered Species Act, nothing else that it did would affect the outcome. In such situations, courts almost always dismiss other legal theories without deciding their merit.]

### **Not out of the woods (or the water) yet**

## **THE GAME NEVER ENDS**

The decision of the United States District Court to vacate the 2008 stream buffer zone rule is a substantial step forward for those concerned about protecting streams. It leaves us with the 1983 version of the rule. Were that version fully implemented, it could do much to control mountaintop removal mining.

That decision does not, however, settle the matter. The Office of Surface Mining is currently working on what it calls (with considerable linguistic imagination) a “stream protection rule.” Were that rule to become final, it would weaken the current 1983 rule and incorporate many of the pernicious features of the now void 2008 rule.

## **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.

**Not out of the woods (or the water) yet II****CONGRESS TRIES TO GET INTO THE ACT**

Even though one attempt to remove the protections of the 1983 buffer zone rule has been struck down (Story on page 1,4), threats to the protections found in the rule continue. In addition to threats from the Office of Surface Mining (Box on page 4), Congress is considering a bill that would effectively eliminate buffer zone protection. Even though the rule was just struck down, the bill would require states to implement it.

The bill is H.R. 2824, currently pending in the United States House of Representatives. If passed it would

- Require states (such as West Virginia) which operate their own mine regulation programs to incorporate the 2008 stream buffer zone rule.
- Require the Secretary of Interior (who is in charge of the Office of Surface Mining) to make a determination that all state permitting programs have complied with implementing the 2008 rule)
- Implement a 5-year period AFTER the Secretary's determination, during which the Secretary
  - Cannot issue a new rule
  - Must evaluate the effectiveness of the 2008 rule
  - Must evaluate how the rule inhibits energy production
  - Must describe in detail any desired changes to the rule, and justify those changes, and include any state comments, as well as projected costs and benefits of such changes

It is unclear what effect the recent decision vacating the 2008 rule will have on the enthusiasm in Congress for this bill. No companion bill has yet been introduced in the Senate.

**ALEX ENERGY: ON TO THE SUPREME COURT**

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

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

Now Alex Energy has appealed Judge Kaufman's ruling to the West Virginia Supreme Court of Appeals. Under current Supreme Court practice, the Court reviews all cases presented to it. Some are handled summarily, with only a statement saying from the Court saying that the lower court was upheld or reversed and giving a brief reason for its decision. Other cases are accepted for full review with briefs, oral argument, and a full decision. The Court has not yet said whether it will handle the case summarily or accept it for full review.

**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](mailto: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.

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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.

# STILL STIRRING THE TOXIC SOUP

By Cindy Rank

I sometimes tire of hearing myself say and write the same thing over and over again. ...And though I often sound like a broken record, events like the recent chemical spill in early February that contaminated drinking water for 300,000 West Virginians around Charleston and the coal ash spill in Dan River NC brought national attention to issues of water safety and are stark reminders of how important yet fragile our water resources are.

Of course we also know that many rural West Virginians outside the reach of the spill have been living without drinkable tap or well water for a long time and many have been harmed by coal slurry spills, like the two later in [http://fc06.deviantart.net/fs70/f/2011/270/5/a/pasture\\_in\\_spring\\_by\\_jonathanjessup-d48anco.jpg](http://fc06.deviantart.net/fs70/f/2011/270/5/a/pasture_in_spring_by_jonathanjessup-d48anco.jpg) in February, that also serve as continuous reminders of the importance of every action taken to protect our water.

So we plow ahead to do what we can to encourage – and sometimes force – better care of those water resources wherever and whenever we can.

And that is the backdrop and reason for our many challenges of polluting discharges from mine sites past and present, -- our challenges to DEP to impose better permit limits and provide stronger enforcement, -- our challenges to companies at active mine sites where violations of permit limits and water quality standards are occurring, -- and our challenges to landowners whose properties continue to discharge polluted water from valley fills constructed as part of older mine sites.

.... Sometimes the polluting discharges fail to meet what are called numeric water quality standards (levels set for individual constituents such as iron, manganese, aluminum, selenium, etc.) and sometimes the discharges violate water quality standards that are not yet quantified by a specific number, but rather fall into the catch-all phrase “narrative standards” – including some harmful pollutants that can be seen and easily identified like oil slicks as well as others that are less easily identified but nonetheless constitute an invisible toxic soup of individual constituents and ions that together significantly harm the health of the stream, that interfere with the biological, chemical and/or physical integrity of those streams.

It seems clear and uncomplicated and not at all complex that we protect our families and homes and everything we depend on for our health and wellbeing. So surely the industries that profit from extracting our valuable resources can and should be held accountable to protect, preserve and improve the waters of our state and nation.

Ah but that's only what reason and the Clean Water Act say we should do. Every requirement for coal mine water discharge permits has come about only after hard fought battles with an industry that has fought tooth and nail against every strong legal limit proposed. And today those battles continue with regard to how and why to limit the toxic soup of conductivity, sulfates and total dissolved solids.

Supported by sound science and years of study and research the Environmental Protection Agency (EPA) issued Guidance in 2010 to offer a reasonable numeric measure for conductivity that would account for that toxic soup and yet be protective of aquatic and stream life. But industry balked and fights are ongoing on both federal and state levels to discredit these studies and the use of these studies by EPA to support a reasonable Conductivity limit for

coal mines to abide by.

And while the battles rage within the walls of regulatory agencies, courtrooms and in the halls of Congress, water contaminated with this toxic soup continues to flow from active <http://jonathanjessup.deviantart.com/art/Pasture-in-Spring-255798456?q=boost%3Apopular%20gallery%3Ajonathanjessup&qo=22> and reclaimed mine sites alike .... And we continue to challenge discharges where and how we can so that the impacted streams stand a chance of recovery and the people who now use those waters – and those who will use them in the future – can use and enjoy them safely.

All that just to remind our readers that we are already in court with our allies at OVEC and Sierra and Appalachian Mountain Advocates challenging active mines where conductivity, total dissolved solids and sulfates are being discharged in amounts that are harming the receiving streams.

And to inform all that our most recent landowner litigation challenge involves pollution caused not by one particular chemical or metal but by the ‘toxic soup’ mix of conductivity, total dissolved solids and sulfates that is causing significant adverse impacts to the stream below valley fills created by previous mining on those lands.

You might recall the following statement from my article in the December 2013 Voice:

*Of course selenium isn't the only problem caused by these old valley fills ... For example, high conductivity and total dissolved solids (TDS) as well as high levels of sulfates (SO<sub>4</sub>) in the Twentymile area where huge mining complexes (Alex Energy, FOLA, etc) straddle the Nicholas-Clay County line and impact water quality and aquatic life in tributaries that flow both to the Gauley on the east and the Elk to the west have been the focus of a number of our complaints against active mining operations in that area.*

*Similar harm is known to impact streams and aquatic life below some of the older valley fills where mine permits have been released so we're looking ahead to more challenges of landholding companies who have inherited these unpermitted polluting discharges as well.*

*Stay tuned.*

Well, adding to our list of landowner challenges in the December Voice is the most recent complaint filed against Pocahontas Land for discharges from two previously mined areas where permits have been released but where unpermitted discharges continue to cause significantly adverse impact to tributaries of Ben Creek of the Tug Fork River in Mingo County.

The areas in question were part of 1) the Twisted Gun Gap Surface Mine operated by the Chafin Branch Coal Company under Surface Mine Permit S008476 -- WV/NPDES Permit WV0043338, and 2) the Pounding Mill No. 1 Surface Mine operated by Mingo Logan Coal Company (and later Cobra Natural Resources under SMCRA Permit S503889 and WV/NPDES Permit WV1016288.

Filed on February 27, 2014 this new landowner litigation maintains that valley fills on these properties are point sources that continue to discharge (1) total dissolved solids (TDS), (2) sulfates (SO<sub>4</sub> 2-), and (3) other ions associated with the measure of conductivity in surface coal mine drainage into waters of the United States without a National Pollution Discharge Elimination, a violation



Photo © Jonathan Jessup

*For, lo, the winter is past;  
The rain is over and gone;  
The flowers appear on the  
earth; The time of the sing-  
ing of birds is come, And  
the voice of the turtle-dove  
is heard in our land;*

**Song of Solomon 2:11-12**

### **Additional evidence:**

The groundhog whose burrow is under the big rock in the corner of our yard has emerged from hibernation. The chipmunks have ended their long sleep (they don't really hibernate) and are once again scampering up and down the log at the edge of our yard, the one we call the chipmunk highway.

**Commentary:** It's about time.



## **TIME TO PLANT SOME TREES**

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



**Billy Triplett plants some trees as part of an earlier spruce planting outing.**



# THE CENTRAL APPALACHIAN SPRUCE RESTORATION INITIATIVE

PROTECTING ONE OF THE CENTRAL APPALACHIAN'S MOST UNIQUE ECOSYSTEMS: 2013 HIGHLIGHTS

## YEAR-END REVIEW

*We are pleased to share highlights of the Central Appalachians Spruce Restoration Initiative!*

CASRI is a diverse partnership of private, state, federal, and non-governmental organizations who share a common goal of restoring historic red spruce-northern hardwood ecosystems across the Central Appalachians.

CASRI's vision is of a functioning red spruce-northern hardwood forest ecosystem restored across portions of its former range on both public and private lands, with the scale, connectivity, maturity and other features that provide habitat to sustain and enhance the viability of the many species and natural communities dependent on this ecosystem.

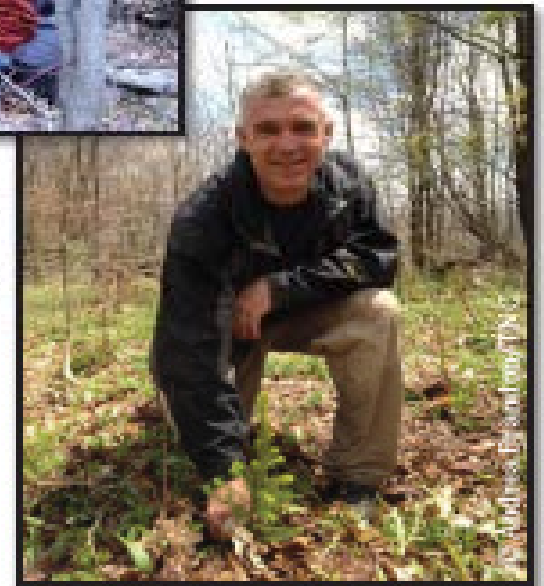


Aerial imagery of deep-rippled land at Lambert ecological restoration project area in the Monongahela National Forest.



Volunteers smile for the camera after planting one of the thousands of red spruce seedlings planted at Canaan Valley NWR in 2013.

Restoration specialist, Dave Saville, planting red spruce seedlings near Mount Porte Crayon, WV.



## MAJOR HIGHLIGHTS

*2013 proved to be an extremely productive and fruitful year for CASRI:*

- Over 1.2 million dollars for land conservation purchases and on-the-ground restoration projects in 2013, totaling \$2,088,141 raised to date.
- Over 570 acres of high-elevation lands placed on a trajectory to develop into functioning red spruce ecosystems, bringing our restoration total to nearly 1,500 acres.
- 62,780 red spruce seedlings and 9,331 native plants were planted upon high priority conservation and restoration sites.
- Volunteers dedicated 822 hours of their time working to restore red spruce.
- Over 250 acres of non-native invasive species were treated in high-elevation red spruce systems.
- Over 89,000 acres of land across the Monongahela National Forest were updated for soil survey and ecological site inventory.

*CASRI would like to thank the following organizations that have contributed funding to support conservation and on-the-ground efforts in 2013:*

Appalachian Stewardship Foundation  
Arbor Day Foundation

Environmental Protection Agency: American Rivers Grant

Outdoor Heritage Conservation Fund

West Virginia Department of Environmental Protection

Wildlife Conservation Society





## HEADS IN THE TREES, FEET ON THE GROUND

*CASRI hit the ground running this year, carrying out a broad array of restoration projects at our grandest scale yet:*

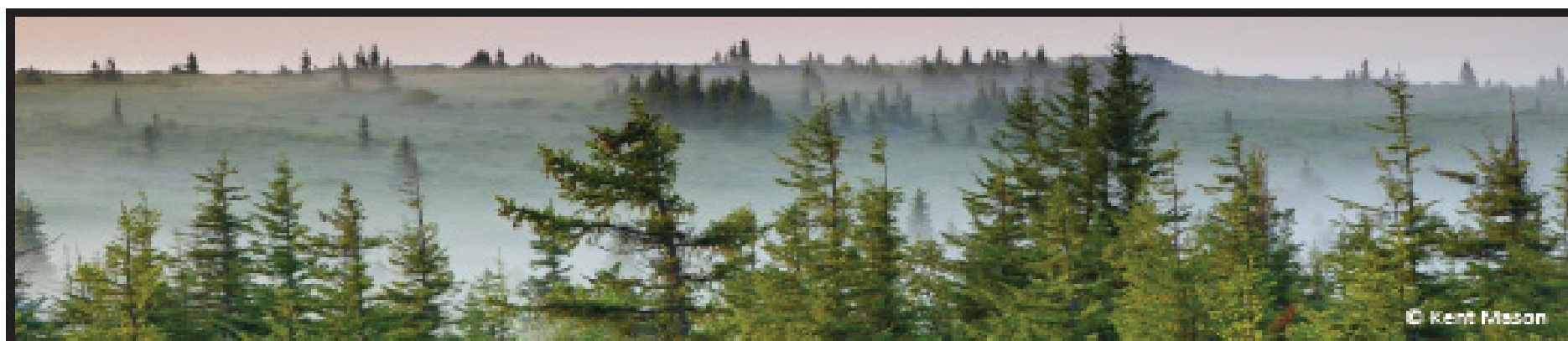
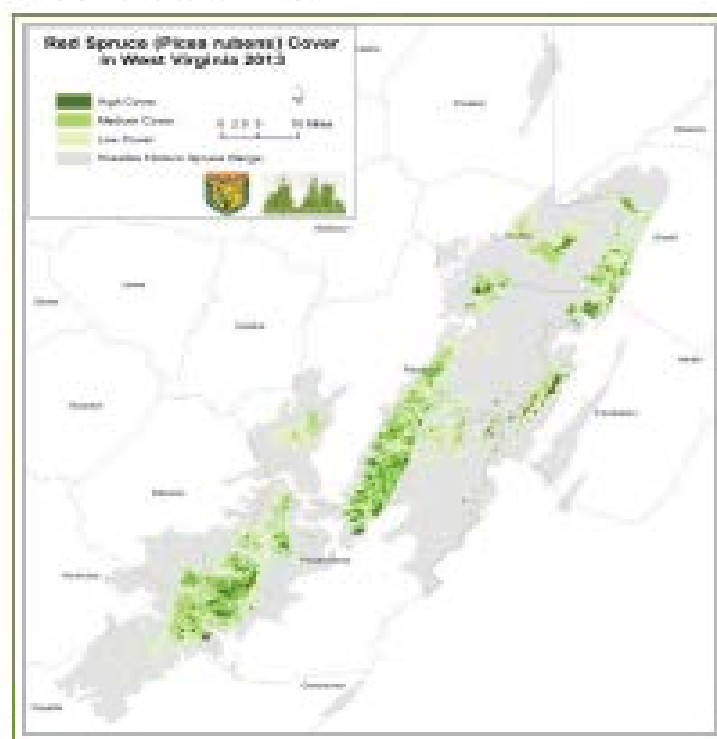
- The **Canaan Valley National Wildlife Refuge** brought 215 volunteers to the Refuge during volunteer events who planted 7,800 red spruce seedlings on 57.5 acres. These events are used to achieve restoration objectives and educate volunteers about the importance of spruce ecosystems and restoration.
- The **Monongahela National Forest** in partnership with **Green Forests Work** and the **Appalachian Regional Reforestation Initiative** treated over 100 acres of formerly mined land by deep-ripping 80 acres (a technique that decompacts soil and improves hydrology), constructing 105 sites to act as vernal pools and wetlands, knocking down over 20 acres of non-native trees, spreading large woody material across 65 acres of deep-ripped land for long-term soil improvement, and planting over 550 aspen to create vigorous, early-successional habitat for wildlife.
- The **Nature Conservancy** planted 34,000 trees on 239 acres near Mount Porte Crayon in Randolph County. Moreover, TNC released 199 acres of red spruce from the understory in hardwood-dominated stands in the Greenbrier River watershed. These projects act to enhance the resiliency and adaptive capacity of the species and systems related to the red spruce northern-hardwood ecosystem.

## MAPPING IN THE HIGH COUNTRY

To assist conservation and restoration of red spruce communities and the high-elevation species that depend upon them, the **West Virginia Division of Natural Resources** joined CASRI partners to map red spruce cover in West Virginia. The current locations of remnant and regenerating red spruce stands are part of the baseline data needed to identify the greatest opportunities for habitat restoration, connectivity, and vulnerability assessment.

This collaborative mapping effort, completed in 2013, will be a powerful tool for prioritizing red spruce conservation and restoration projects in the Central Appalachians. The map can be viewed in the "Research" section of <http://RestoreRedSpruce.org>.

To learn more about CASRI and view the complete 2013 annual report, visit: <http://RestoreRedSpruce.org>



**This time they really mean it, promise**

# UNITED STATES ENVIRONMENTAL PROTECTION AGENCY AGREES TO REGULATE COAL ASH

The United States Environmental Protection Agency and a coalition of environmental and citizen groups have reached an agreement on the regulation of coal ash, the material that is left after the burning of coal. The agreement does not result in immediate regulation. It does, however, start the process that will eventually lead to more nearly complete regulation of coal ash.

The regulation will come under the Resource Conservation and Recovery Act. The Resource Conservation and Recovery Act (RCRA) gives EPA the authority to control hazardous waste from the “cradle-to-grave.” This includes the generation, transportation, treatment, storage, and disposal of hazardous waste. RCRA also set forth a framework for the management of non-hazardous solid wastes. EPA’s primary statutory duty under RCRA is to minimize the threat to human health and the environment from the disposal of solid waste, including coal ash.

The power industry has been disposing of coal ash for over a century, both before and after the Resource Conservation and Recovery Act was passed in 1976. The industry has disposed of an estimated three billion tons of coal ash, none of it regulated. This ash currently sits in 1,000 massive coal ash impoundments, ponds, dry landfills and other coal ash dumpsites. The Act was supposed to fix this problem but slow implementation has allowed the problem to persist.

The problem was dramatically brought to the public’s attention with the December, 2008, spill in Tennessee. In the Kingston, TN, coal ash spill, residents all along the Emory River woke up to 1 billion gallons of toxic coal ash that spilled from the Tennessee Valley Authority’s Kingston Fossil Plant. The spill covered 300 acres, destroyed homes, poisoned rivers and contaminated coves and residential drinking waters.

This spill lit a fire under the Environmental Protection Agency. While damage to health and the environment had been occurring for decades at hundreds of sites throughout the nation, the headline-making disaster brought a commitment in 2009 from then-Administrator Lisa Jackson to establish federal disposal standards within the year.

Whatever fire was lit apparently fizzled quickly; the EPA didn’t act by its self-imposed deadline. As a result, the groups filed the suit which resulted in the recently announced agreement.

Now the EPA has agreed to publish a final rule addressing the disposal of coal ash by Dec. 19, 2014. Unlike commitments in press releases, this commitment is a part of a federal court order. The

Court retains jurisdiction of the case and can take action to see that the EPA actually does what it committed itself to do. While the words “cross my heart and hope to die, stick a needle in my eye” appear nowhere in the Consent Decree, the parties are confident that the EPA will publish the final rule as required.

The agreement does not dictate what the final regulations have to say. Courts would seldom, if ever, dictate the substance of a rule. The agency’s final coal ash rule should phase out dangerous coal ash ponds as soon as possible, establishing an enforceable baseline of engineering and disposal standards applicable in all



**Coal ash spill, Kingston, Tennessee**

states that protect both air and water, and establishing federal authority to ensure that such standards are timely instituted and effectively enforced. The coal ash rule must protect the nation’s most vulnerable communities and give all citizens a meaningful role in the siting of disposal facilities. Law, science, and sound public policy dictate that the EPA should finalize a rule, regulating coal ash as a “special waste” under RCRA. It remains to be seen, however, whether

considerations other than protection of health and the environment will take precedence in this politically charged rulemaking.

Coal ash and sludge laden with toxic metals, including arsenic, chromium, lead, mercury and selenium, are dumped in unlined and unmonitored lagoons and landfills and stacked stories-high behind earthen dams without proper engineering, inspection or maintenance. In many states, where millions of tons of coal are burned for electricity, there are simply no regulations controlling the disposal of this toxic waste. For decades, communities have waited for protection from the waterborne and airborne chemicals that cause cancer, birth defects, neurological injury, and other diseases.

The EPA made a very grave error when it failed to establish nationwide protections decades ago. The dumping of toxic ash nationwide has contaminated more than 200 rivers, streams, lakes and sources of underground drinking water.

In exchange for significant health, safety and environmental benefits, most power plants will pay a pittance. The EPA has previously proposed rules regulating this waste; it just never made them final. As part of that rulemaking, the EPA estimated that even under the most stringent rule, electricity prices would not rise more than one percent, even if all costs were passed on to the consumer.

**(More on the next page)**

## HIGHLANDS CONSERVANCY URGES EPA TO ACT ON COAL ASH

The United States Environmental Protection Agency has agreed to finalize rules on the disposal of coal ash (see story on p. 10). Several groups, including the West Virginia Highlands Conservancy, have joined together in a letter to EPA Administrator Gina McCarthy urging her to adopt the most effective rule possible on coal ash disposal, a rule which ensures public safety. Here is part of what the letter said:

*The undersigned public interest groups respectfully request that the EPA finalize a rule that requires the closure and cleanup of all coal ash ponds, establishes federal oversight and enforcement, and requires polluters to guarantee financial ability to clean up coal ash spills and pollution. The recent spill at Duke Energy's Dan River Power Station demonstrates the urgent need to address threats to the health, environment and economy posed by the nation's leaking and unstable coal ash dumps. In particular, this spill demonstrates the necessity for a final EPA rule to ensure safety from all coal ash dumps, both active and retired; to ensure that polluters are able to pay for cleanup; and to guarantee that EPA has the authority to enforce rules when states are unable or unwilling to do so.*

### MORE ABOUT COAL ASH (Continued from p. 10)

Both of EPA's proposed rules, under subtitles C and D, will allow the continued operation of existing coal ash landfills, and both will require the eventual phase out of dangerous and leaking impoundments like the one that failed in Kingston, Tennessee. Those utilities that have managed their coal ash in the most dangerous, antiquated and irresponsible manner will have to make a larger investment to convert their dumping operations to safe practices. For utilities that invested in safer disposal practices, such as lined, engineered and monitored landfills, the cost of the rule will be negligible—even if the EPA regulates coal ash as a special waste under subtitle C.



Coal ash spill at Dan River, Virginia

### GET YOUR RAFFLE TICKETS NOW!!!

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



### ***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.

## Join Now !!!

Name \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Phone \_\_\_\_\_ E-Mail \_\_\_\_\_

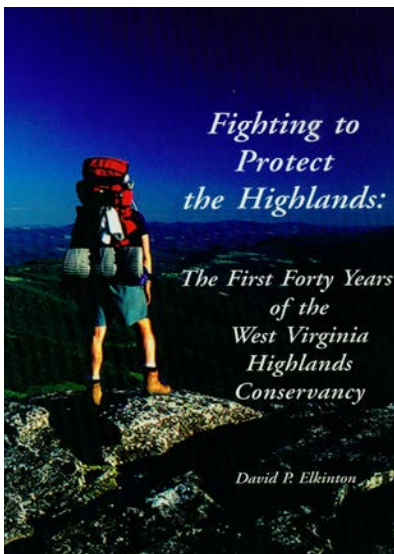
**Membership categories (circle one)**

	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](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 \$14.95 plus \$3.00 postage. We are offering it as a premium to new members. New members receive it free with membership.

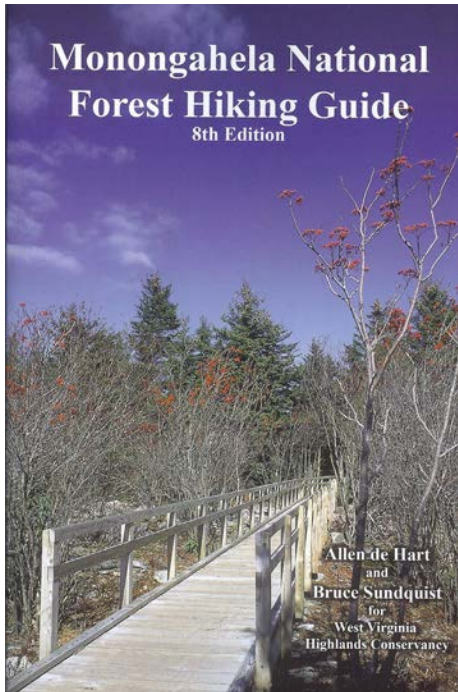
Existing members may have one for \$10.00. Anyone who adds \$10 to the membership dues listed on the How to Join membership or on the renewal form will receive the history book. Just note on the membership form that you wish to take advantage of this offer.

### 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](mailto:martinjul@aol.com).

# 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](http://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.



# The Broad Form of the Company's Deeds

by Bob Henry Baber

..... and excepting and reserving all the coal and other minerals and other substances on, in, and underlying said land together with the right of removing and taking away the coal and other minerals and other substances from adjoining and adjacent land through any openings and the right to occupy as may be necessary or convenient for mining purposes without reservation or hinderance and with proper rights for ventilation and draining the mines and all rights of ingress, egress, or way and the privilege of constructing operating and maintaining railroads and other roads in, on, under, across, and through and over the land without being in anyway liable for any injury or damage which may be done to the land or water therein upon and generally free, clear and discharged of and from all servitude to the land whatsoever.

Grandpa  
all you  
bought  
was  
the  
air

Calligraphy by Sirko

Bob Henry Baber  
2010

## UPDATE ON THE GEORGE WASHINGTON NATIONAL FOREST

The November, 2013, issue of *The Highlands Voice* reported that the new Forest Plan for the George Washington National Forest would be final soon. This was based upon the information from the Forest's web site which said the final Plan would be released in the fall of 2013.

In December, 2013, the Forest updated its web site, saying, "Our analysis and review is continuing. Once it is complete and a final decision is made, we will release the final versions of the Forest Plan and Environmental Impact Statement."

From all that anyone can determine, the holdup is over the issue of horizontal drilling of gas wells (including fracking) in the George Washington National Forest. The Draft Plan had allowed conventional gas wells but had prohibited wells that anticipated horizontal drilling.

This part of the Draft Plan produced many, many positive comments as well as some negative, but very loud, comments. The United States Forest Service apparently cannot decide how to resolve this issue.

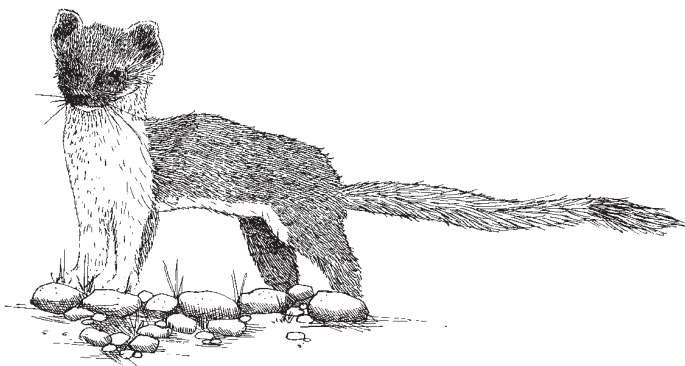
In the meantime, the District of Columbia Water and Sewer Authority's general manager has come out in opposition to fracking in the George Washington National Forest. The District of Columbia's water supply comes from George Washington National Forest land. While not ideologically opposed to fracking, he thinks water coming from George Washington National Forest is special: "In my judgment, it's hard to find a place that has more bona fides for protection than a national forest at the headwaters of a drinking water supply for a place that has no others, like Washington, D.C., the nation's capital.

"Let's take the time," he adds. "Let's not get this wrong, because getting it wrong is going to be very hard to recover from."



Still wondering

**Note: The poem on the facing page is an actual quotation from a deed by which Bob Henry Baber's ancestor acquired land without the mineral rights.**



## HIGHLANDS CONSERVANCY HELPS SPONSOR WATER FORUM

On February 20 and 21 the West Virginia Highlands Conservancy cooperated with the Ohio Valley Environmental Coalition, Marshall University Student Environmental Action Coalition and Marshall University Students for Appalachian Socialism to sponsor forums to give people an opportunity to listen to experts speak about the chemical spill and the related water problems that have bedeviled Charleston and the surrounding areas.

At the forum:

- Evan Hansen, of Downstream Strategies spoke about water testing
- Maya Nye, People Concerned about Chemical Safety spoke about the recommendations of the Chemical Safety Board and how adoption of these will help preserve clean tap water. She also provided some information on how the recent water crisis affects women and children.
- Andrew J. Whelton, Ph.D., Assistant Professor of Environmental Engineering, University of South Alabama reported on tap water sampling he has carried out in the impacted area.
- Cathy Kunkel, Independent Energy Consultant, addressed the process of making complaints to the Public Service Commission regarding water quality.

There was also an opportunity for the audience to ask questions.

### And the evidence just keeps on coming

## NEWS FLASH: COAL MINING MAKES YOU SICK

There is a growing body of evidence that living in the vicinity of coal mining has adverse health effects. Here is another piece, from the *Journal of Exposure Science and Environmental Epidemiology*, (19 February 2014) | doi:10.1038/jes.2014.2

*Atmospheric particulate matter size distribution and concentration in West Virginia coal mining and non-mining areas*

Laura M Kurth, Michael McCawley, Michael Hendryx and Stephanie Lusk

### **Abstract**

People who live in Appalachian areas where coal mining is prominent have increased health problems compared with people in non-mining areas of Appalachia. Coal mines and related mining activities result in the production of atmospheric particulate matter (PM) that is associated with human health effects. There is a gap in research regarding particle size concentration and distribution to determine respiratory dose around coal mining and non-mining areas. Mass- and number-based size distributions were determined with an Aerodynamic Particle Size and Scanning Mobility Particle Sizer to calculate lung deposition around mining and non-mining areas of West Virginia. Particle number concentrations and deposited lung dose were significantly greater around mining areas compared with non-mining areas, demonstrating elevated risks to humans. The greater dose was correlated with elevated disease rates in the West Virginia mining areas. Number concentrations in the mining areas were comparable to a previously documented urban area where number concentration was associated with respiratory and cardiovascular disease.

# HIGHLANDS CONSERVANCY BOUTIQUE



Even before baby gets here, moms like our I Love Mountains shirts



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

## T- SHIRTS

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



## HATS FOR SALE

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

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

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