



The Highlands Voice

The Monthly Publication of the West Virginia Highlands Conservancy

Volume 43 No. 5 May, 2010

Said they were going to sue, and they did

GROUPS WEREN'T KIDDING

By John McFerrin

As reported in the February, 2010, issue of *The Highlands Voice*, the West Virginia Highlands Conservancy, along with the Sierra Club, the Ohio Valley Environmental Coalition, and Coal River Mountain Watch, filed a notice of intent to sue Massey Energy Company and twenty nine of its subsidiaries for failing to comply with the federal Clean Water Act and the terms of the permits issued for those mines.

The federal Clean Water Act gives citizens the right to go to court to enforce the Clean Water Act. Before they may do so, they must notify the violators of the violations at least sixty days before filing suit. That is what the groups did in January, 2010..

Coal mines are routinely issued permits placing limits upon the amount of pollution they may discharge. The Clean Water Act prohibits the discharge of any pollutant other than what is allowed by the permit. By the notice the groups filed in January, they notified Massey Energy and the federal Environmental Protection Agency of the violations and the group's intent to sue if the violations are not corrected.

February came and went, as did March and April, without any action by Massey Energy and its subsidiaries to correct the violations. So on April 27, 2010, the groups who had filed the notice filed suit seeking a Court order requiring the Massey

subsidiaries to comply.

The Massey subsidiaries involved are the Elk Run Coal Company, Independence Coal Company, Marfork Coal Company, Peerless Eagle Coal Company, and Power Mountain Coal Company. The majority of the violations are for discharge of aluminum. Some of the mines are also violating permit limits for other pollutants including iron, pH, and suspended solids. In total, these mines racked up approximately 3,300 days of permit violations in the period from April 2008 through December 2009. All of these violations appear to be ongoing.

This is not the first time Massey Energy has been sued over such violations. The Environmental Protection Agency recently took action against it for similar violations. That case alleged that Massey had had over 60,000 violations over a six year period. That case resulted in a consent decree in which Massey agreed to pay a fine and change its polluting ways. It also agreed to provide EPA with reports on how much pollution it was discharging and whether it was complying with the limits found in its permits.

Massey has not learned its lesson. Its violations have grown more frequent after the settlement with EPA than they were before EPA brought its enforcement action. The quarterly reports that Massey provides to EPA under the terms of the consent decree

show that the Consent Decree had little or no effect on Massey's compliance with its effluent limitations. Between April 1, 2008, and March 31, 2009, Massey violated its effluent limits at its various operations at least 971 times, and accrued 12,977 days of violation during that 12-month period.

The groups also contend that Massey is in violation of permits issued under the Surface Mining Control and Reclamation Act. These permits are issued by state regulatory authorities such as the West Virginia Department of Environmental Protection. Those permits regulate all aspects of the mining, including the water pollution.

Although the Clean Water Act permit and the Surface Mining Control and Reclamation Act permits are two separate permits, they require the same thing so far as the discharge of polluted water is concerned. Because of this, the violations of the Clean Water Act are also violations of the surface mining act.

A copy of the filing can be found at <http://bit.ly/bqfFV4>. It is 38 pages long; the appendices listing violations add another ten plus pages. Only those who really, really want to know the details (and those who have trouble getting to sleep) should attempt it.

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How You Say It

Floyd Dominy died last month at the age of 100. He had been commissioner of the Department of Interior's Bureau of Reclamation longer than anyone else. During his career at the Rec Bureau, he got the Glen Canyon, Flaming Gorge, and Navajo Dams built along the Colorado River, and if he'd had his way there would be two dams in the Grand Canyon. He once said, "I've seen all the wild rivers I ever want to see."

This unapologetic manipulator of Nature was not an engineer but a skilful manipulator of our political system. He knew how to roll the pork barrel. The population boom of the past forty years in the desert Southwest was largely due to air conditioning and Floyd Dominy—and they wouldn't have the air conditioning without the hydroelectric power that Dominy's dams provided.

Dominy was a main figure in Marc Reisner's book, Cadillac Desert (1986), but I first heard of him in Encounters with the Archdruid (1971), in which John McPhee set David Brower, former executive director of the Sierra Club and founder of Friends of the Earth, against three antagonists: a mining geologist, a resort developer, and Dominy. The Brower vs. Dominy chapter can be found in The John McPhee Reader. It was the most spirited of the three arguments, conducted during a raft trip down the Grand Canyon. The Colorado still flowed free over monster rapids, but all its water had been processed through the "ten million ton plug" in Glen Canyon, just upstream from the National Park.

While Brower blamed himself for the dam that had turned Glen Canyon into Lake Powell, everyone else gave him the credit for saving the Grand Canyon. His campaign was the model for all other dam fights. Its icon was the full-page ad he placed in major newspapers with the headline, "Should We Also Flood the Sistine Chapel So Tourists Can Get Nearer the Ceiling?"

Dominy's comment: "People ignore facts and play on emotions."

By the end of his career, Dominy had decided not to ignore this fact. To counter the Sierra Club's elegiac film about Glen Canyon, "The Place No One Knew," he had commissioned "Lake Powell, Jewel of the Colorado." Sweeping shots of the big blue lake in the midst of red desert. Water skiers cutting wakes. Families camping beside half-filled lateral canyons. The Rec Bureau film turned the Sierra Club's message on its head: no one had known Glen Canyon, but now everyone could use it.

Some years ago, I went to Washington to talk to a congressional staff person about another proposal to put a slab of concrete where it would do a lot of harm. I was urgent. He just shrugged. "On every issue like this," he told me, "ten percent are for, ten percent are opposed, and eighty percent are either undecided or don't care."

As long as the numbers didn't move, the congressperson could do as he or she wished—other factors, including money, would control. Ten percent wouldn't change the outcome until they moved at least some of the eighty percent.

How do you move people who are undecided or don't care? Floyd Dominy was only half right when he said, "ignore facts . . . play on emotions." His Lake Powell-as-jewel movie showed he knew

(More on p. 11)

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StopPATH Campaign Takes To The Airwaves

By Frank Young

In April StopPATH WV formally launched its television, radio, Internet and print ad campaign in West Virginia's eastern panhandle and tri-state area. The campaign will soon be expanded to the Weston-Buckhannon and Charleston area media markets.

StopPATH WV spokesperson Keryn Newman says, "The underdogs are bringing the fight to the power companies with StopPATH WV's launch of a television, radio, internet and print advertising campaign that points out that the Potomac Appalachian Transmission Highline (PATH) is an expensive, unnecessary boondoggle that will only benefit corporate profit margins."

This advertising campaign was made possible by grants from the National Trust for Historic Preservation through the Henry A. Jordan, M.D. Preservation Excellence Fund and the Sierra Club, in cooperation with the West Virginia Highlands Conservancy. As part of the grant, these ads are available for use by other opposition groups in Virginia, Maryland and West Virginia.

Visit the website www.stoppathwv.com to view campaign materials, you-tube videos of the television commercials and links to backup material. The radio commercials and print ads are not yet available at this website. If you need copies of these, please email keryn@stoppathwv.com

These ads were made very general so that they may be re-tagged by other groups for their own use. Re-tagging of all the campaign materials can easily be done by the agency that created the commercials, Growth Media Services of Martinsburg, WV. You can contact Darla Gaige at 540-550-0590 or darla@growthmediaservices.com. She estimates the cost for re-tagging to be under \$100 for the entire package.

A Stop PATH news release says, "Even if you do not plan to re-tag and use these advertising materials in your own local markets,

please feel free to use and disseminate our commercials on your own websites and within your own groups. Our side of this fight doesn't have the money to flood all markets with advertisements like the PATH companies do. So we must depend on person-to-person contacts in order to compete. Let's see if we can get this campaign to go viral!"

Despite PATH's expensive advertising, public relations and marketing campaign, which will ultimately be paid for by electric customers in 13 states, including West Virginia, StopPATH WV looks to share the knowledge throughout the region affected by the PATH proposal.

StopPATH WV, Inc. is a grassroots citizens' group based in Jefferson County, West Virginia that seeks to protect the health, property values and welfare of their community by defeating PATH's currently pending application before the West Virginia Public Service Commission, as well as promoting education and awareness of the potentially devastating effects this project will have on the local communities through which it is proposed to pass. Visit us on the web at www.stoppathwv.com

The Potomac Appalachian Transmission Highline, or PATH, is a 765kV high-voltage electric transmission line that is slated to pass through West Virginia, Virginia and Maryland on its nearly 300-mile journey from St. Albans, W. Va., to Kemptown, Md.

More information available at www.pathtransmission.com

For more information contact:

Keryn Newman (304) 876-3497 or keryn@stoppathwv.com

Patience Wait (304) 876-1515 or waitp@stoppathwv.com

DON'T FORGET!!!

WV HIGHLANDS CONSERVANCY SPRING REVIEW TYGART LAKE STATE PARK May 7-9, 2010

Fun, educational, program and activities for all! Details of the program were in both March and April issues of *The Highlands Voice*. For absolutely up to the minute program changes, go to our website, www.wvhighlands.org.

If you haven't registered yet, contact Cindy Rank (clrank@hughes.net or call 304-924-5802) Spots were filling fast but there may still be lodging available. For directions and overview of the park see: www.tygartlake.com

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

The West Virginia Highlands Conservancy web page is www.wvhighlands.org.

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.

COMMENTING ON Spruce #1/PIGEONROOST PERMIT *DUE: JUNE 1*

SUMMARY: Pursuant to Section 404(c), the United States Environmental Protection Agency Region III (EPA) is requesting public comments on its proposal to withdraw or restrict use of Seng Camp Creek, Pigeonroost Branch, Oldhouse Branch, and certain tributaries to those waters in Logan County, West Virginia to receive dredged and/or fill material in connection with construction of the Spruce No. 1 Surface Mine (Spruce No. 1 Mine or the project).

An important part of EPA's mission is to ensure our environment and public health are protected and restored for current and future generations. Among ways that EPA carries out its mission is by ensuring appropriate implementation of the Clean Water Act. Section 404(c) of the Clean Water Act (CWA) authorizes the U.S. Environmental Protection Agency (EPA) to prohibit, restrict, or deny use of any defined area in waters of the United States for specification [designation] (including the withdrawal of specification) for the discharge of dredged and/or fill material whenever it determines, after notice and opportunity for public hearing, that use of such sites to receive dredged and/or fill material would have an unacceptable adverse impact on various resources, including fisheries, wildlife, municipal water supplies, and recreational areas. This authority is often referred to as EPA's authority to "veto" a CWA Section 404 permit to discharge dredged and/or fill material to waters of the United States.

The Spruce No. 1 Mine is one of the largest surface mining operations ever authorized in Appalachia. In connection with this project, Mingo Logan Coal Company (permittee) has been authorized by the U.S. Army Corps of Engineers, Huntington District (Corps) ((Department of the Army Permit No. 199800436-3 (Section 10: Coal River)) to construct six "valley fills" and numerous sedimentation ponds in Seng Camp Branch (already partially constructed), Pigeonroost Branch (not yet constructed), Oldhouse Branch (not yet constructed), and certain tributaries to those waters by discharging excess overburden (or spoil) generated by surface coal mining operations.

The project as authorized will directly impact 2,278 acres, including more than seven miles of stream, and indirectly impact other waters. EPA Region III acknowledges the project has undergone extensive regulatory review and has been modified from the original proposal in order to reduce

impacts. EPA Region III is taking this action because it believes, despite all the regulatory processes intended to protect the environment that construction of Spruce No. 1 Mine as authorized would destroy streams and habitat, cause significant degradation of on-site and downstream water quality, and could therefore result in unacceptable adverse impacts to wildlife and fishery resources. These impacts are described in more detail at: www.epa.gov/region3/mtntop/spruce1.html.

The goal of protecting water quality, plant and animal habitat, navigable waterways, and other downstream resources requires the careful protection of headwater streams and life they support. These streams are like the capillaries within our circulatory system. They are the largest network of waterbodies within our ecosystem and provide the most basic and fundamental building blocks to the remainder of the aquatic and human environment.

Applying the lessons of the past, we now know that failure to control mining practices has resulted in persistent environmental degradation in the form of acid mine drainage and other impacts that cost billions to remedy. While the Surface Mining Control and Reclamation Act (SMCRA), the CWA, and other laws have put in place controls addressing some environmental impacts, including acid mine drainage, recent studies and experience point to new environmental and health challenges that were largely unconsidered until more recently. We know the regulatory controls currently in place have not prevented adverse water quality and aquatic habitat impacts from other surface mining operations. We also know the same types of impacts as those anticipated from this project have had previously unforeseen environmental consequences.

Public health issues surrounding the types of impacts associated with the Spruce No. 1 project are not well understood. EPA has been presented with household-specific and anecdotal information that suggests individual and possibly public surface water and ground water supplies could be adversely impacted by surface coal mining activities. In addition, recent published studies directly relate intensity of surface mining activities within Appalachia to degraded public health and mortality. EPA has been presented with a petition from a variety of local stakeholders that outlines many of these concerns and further relates them to issues of environmental

justice.

Ultimately, EPA's process will result in one of three outcomes: (1) EPA could withdraw specification of the site as a disposal site and decide to use its discretion to prohibit any discharges from the project, including the construction of valley fills; (2) EPA could restrict specification of the site as a disposal site and decide the project cannot go forward under the permit as currently issued, but could go forward under a modified permit with more environmentally protective conditions; or (3) EPA could decide the permit as currently issued is sufficiently protective.

EPA seeks comment on this proposed Section 404(c) determination to withdraw, prohibit or restrict use of Seng Camp Creek, Pigeonroost Branch, Oldhouse Branch, and their tributaries in Logan County, West Virginia, to receive dredged or fill material in connection with construction of the Spruce No. 1 Surface Mine as currently authorized by the January 22, 2007 Department of the Army (DA) Permit No. 199800436-3 (Section 10: Coal River).

DATES: Comments must be received in writing by June 1, 2010.

ADDRESSES: Submit your comments, identified by **Docket ID No EPA-R03-OW-2009-0985**, by one of the following methods:

1. Federal eRulemaking Portal (recommended method of comment submission): <http://www.regulations.gov>. Follow the online instructions for submitting comments.
2. E-mail: ow-docket@epamail.epa.gov. Include the docket number, EPA-R03-OW-2009-0985, in the subject line of the message.
3. Mail: "EPA-R03-OW-2009-0985, Spruce No. 1 Surface Mine," U.S. Environmental Protection Agency, EPA Docket Center Water Docket, Mail Code 28221T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.
4. Hand Delivery or Courier: Director, Office of Environmental Programs; Environmental Assessment and Innovation Division; U.S. Environmental Protection Agency, 3EA30 Region III; 1650 Arch Street, SW.; Philadelphia, Pennsylvania 19103.
5. Submit at Public Hearing: **See Public Hearing on page 6 of this issue of The Highlands Voice.** Direct your comments to Docket ID No. EPA-R03-OW-2009-0985.

FLYING OVER SPRUCE FORK

By Cindy Rank

I suppose when a person stays someplace long enough many things come around full circle at least once.

After nearly 40 years in West Virginia I feel that way a lot these days and it's certainly how I felt recently when I was treated to a bird's eye view of what's left of the town of Blair in Logan County WV and the old Dal-Tex operation that looms over the town, a site I first visited on a state sponsored mine tour in 1994 and one that Penny Loeb featured in her *Sheer Madness* article in US New & World Report of August 1997.

From there Southwings pilot Susan Lapis flew us over Route 17 and the short section of widened road by Sharples that now hosts long rectangular treatment ponds that are part of the Mountain Laurel deep mine/prep plant complex at the mouth of Seng Camp Creek.

Portions of the upper reaches of Seng Camp Creek are included in the Spruce #1 mine permit that became the focus of our 1998 *Bragg v. Robertson* litigation. For many reasons outlined elsewhere in this issue of the Voice the US Environmental Protection Agency (EPA) is proposing to veto the Clean Water Act 404 fill permit for the Spruce #1 mine.

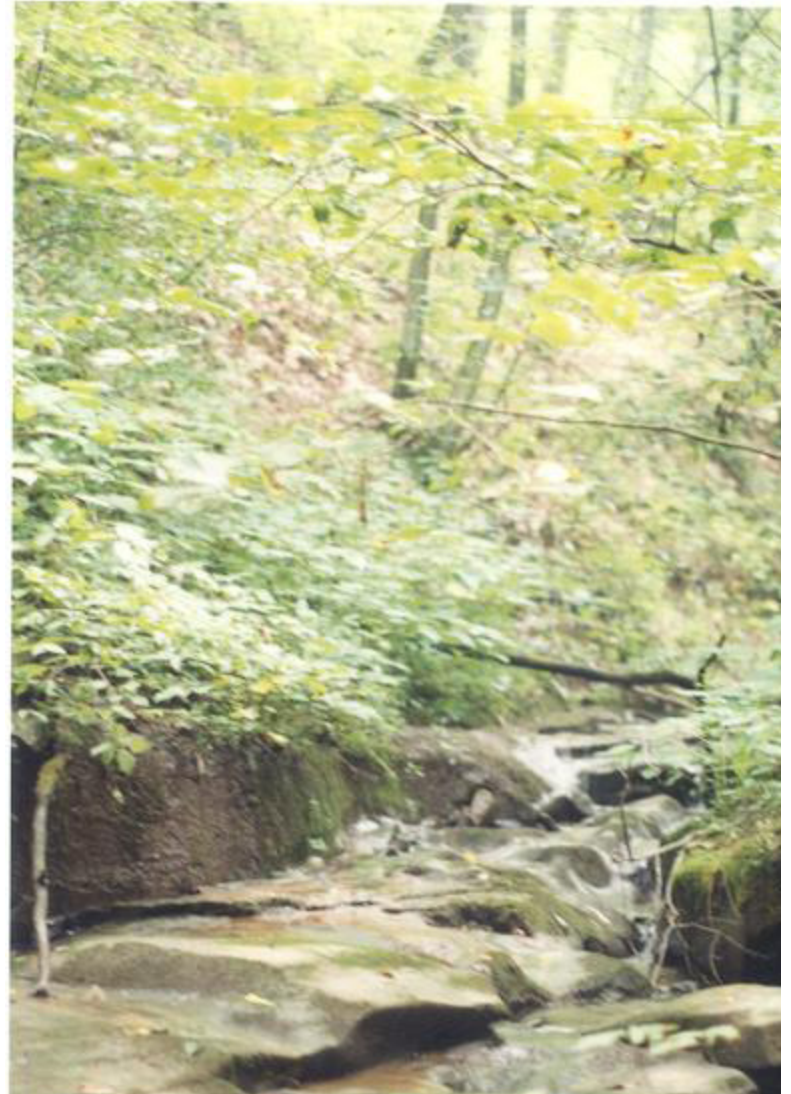
Seng Camp is on the northern edge of the 2,278 acre Spruce #1 permit and is one of three streams targeted for filling as part of the Mingo Logan mine. (Pigeonroost and Oldhouse Branch are the other two.) The Seng Camp Creek valley fill area was initially disturbed in January 2007 - before we discovered that the Army Corps of Engineers had issued the 404 fill permit and before we could file an objection with Judge Chambers to include it with our ongoing 2005 litigation

about similar permit actions in southern West Virginia.

Because work had begun in Seng Camp, the best we could achieve was a stand-still agreement with the company that they would only mine in that limited portion of the Spruce #1 mine while the courts worked through the rest of the legal questions. In the summer of 2008 circumstances were such that we were unable to object to an expansion of the mining to the uppermost portion of the ridge between Seng Camp and Pigeonroost Creek. Though the expansion would remove portions of the ridge, the absence of any discernable "jurisdictional" waters in the new area left us no basis for legally challenging the seventy some acre expansion.

I regret to this day that we were unable to prevent Mingo Logan from extending the operation into the ridge separating Seng Camp Branch and Pigeonroost And yet I was heartened last week to see Pigeonroost still undisturbed and forested for it's full two and a half mile length... and Oldhouse Branch to the south as well, and even portions of Seng Camp as yet untouched.

It is my hope that readers of the Highlands Voice and hundreds of other sympathetic minded friends will chime in with even the briefest of comments encouraging EPA to deny any additional movement into these untouched tributaries of the already severely impacted Spruce



Oldhouse Branch

Fork of the Little Coal River.

Information on how to file comments supporting EPA's proposed veto can be found on page 4 of this issue of The Highlands Voice.

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

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.



PUBLIC HEARING
SPRUCE #1/PIGEONROOST PERMIT
MAY 18TH – CHARLESTON WV

The U.S. Environmental Protection Agency (EPA) will hold a public hearing regarding its proposal under the Clean Water Act to significantly restrict or prohibit mountain top mining at the Spruce No. 1 surface mine in Logan County, W. Va. The project was permitted in 2007 and subsequently delayed by litigation. The Spruce No. 1 mine would bury over 7 miles of headwater streams, directly impact 2,278 acres of forestland and degrade water quality in streams adjacent to the mine.

EPA's proposed determination comes after extended discussions with the company failed to produce an agreement that would lead to a significant decrease of the environmental and health impacts of the Spruce No. 1 mine.

The purpose of the public hearing is to obtain public testimony or comment on EPA's proposed 404 (c) action on the Spruce No. 1 Mine project.

WHO: U.S. Environmental Protection Agency Region III representatives

WHAT: Public hearing on EPA proposal for Spruce No. 1 surface mine

WHEN: May 18th, 2010 at 7:00 p.m.

WHERE: Charleston Civic Center (South Hall) Charleston, W.Va. 25301

Registering ahead of time is recommended:

Advance sign up is not required to attend or speak at the public hearing. However, because of the large turnout expected, EPA is recommending that people wishing to attend the public hearing, and especially those who wish to speak, sign up in advance. People wishing to sign up in advance can do so over the internet by going to <http://www.epa.gov/region3/mtntop/spruce1hearing.html> and clicking on the link, or **by calling 877-368-3552**.

To accommodate as many speakers as possible, each speaker will be limited to two minutes. There also will be an opportunity to sign up on-site the day of the public hearing. Speakers at the public hearing will be in order of sign up.

In addition, people wishing to provide comment may do so in writing. If you would like to submit written comments you may do so at the public hearing or on-line at www.regulations.gov (search for EPA-R03-OW-2009-0985).

More information on Clean Water Act Proposed Determination:

The Clean Water Act gives EPA authorization to deny the Spruce No. 1 Mine permit or add restrictions that the mine owner would be required to follow. The part of the Clean Water Act that grants this authorization is known as 404 (c). This section authorizes EPA to restrict or prohibit placing certain pollutants in streams, lakes, rivers, wetlands and other waters if the agency determines that the activities would result in "unacceptable adverse impacts" to the environment, water quality, or water supplies. This authority applies to proposed projects as well as projects previously permitted under the Clean Water Act. A final decision

to restrict or prohibit the Spruce No.1 Mine will be made at a later date by EPA's national headquarters based on a recommendation from the regional administrator of EPA's mid-Atlantic region, public comments, and discussions with the Army Corps of Engineers and the Mingo Logan Coal Company, the mine owner.

Relevant documents, including the EPA regional administrator's proposed determination can read and reviewed on EPA's website at: www.epa.gov/region3/spruce1.html.



Tragedy of Mountains

By Paula Kaufman

ap-uh-latch-uh

Light is
our tragedy,
water turns orange,
when do you bury a mind,
roads hug every inch of the curve,
our mountains breath light,
choke out light.

We want to hide those explosives!
We want to rip billboards from roads,
propaganda of lies.

We don't want to be a privatized province,
penny-picked paradise,
petty people,
provincial place,
packaged product--
the hypocrisy of light.

Ms. Kaufman is an undergraduate at Brown University, and a denizen of Charleston, West Virginia

MONONGAHELA NATIONAL FOREST EXPANDS

A 448 acre tract located above Bartow has been added to the Monongahela National Forest.

The property is located on a bluff adjacent to a stretch of the historic Staunton-Parkersburg Turnpike, a heavily traveled route over the Allegheny Mountains during the Civil War. The property's turnpike route extends from the base of Allegheny Mountain at Staunton, Va. over the mountain into W.Va. to the Ohio River in Parkersburg, W.Va. The Turnpike, a designated National Scenic Byway, links battlefields at Rich Mountain, Cheat Summit, and Camps Allegheny and Bartow, and is promoted through the Staunton-Parkersburg Turnpike Alliance. The Alliance preserves Turnpike history and promotes tourism and visitors to the area.

The Trust for Public Land, a national conservation organization, conveyed the property to the U.S. Forest Service as an addition to the Monongahela National Forest. In partnership with the Forest Service, the Trust for Public Land has helped protect more than 72,000 acres in the Monongahela over the last two decades for outdoor recreation, habitat, and water quality protection.

The \$900,000 purchase price was entirely funded by an appropriation from the federal Land and Water Conservation Fund (LWCF), secured with the support of members of the West Virginia congressional delegation, led by U.S. Congressman Nick Rahall, Chairman of the House Natural Resource Committee and U.S. Senator Robert C. Byrd, a leading member of the Senate Appropriations Committee. Efforts are underway in Congress now to permanently fund the LWCF at its fully authorized annual level of \$900 million.

"Adding this historic Civil War corridor to the Monongahela National Forest will help boost tourism and create economic opportunities in Pocahontas County," said Chairman Nick Rahall. "I will continue to lead efforts in the Congress to fully fund the federal Land and Water Conservation Fund, which stimulates local economies while preserving West Virginia's rich natural, cultural, and historic heritage for future generations to enjoy."

"We are pleased this property is now available for the public to use as part of the Monongahela National Forest, and appreciate the efforts of the many people who worked to complete the transaction," said Clyde Thompson, Forest Supervisor for the Monongahela.

The Trust for Public Land is a national nonprofit land conservation organization that conserves land for people to enjoy as parks, gardens, and natural areas, ensuring livable communities for generations to come. Since 1972, TPL has helped protect nearly 3 million acres nationwide, including more than 73,000 acres in West Virginia.

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.

NATURE HAPPENS

By John McFerrin

Two years ago the two ninety year old maple trees in our yard had to come down. They had become over mature, as we say, with multiple big dead limbs hanging there, menacing the children who fill our yard every summer. We had them cut down, their stumps ground into wood chips.

Most of the wood went for firewood; neighbors and friends of friends came with chain saws and splitting wedges, worked it into manageable size pieces, and hauled it away.

When one of the trees was alive, the trunk divided itself into five huge limbs about a dozen feet off the ground. While the neighbors and friends of friends could manage the rest, nobody could do anything with that part of the tree. It was too big to move, too knotty to split. We were left with a slice of the tree, two feet tall, over two feet across, with the stumps of the big limbs sticking out from all sides.

Not much happened the first summer. The big chunk of wood hosted a few tea parties. It was a good platform for six year old Samuel to leap up on, wave his sword, and declare himself master of all he surveyed. It was a drive through restaurant for some woodpeckers. But the big chunk was not home to much visible life and the pile of wood chips left from grinding the stump was not yet hospitable to new growth.

The second summer the mushrooms appeared. A whole stack of them, all up and down one side. They looked like a stack of pancakes, made with whole wheat flour and extra baking powder to make them fluffier and darker than regular pancakes. Over where the stump had been there was not much sign of life. Under the ground the roly polies and other assorted wee beesties were hard at work, turning the wood chips into something plants could use. On the surface there was nothing.

Now we are beginning the third summer. The mushrooms are gone, collateral damage from one of Samuel's sword fights. But other things are happening. In the forks of the big chunk, a bit of dirt has accumulated. Dandelions have parachuted in and established a beachhead.

Meanwhile, there is action over where the tree was. The tree's spot is still bare but white clover—a species largely unknown when the trees were there—has now bivouacked all around it. They are obviously planning an invasion; advance scouts are already inching toward the interior.

Nature happens. Not just at Seneca Rocks or some designated wilderness area. Right here, right now, right where my habitat overlaps that of other creatures. The trees come down; the squirrels either leave town or move to the back yard. A plant species that couldn't make it there before moves in. Wood chips become dirt, mushrooms sprout, life goes on.



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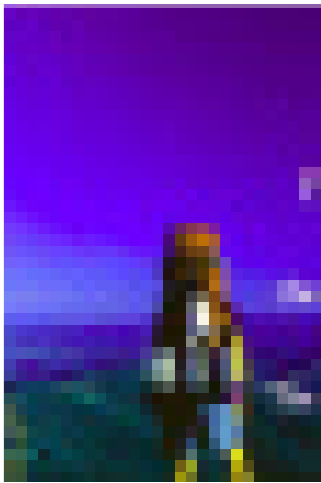
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Regular	\$ 25	\$ 35	\$ 50
Associate	\$ 50	\$ 75	\$ 100
Sustaining	\$100	\$ 150	\$ 200
Patron	\$ 250	\$ 500	\$ 500
Mountaineer	\$500	\$ 750	\$ 1000

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 \$24.95, 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 \$24.95, we are offering it as a premium to our members. Anyone who adds \$10 to the membership dues listed on the How to Join membership form (right up there) will receive the history book for free. Just note on the membership form that you wish to take advantage of this offer.

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

HATS FOR SALE

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

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

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

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



THE WV COAL EQUATION: LIVING WITH PAST PEAK PRODUCTION

By Bill Howley

We now see clear evidence that the West Virginia coal industry is in decline. This is not to say that the industry is going away any time soon. WV coal production peaked at 181 million tons in 1997 (www.minesafety.org/historicprod.htm). Production in 2008 was 165 million tons. Like the arrival of peak oil production around the world, the passage of the peak of the West Virginia coal resource is now clear.

Here are the changes peak coal has wrought:

1) For the last 20 years, coal mining in WV has metastasized into mountaintop removal in which 40 feet of unproductive overburden must be removed to mine coal seams as thin as 18 inches. The WV Legislature actually created a tax credit on the state's severance tax that was available to mountaintop removal operations for mining these "thin seams". Mountaintop removal requires massive amounts of diesel fuel, for both equipment and blasting. When diesel gets too much more expensive, mountaintop removal will no longer be profitable. Peak coal production is now subject to the laws of peak oil.

2) For the last 20 years, underground coal mining has only been economically viable with the removal of the UMWA from most WV mining operations. Mining coal with miners who can protect themselves is more expensive than non-union mining in which miners live in constant fear of losing their jobs.

3) Both mountaintop removal mining and underground mining only remain economically viable in WV if state and federal regulators subsidize mining by radically reducing enforcement of laws and regulations. Corporate giveaways and tax cuts have also undermined enforcement as all regulatory agencies are forced to reduce inspection staff.

4) Coal mining in West Virginia only remains economically viable if state political leaders and our Congressional delegation constantly browbeat career regulators into allowing coal operators to break the law. No career regulator will stick his neck out to fight the people who provide his/her paycheck. Both Davit McAteer and Jack Spadaro are good examples of regulators who were pushed out of federal agencies because they did their jobs too well.

5) Governor Manchin, the WV Public Service Commission, Congress and the Federal Energy Regulatory Commission design new schemes, like PATH and TrAIL, to prop up demand for coal and to sustain obsolete coal-based electrical power technologies by subsidizing and promoting Project Mountaineer's "coal by wire." Pushing crazy coal projects like "clean coal", "coal to liquids" and "coal gasification" starves real non-coal alternatives of needed investment, insuring that coal maintains its "low price" in the marketplace.

Peak coal is a simple economic proposition. The quality of the coal resource in WV is now so inferior, compared to what it was 40 years ago, that the mining industry must push more and more of its costs off onto communities where it operates and the miners who

actually do the work. Coal companies can't do anything about the decline of their resource so they continue their push to viciously cut costs.

A.T. Massey and Don Blankenship as well as others in the industry realized in the 1980s that coal mining in West Virginia could only continue if the cost of mining coal were cut radically by destroying the UMWA in the state and by massively expanding new mountaintop removal techniques that would physically devastate southern West Virginia. Unless costs of extraction could be driven down, largely by eliminating miners and mining jobs, coal mining in WV would not be economically viable.

The Massey Energy Frankenstein monster is a prime example of what was created by all of the West Virginia politicians and federal elected officials, with the notable exception of Ken Hechler, who actively promoted the industry's outlaw agenda with regard to federal law and safety regulations.

Instead of drawing a line and facing the realities of peak coal, West Virginia's political leaders chose to support the industry's agenda to drive down costs of production without regard to our state's welfare. The chickens have come home to roost.

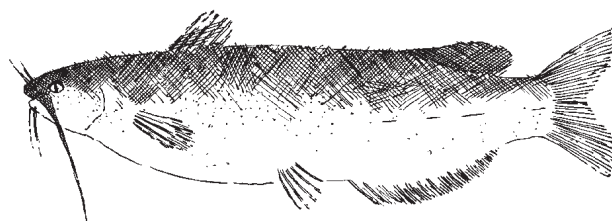
It is actually a rather simple mathematical equation. As the coal seams get more expensive to mine and poorer in quality, other costs, such as mine safety and compliance with surface mining laws, must be reduced if the profits of mining companies are to be maintained. These profits do not have to be huge, they just have to be high enough to produce a return on investment that can compete with other industries.

If the West Virginia coal industry cannot generate a high enough return on investment, the banks, pension funds and equity funds will simply invest their capital elsewhere. Instead of protecting West Virginia from the coal industry's race to the bottom, and insuring a measured shift in the state's economy away from coal, our political leaders have chosen to bleat about the "war on coal", while miners are killed and communities and our lands are destroyed.

So "coal by wire" power lines, killing miners and destroying southern West Virginia are all part of the same system of subsidies that have been piled on the coal industry (including the electrical power giant AEP and Allegheny Energy, soon to be swallowed by another giant, FirstEnergy).

Since the 1980s, we have seen the face of peak coal in West Virginia, and it isn't a pleasant face. Things will only get worse, as the coal and electrical industries devour more land and destroy more lives.

(A similar version of the above article was posted April 17, 2010 on Bill's blog THE POWER LINE, a view from Calhoun County. For more thoughtful posts about the recent surge of activity to build new huge power lines across WV see www.calhounpowerline.wordpress.com)



West Virginia Mountain Odyssey



Outings, Education and Beyond

Saturday-Sunday, May 08-09, 2010. Ramsey's Draft, GWNF, VA. 17 mile circuit with several stream crossings and 3100 feet of elevation gain. Beautiful stream and still some magnificent old Hemlocks left to see. Suitable for experienced hikers who want to try backpacking. Pre-registration required. Contact Mike Juskelis at 410-439-4964 or mjuskelis@cablespeed.com.

Saturday-Sunday, May 8-9. West Virginia Highlands Conservancy Spring Review. Tygart Lake State Park, Grafton, WV. Programs, outings, and activities for everyone.

Saturday-Monday, May 29 to 31, 2010 (Memorial Day Weekend). Cranberry Backcountry Backpack, MNF, WV. 26 mile moderate circuit in this under-utilized hiking venue featuring a circumnavigation of Cranberry Glades. Daily mileage: 8/12/6. Pre-registration required. Contact Mike Juskelis at 410-439-4964 or mjuskelis@cablespeed.com.

Saturday-Wednesday, June 26 to 30, 2010. Mount Rogers N.R.A., VA. Car Camping and Day Hiking. Camp at Grindstone Campground. Hike the Iron Mountains. The first hike will be The Iron Mountain Loop. It is a strenuous 14 mile circuit with 3400 feet of elevation gain starting at Beartree Lake and features vistas, streams and Rhododendron tunnels. The second hike will be the 12 mile Rowlands Creek Loop with 2430 feet elevation gain featuring several waterfalls, a couple over 100 feet in height, and some views. The third hike is another waterfall hike, 9.0 mile Comers Creek Loop, with 1850 feet of elevation gain. (The leader reserves the right to substitute any of the above with a shorter, easier hike starting from camp.) Sign up for all or part of the trip. Pre-registration and campsite reservation required. Contact Mike Juskelis at 410-439-4964 or mjuskelis@cablespeed.com.

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

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

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

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

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

MORE FROM PRESIDENT HUGH (Continued from . 2)

instinctively that facts were inseparable from emotions. Mere facts or refutations were unpersuasive because they lacked emotional meaning.

Maybe everyone has heard this now, but it bears repeating: if you want to persuade people, you have to link your cause with their dearly held, though often unconscious, values and metaphors. Brower associated the Grand Canyon with a monument of Western civilization. The Canyon, he implied, was a secular chapel, sacred to our national religion. Dominy fought back by associating Glen Canyon with access for everyone, not just the elite; with family recreation; and with other can-do national projects that made Nature serve human purposes.

Neither allowed the other to define his cause. Beware using your opponents' language, even to refute misstatements. Otherwise, you'll simply reinforce their metaphors about what's at stake.

This came up in a recent email from one of our own. He complained: "It disturbs

me that 'we' environmentalists are against about everything."

Julian Martin, a passionate rapid responder, wrote:

We environmentalists are not against about everything. That is a line used most often by folks who would destroy all that I hold dear. Being against mountain top removal means we are for the mountains and streams and critters. Being against massive blocks of concrete and huge windmills in the Mon Forest means we are for the wonder and beauty and the birds and bats. And I don't have to go to a place to want it protected and preserved. I have been to Alaska only once and then not to the Arctic but I sure don't want them drilling there.

To be "against:" that's negative, backward, obstructionist, inflexible; to be "for" is positive, forward-looking, adaptable. "Against" is a frown, "for" is a smile. It's all in how you say it.

I'll close with a prediction. At the end of April, the electric power producer FPL Group (which owns the wind turbines on Backbone Mountain) signaled its tentative support for the climate-change legislation being considered in the Senate. It wasn't alone. Whoa! Major utilities come out for a green initiative! How green can it be?

One of its advantages for them is that it would establish a predictable price for carbon emissions. Predictability would be good for the utility business. Perhaps more important, the utilities want a renewable energy standard to create a solid market for carbon-free energy, i.e., their wind and solar investments. But look closer: the companies also say that the new law would encourage them to invest in nuclear power.

Proponents, opponents, and agnostics alike know that if nuclear power can be defined in enough minds as "clean energy" it will outstrip solar and wind combined.

GROUPS APPEAL COAL-TO-LIQUID PLANT

The West Virginia Highlands Conservancy has joined with the Sierra Club, Ohio Valley Environmental Coalition, and Coal River Mountain Watch in an appeal of the permit for a coal-to-liquids plant proposed for Mingo County by developer TransGas Systems. The appeal highlights numerous errors and problems in the WV Department of Environmental Protection's proposed permit.

A key issue in the appeal is whether the plant is designated as a "minor" or "major" source of pollution. Plants whose air emissions will remain under a certain threshold qualify for minor source status and do not receive the same scrutiny as major sources.

As a "minor source" TransGas can start construction without installing the best available control technology or determining how its pollution will affect air quality in downwind areas.

The appeal identifies more than a dozen areas in which TransGas and DEP have underestimated the plant's emissions or relied on operating limits that can't be enforced. The appeal would require TransGas and DEP to reveal all expected air pollution and to include control technology to protect human and environmental health.

As proposed, the TransGas liquid coal plant would process more than 3 million tons of coal each year, and more than 166,000 tons of limestone. The plant plans to produce up to a total of 226,271 tons of liquid sulfur, liquefied petroleum gas (LPG), gasoline and other "miscellaneous" liquid coal products each year.

The proposed TransGas plant would be located near Wharnccliffe, West Virginia on 63 acres of what is currently an active mountaintop-removal surface mining site.

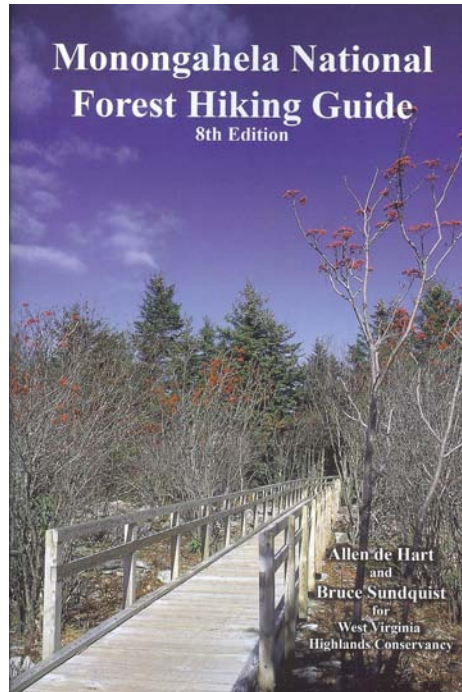
BROCHURES

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

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

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

Please email any poems, letters, commentaries to the VOICE editor at johnmcferrin@aol.com or real, honest to goodness, mentioned in the United States Constitution mail to John McFerrin, 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.

T- SHIRTS

White, heavy cotton T-shirts with the **I♥Mountains** slogan on the front. The lettering is blue and the heart is red. "West Virginia Highlands Conservancy" in smaller blue letters is included below the slogan. Short sleeve in sizes: S, M, L, XL, and XXL. Long sleeve in sizes S, M, L, and XL. **Short sleeve** model is \$12 total by mail; **long sleeve** is \$15. West Virginia residents add 6% sales tax. Send sizes wanted and check payable to West Virginia Highlands Conservancy ATTEN: James Solley, WVHC, P.O. Box 306, Charleston, WV 25321-0306.



Speakers Available !!!!!

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

Voice Available Electronically

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

BACKPACKING VIRGINIA'S TRIPLE CROWN (SORT OF)

By Michael Juskelis

April 24 to 26, 2010: The three best vistas on the Virginia portion of the Appalachian Trail are considered to be, from south to north, the Dragon's Tooth, McAfee Knob and Tinker Cliffs. We bypassed the Dragon's Tooth but added several views of Carvin Cove Reservoir on the northern end of Tinker Mountain by extending the trek to the intersection of I-81 and U.S. 220.

Day 1: I was joined by Short Stack, Treebeard IM, Bubbles, Single Malt, Paul, Richard and Henry. From the southern trailhead on VA route 311, we set off at a reasonable pace using the Scout trail to quickly connect with the Appalachian Trail. Almost immediately the typical Appalachian display of spring wildflowers started: Gay Wings, then some Trillium followed by an assortment of violets, Bluets, Fly Pink, Spring Beauties, Pink Lady Slippers, the diminutive Pussy Toes and Red Bud and Blackhaw Viburnum as beautiful understory trees.

We crossed a road and began a gradual climb via switchbacks to some picturesque pastures with Catawba Mountain, our target for the day, in the background. Several stiles had to be negotiated to navigate through them, a tough chore with a 40 pound pack.

We climbed up Beckner Gap. As we got closer to the gap itself, the trail veered off to the left, quickly reaching the initial ridge line of Catawba Mountain. Here we began to get partial views of the valley of the same name and Great North Mountain to the northwest. We crossed Route 311. The trail was now lined with Dame's Rocket, a garden escapee with pretty pink/purple flowers and leaves resembling those of wild Garlic Mustard. There were several places where the mountainside was too steep and rocky to hold a trail. To resolve this issue a group of Eagle Scouts had built short boardwalks on legs to get by the worst of it.

We soon passed a recently constructed Johns Spring Shelter (but there is no water

there.). (The old one had been unwisely constructed using a living tree as one of the corner posts. Whenever the wind blew the entire shelter would creak, making for an uncomfortable if not nerve racking night for its occupants.). In another one and a half miles we reached the Catawba Mountain Shelter and its tent site and flowing spring. Stats for the day: 9.2 miles and 1700 feet of elevation gain, lots of pleasant views.

Day 2: We summited McAfee Knob in 45 minutes but there was no view to be had. Some of us stayed behind to dry some wet gear while the rest of us descended through some massive rock mazes on our way to the next focal point, Tinker Cliffs. In about an hour the skies were blue with some fluffy white clouds drifting high above. The trail leveled out as we passed Campbell Shelter and its campsites and spring. For a short distance the trail joined a service road that we had crossed earlier in the day. This provided a welcome, albeit short, respite from the rocky trail before we climbed to Tinker Cliffs and some of the most magnificent panoramas any of us have seen in the Mid-Atlantic region. The cliffs were edged with masses of beautiful Dwarf Iris.

We descended to Scorched Earth Gap and the junction with the yellow blazed Andy Lane Trail. (This would be the usual exit point of the trip if doing the original Triple Crown hike.) Scorched Earth Gap – The story is told that a trail maintenance crew had hiked up the Andy Lane Trail to do some work on the Appalachian Trail. The trail climbs nearly 3000 feet in 3.1 miles. The leader claims that the language that came out of one lady's mouth after the climb was so foul it ... scorched the earth beneath them!)

The sign post here claims that the Lambert's Meadow Shelter and camp sites are 0.6 miles NOBO. It felt more like a mile. Regardless of the distance we were all in camp by 3:00. Stats for the day: 9.1 miles,

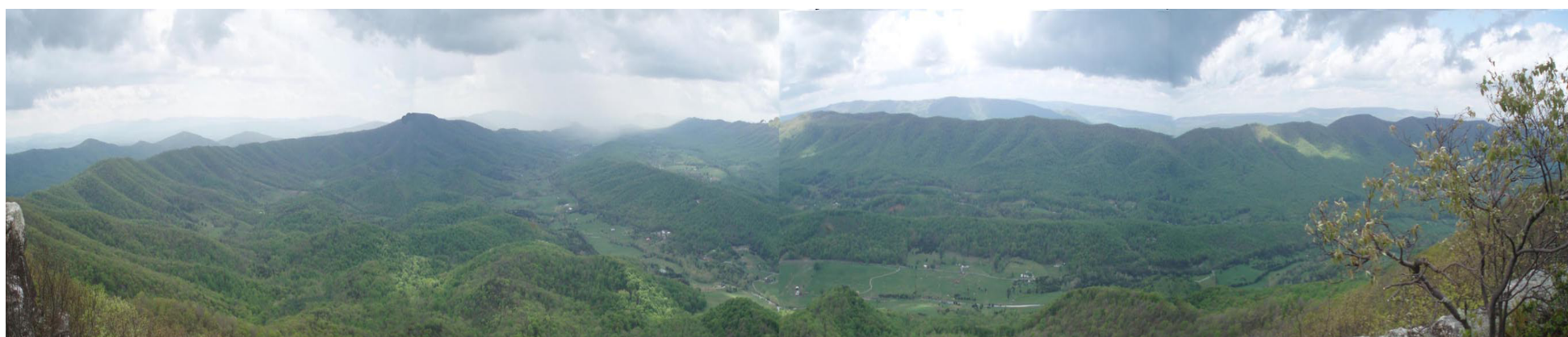
2000 feet elevation gain and some of the best views we've ever seen.

Day 3: We broke camp around 8:30. Although today would be longer than originally predicted the elevation gain was not supposed to be as bad as the previous two days. It was not but buried in the elevation profile that my National Geographic software plotted were several short but steep climbs that we encountered as the Appalachian Trail tried its best to maintain its position on the top of Tinker Mountain. Thankfully the rocky parts were separated by some long stretches of flat and smooth hiking.

The highlight of this final segment was supposed to be Hay Rock Overlook. We were all sorely disappointed to find this massive rock outcrop almost totally covered by graffiti. At this point I was behind everybody in the group by several minutes. I said to myself "Why? What's the purpose? Why not just paint the side of some vacant building in town?" Fortunately there were several other better views of the Carvin Cove Reservoir that escaped the spray paint cans of these eco-terrorists.

After passing under a set of humming high power lines the Appalachian Trail quickly switchbacked down to the bottom of the mountain. After crossing a railroad track and Tinker Creek we turned off onto an abandoned road and soon found ourselves at the northern trailhead. Stats for the day: 9.6 miles and 900 feet of elevation gain.

We quickly loaded our gear into the awaiting vehicles and drove to the southern trailhead to retrieve the rest of our transportation. With just a minimum of error, five of us found our way to the Country Cookin' Restaurant in Salem for a hearty meal before heading back to northern VA/MD. It was one of the best trips we've done in a very long time.



Tinker Cliffs looking into the Catawba Valley with North Mountain on the right. McAfee Knob and Catawba Mountain are to the left.

COUGARS IN THE EAST, WHEN IS A NATIVE A NATIVE?

By John Laundre

In a previous issue of the Voice (Dec 09), I outlined the problem Eastern forests face from a burgeoning white-tailed deer population. As pointed out in this earlier article, what is needed is the restoration of a top predator such as the cougar to return ecological integrity to the Eastern forests. However, where are these cougars to come from? Do we hope, as many do, that they come from some remote remnant survivors of the original Eastern cougars who once roamed the region or is our only hope the introduction of cougars from existing populations outside of the East?

The first approach raises and hinges on the often asked question: Do cougars exist in the East? If they do, are they the true "native" eastern cougar or "exotic" individuals from the western U.S. or worse, Latin cousins from South America?

This is not surprisingly a controversial question that is raised more and more frequently throughout the states east of the Great Plains. In every Eastern state, someone, somewhere has reported seeing what they truly believe is a cougar. Most of these are false identifications, bobcats, dogs, and even house cats that looked like cougars from a distance. Some are downright hoaxes, pictures of western cats purportedly taken in the East, and many we will never know for sure.

In almost all cases, such reports are met with skepticism from local wildlife resource agencies and their standard response is that there are no cougars in the East. Though likely prudent in their skepticism, the more they deny the possibility, the more the public believes it to be true, often blaming these agencies of a cover-up conspiracy.

Recently, however, there have been some confirmed sightings in the East, even one sighting in New Hampshire by a state wildlife employee and another in Georgia where a cougar was killed by a hunter! These sightings often fuel the debate about the "return" of cougars to the East and many feel lend credence to the multitude of previous sightings AND the cover-up theories! Though agencies recognize these confirmed sightings, they normally write them off as "exotic" escaped or released pets, usually from the West or from South America.

This disclaimer is used primarily to reinforce the idea that IF there are cougars out there, they are not native to the area and so don't constitute reason for concern...or protection. This circular reasoning implies then that for a cougar found in the East to be of concern and protected it has to be of NATIVE stock, offspring of the true eastern cougar subspecies (*Puma concolor cougar*). However, since, as they argue, all eastern cougars were killed off, there is no native stock out there and so any cougars found are by default... exotic.

We saw that recently in the Georgia incident where the cougar shot by the hunter was automatically assumed to have been one of those exotic cats, so no big deal. No punishment for killing an endangered species was demanded. This is in contrast to the fact that before bald eagles were de-listed, killing any eagle, anywhere, brought severe consequences. When it was found that this particular cougar was a Florida panther, they then back-pedaled and said, well it must be an escaped pet so there were, again, no consequences. Now they are in a quandary because it is genetically linked to a wild Florida panther! However, many still insist that someone likely transported it to the north so again, it was ok to shoot it.

This and so many other incidents involving exotic or "foreign"

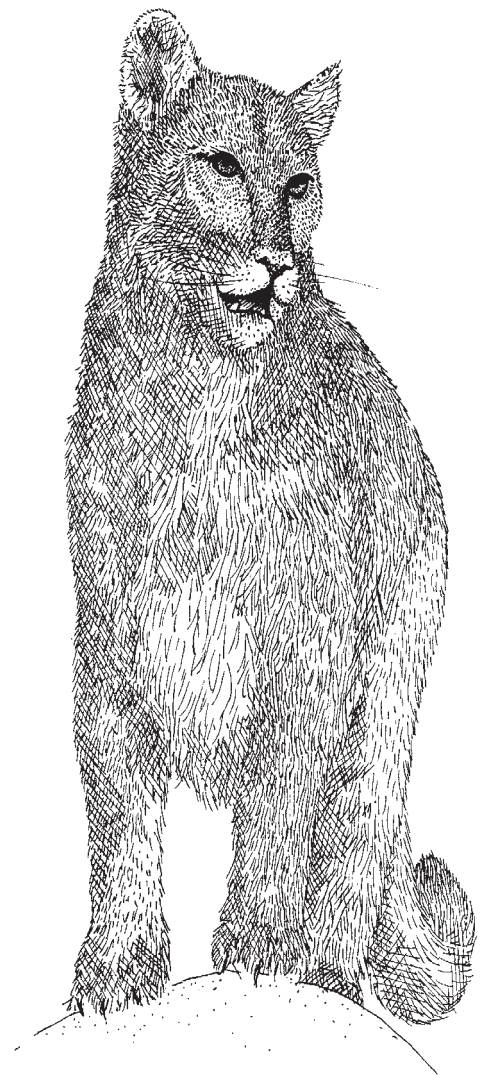
cougars begs the question of when, if ever, can one of these pets or South American or western cougars ever be considered a native?

This question also lies at the core of not only hopeful "natural" recovery of cougar populations in the East but also the discussion of the second option of reintroducing cougars. Because any cougars brought in would be from more western populations, many argue the use of cougars even from relatively close Wyoming or South Dakota populations constitutes introducing exotics, no different than those escaped pets! This puts all cougars on the same level as other exotic species such as purple loosestrife, or starlings, or European boars (which were deliberately introduced by the WV DNR in the 1970's). They argue that we really don't know how they might react and if they might cause more problems than we expect.

This is a red herring. REintroducing individuals of a species that has been in an area is not the same as INtroducing a totally new species that has never occurred there. Unless we want to start referring to our European ancestors AND ourselves as exotics, this argument is groundless. Released or introduced cougars from anywhere in their known range into the East might be foreigners but they will never be exotics.

As for these foreign cougars, be they escaped pets from South America or reintroduced wild animals from out west, we can use the human example to also answer how long it would take them to be considered natives...or at least "citizens" of the East. The native issue is easy. For humans, if you were born in the U.S., by law you are considered a native. It really doesn't matter if your parents, or ancestors, arrived 10,000 years or 10 minutes before you were born. Born here, native, end of discussion. So any cougar born in the East, regardless if its parents were from Patagonia, are automatically part of the native fauna of the area AND SHOULD BE AFFORDED TOTAL PROTECTION AS SUCH, in this case under the Endangered Species Act! Of course this then means that all cougars born in zoos in the East are already natives and could provide "native" stock for reintroductions!

How about those foreign parents? Again, based on human law,



(Continued on p. 15)

KANAWHA VALLEY SUSTAINABILITY**FAIR IS ON ITS WAY!****MORE ABOUT COUGARS (Continued from p. 12)**

even a person of foreign birth can become a legal citizen after fulfilling certain time and knowledge criteria. IF an escaped pet cougar or an introduced individual successfully survives over a year in the wild, I think that fulfils the knowledge and the time criteria and it should be pronounced a legal citizen, also deserving all the rights and protections of the law!

By these criteria, if the cougar recently photographed in Indiana is indeed Donner, Montana-born and an escapee from a big cat sanctuary in January of 2007, she should be declared a legal citizen of the state and protected as such. As should any offspring she might have. So, in either case, escaped pet or offspring of such, ALL cougars found in the wild in the East should fall under the protection of the Endangered Species Act and all possible effort should be made to ensure their survival, including prosecution of anyone killing them. Unless it's a recently escaped pet, it should be a federal offense for anyone to kill a cougar at any time in the states where it is listed as endangered.

Lastly, ok, they can become citizens but will escaped pets from Brazil last the year? Aren't they just too different genetically and aren't there just too many differences in climate, habitat, and prey? The most recent genetic information we have on cougars indicates that all cougars in North America, including most of Mexico are too similar to separate into subspecies. Even of the 5 subspecies now recognized from Canada to Patagonia, there is probably LESS genetic difference among them than among the human populations inhabiting that same broad region. As for climate, last I checked, I think the eastern U.S. has people from every country in the world living there. Even in the more northern climates we have people of tropical origin living and thriving!

I suspect cougars are even more adaptable than humans. Also, all indications are that the cougars to the north actually came up from the south! Finally cougars everywhere in their range live under the more diverse habitat and prey conditions than any other predator species. This highly adaptable species, regardless of where it may come from would have little trouble adapting to local conditions. If it doesn't, then it fails its citizenship test! Nature should decide if they die, not a hunter sitting in a tree!

So, although it is probably wiser to use North American cougars for reintroduction efforts in the East, because we want to restore an ecological function (see Dec. 09 Voice) and not some esoteric subspecies, any cougar should do, even ones from as far away as South America! The key is to DO IT and DO IT NOW. The Eastern forests have suffered too long under the unbridled pressure of white-tailed deer. Remember the three R's of conservation: Reintroduction (of individuals), Restoration (of populations), Recuperation (of ecosystems).



Kanawha Valley Connections will hold its 2nd annual Kanawha Valley Sustainability Fair on Saturday, May 22, 2010. The Fair will run from 10 a.m. to 4 p.m. at the Habitat for Humanity ReStore, 301 Piedmont Road in Charleston. Admission is free.

Kanawha Valley Sustainability Fair is the signature event of Kanawha Valley Connections, a volunteer organization dedicated to creating pathways to sustainability throughout the Kanawha Valley and surrounding communities. This year's theme is "Exchanging ideas. Experiencing possibilities."

This year's Fair will include several sustainability-themed programs before and during the event:

- Home Depot (Southridge) will offer a free workshop on how to install cellulose insulation and reduce energy bills, on Wednesday, April 28, beginning at 7 p.m.
- Kanawha Valley Connections and Step by Step invite young people ages 3 through 18 to participate in the first annual Sustainability Youth Art Contest. Artwork will be displayed at the Fair, and prizes will be awarded in each age category. Entries must be no larger than 9 x 12 inches and must be designed to hang on a wall. Entries must be received by May 12, 2010. Call Jenny Totten, Art Contest Coordinator, at 304-414-4452 for more information and an entry form.
- Build Green West Virginia will hold a Sustainable Building Workshop on Wednesday, May 5, at 7 p.m., in the Community Room at the Habitat for Humanity ReStore, 301 Piedmont Road in Charleston. There is no charge to attend.
- Charleston's first Wild and Scenic Environmental Film Festival will take place on Friday, May 21, at John Adams Middle School, beginning at 7 p.m. The film festival is funded through a grant from the WV Conservation Agency Capitol District and will be an evening sure to educate, entertain and motivate! National partners include Patagonia, Cliff Bar and Company, Tom's of Maine, Osprey Packs and Sierra Nevada Brewing. Admission is \$5.00. The school's newly constructed rain garden will be dedicated at 6:30 p.m.
- The Pro Start program will return to the Ferguson Kitchen Gallery on Saturday, May 22, at 10 a.m., for a youth cooking demonstration and tasting. The young chefs will prepare a variety of small dishes using locally-grown and organic food materials. Observers will be invited to enjoy the delicious results at no charge. Pro Start's demonstration was a highlight of last year's Fair and should delight audiences again this year.

Food for exhibitors and attendees will be available from several vendors, including Bluegrass Kitchen and Tricky Fish, the Purple Onion, Healthy Life Market and the Monroe Farm Market.

Music by DJ Mechanical Renegade, live performances by the No Pants Players, Shayar, Tin Can Buzzard Band & Friends, interactive storytelling with Bob Henry Baber, environmental and energy exhibits, gardening and composting demonstrations, live animals, and activities for children will introduce participants to a wide variety of locally available economic, environmental and social resources.

People who would like to volunteer before or during the fair should contact the KVC office at 304-941-3281.

ENERGY EFFICIENT BUILDINGS

By Don Gasper

West Virginia includes energy conservation in its building codes, as do most other states. The 2003 International Energy Conservation Code in West Virginia's building code specifies energy efficient construction of new and renovated residential and commercial buildings. It includes some minimum standards for insulation, windows, air-sealing, lighting and heating, ventilating and air-conditioning (HVAC).

"The energy-saving requirements in the state's building code will save West Virginia residents money on their utility bills," said John F. Herholdt Jr., the director of the program for the West Virginia Division of Energy (WVDOE).

In the process for West Virginia to obtain funding for energy projects through the American Recovery and Reinvestment Act (ARRA), also known as the stimulus, the state must move toward the 2009 International Energy Conservation Code. The State Fire Commission, which is responsible for the adoption of West Virginia's building code, added the 2009 IECC to the code. The West Virginia Legislature will finalize this process in 2010.

One example of the use of these construction methods is Hilltop School, which opened in the fall of 2009. It has window treatments that keep direct sunlight out of open areas, greatly reducing the overall cooling cost. It has an air-to-air heat exchanger, so the stale air that's being exhausted is going back through the heat exchanger and pre-heating and pre-cooling the fresh air coming into the building. That way, we get fresh air without a big energy penalty. We are drawing air outside through an earth tube assembly, utilizing the year-round geothermal temperature of about 50° F. Earth tubes run underground and alter air's cooling or heating temperature before it is allowed into a home or office.

Hilltop students will learn how the school was built from recycled materials using as many local manufacturers as possible, which cuts down fuel costs and stimulates the local economy. They will learn about the chemical-free flooring. The floors will need to be buffed, but they will not need to be stripped and waxed every summer like typical vinyl composition tile floors.

The building is constructed of recycled materials that will be

recycled again at the end of its useful life. "The exterior siding and roofing is Cradle to Cradle certified, which means that when the finished building is modified or demolished, the product manufacturer will take that material back and make new roofing and siding from it." Another is designed with wood-fiber composite walls, geothermal heat floors, structural insulated panels and a metal roof. Metal roofs reduce energy costs.

The building will have auto-controlled motion-detector lights and skylights and will also be equipped with energy efficient fluorescent and L.E.D light bulbs. They will also be equipped with 40 photovoltaic solar panels. "The solar panels will be used to heat water. They can increase the number of panels at a later date." Water will be collected in a couple of tanks in the ground: one hot, one cold, at 1,500 gallons each. Storm water runoff is captured for reuse in watering the athletic fields.

There are plenty of job opportunities within the development and creation of net-zero energy buildings. A net-zero energy building produces as much energy as it uses said David Mitchell of Mitchell Building Services LLC.

He acknowledged that while building green may require an investment up front, eventually it pays for itself. "There are a lot of federal tax incentives for insulation, windows, metal roofs - but the big items like PV panels, geothermal heat cells - those types of things, you can get a 30 percent savings on your income tax with no cap." West Virginia now has its own \$2,000 tax forgiveness. For the smaller items -windows, metal roofs, etc., you can also get 30 percent but there is a \$1,500 cap.

"West Virginia is fourth in the country in embedded energy in our buildings. We have the buildings, we've already used energy to build them, so it makes sense to revitalize them and make them energy efficient instead of building new." The state is interested in reducing its electric bills. It is interested in reducing its environmental footprint. How about you, your home or business? You get the same tax breaks.

Note: This story is adapted from an article in West Virginia's "Wonderful West Virginia" magazine.

STILL IN NEED OF SOMETHING TO READ?

Highlands Conservancy member and lifelong social and environmental activist Julian Martin has a new web site.

The web site contains an archive of Julian's writings spanning nearly 50 years.

The contents are primarily Julian's letters to the editor as well as his "News from Sam's Branch" series of articles.

For some interesting, educational and stimulating reading, check it out: <http://WildWonderfulWV.us/julian/>

STILL IN NEED OF SOMETHING TO READ?

The on-line and print publication *Solutions* is preparing a special issue devoted to Appalachia. *Solutions* describes itself this way: "*Solutions* is a new, non-profit 501c3 bimonthly publication—a hybrid academic and popular magazine—that showcases the most innovative ideas for solving the world's environmental, social, and political problems." The July-August issue will focus on Appalachia. It hopes to address environmental and economic questions which arise in Appalachian coal country. It will be available either online at www.thesolutionsjournal.com or in print. The same web address contains information on how to subscribe to the print edition.

Solutions prides itself on not only describing problems but offering solutions; it has a policy of devoting no more than one third of each issue to describing problems and devoting the remaining two thirds to describing solutions.