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Say West Virginia Is Making a Mess of It

GROUPS ASK EPA TO TAKE AWAY WEST VIRGINIA'S WATER POLLUTION CONTROL PROGRAM

By John McFerrin

The West Virginia Highlands Conservancy, Appalachian Mountain Advocates, Sierra Club, Ohio Valley Environmental Coalition, and Appalachian Voices have asked the United States Environmental Protection Agency (EPA) to withdraw approval of West Virginia's National Pollutant Discharge Elimination System (NPDES) program. The groups contend that West Virginia is doing such a poor job of carrying out that system that the EPA should take away authority to run that system. If EPA does take away authority, then EPA would step in and administer the system in West Virginia.

The National Pollutant Discharge Elimination System is the major tool for controlling water pollution under the federal Clean Water Act. Under that system, any person who is discharging pollution to the waters of the United States must have a permit. That permit puts a limit on the amount of pollution that can be discharged. The permit is supposed to consider the pollution being discharged, the technology available to control that pollutant, and the use of the receiving stream. The amount of pollution being discharged has to be small enough that it will not prevent the use of the stream. If, for example, the scientific evidence was that fish could not live in water with more than .5 milligrams per liter of aluminum, then the discharge into that stream would have to be small enough that it did not cause the stream to go over .5 milligrams per liter of aluminum.

The original idea of the Clean Water Act was to eliminate polluting discharges into the waters of the United States. In practice, it has developed into a system of limiting—but not eliminating—polluting discharges.

The Clean Water Act sets up a partnership between the state and federal governments. States may set up a program to administer a state statute that corresponds to the Clean Water Act. If EPA approves the program, then the state administers it. The administration is subject to EPA oversight.

West Virginia had done this. It has a statute which it considers equivalent to the federal Clean Water Act. It has been administering this statute for the last several years, including issuing National Pollutant Discharge Elimination System (NPDES) permits. Now the groups say that West Virginia is making such a mess of things that it should not be allowed to continue operating its program.

Here is how the groups believe that West Virginia is failing to adequately carry out the West Virginia equivalent of the federal Clean Water Act:

1. West Virginia does not require permits for pollution coming from mines that are no longer active. There are lots of old mines, particularly those with valley fills, where water coming from the mine is polluted. West Virginia does not do anything

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Ramblin' the Ridges

By Cynthia D. Ellis

We Like It Wild

“Wilderness preservation has been the major point of emphasis for Conservancy action down through the years.” The third editor of “The Highlands Voice” said so years ago and the sentiment resounds now during this year’s recognition of the 50th anniversary of the nation’s Wilderness Act.

We like it wild. Wilderness is closely entwined with the history, members, campaigns, and future of the West Virginia Highlands Conservancy.

Our chronicler, Dave Elkinton, in “Fighting to Protect the Highlands: The First Forty Years of the West Virginia Highlands Conservancy,” devotes a complete chapter to wilderness and calls it, “The First and Continuing Battle--- Wilderness”. Through 40 pages he details the connections between us and the fight to codify the process of designation [and protection] of wilderness areas.

Here is just a very superficial listing of some of his findings.

He notes that one sponsor of a 1956 effort toward a wilderness bill was West Virginia Senator William Laird. Our own members Bruce Sundquist and Helen McGinnis are cited for early grassroots work, and McGinnis was commended for “untiring and very thorough work”.

While they and many others labored here to get wilderness areas recognized, a prevailing feeling of the U.S. Fish and Wildlife Service was that there were not any locations at all in the eastern United States that were “pristine” enough to deserve wilderness status. But the Conservancy persevered, working first on Dolly Sods, then Otter Creek, then the Cranberry Backcountry--- where one of our founders, Joe Rieffenberger, conducted black bear research, and where the sum of its 36, 000 acres that were ultimately secured make it the largest wilderness area in the eastern United States.

It may be news to some of us that coal companies had to be fought in these battles...that mineral rights had not originally been secured. But, in one instance, in regard to public lands, WVHC president Tom King rallied with, “Remember, the coal belongs to Island Creek, but the surface belongs to you! You have as much right to the preservation of your property as they do to theirs.”

The Wilderness Act itself came into being in the 1960’s as we were launching our organization. On September 3, 1964, President Lyndon Johnson signed the final successful bill after 60 previous failing drafts throughout an eight year effort. Wilderness Protection currently is afforded in sites in 44 states and in Puerto Rico. In West Virginia these areas are preserved:

- *Big Draft
- *Otter Creek
- *Mountain Lake
- *Spice Run
- *Roaring Plains
- *Cranberry
- *Dolly Sods
- *Laurel Fork North
- *Laurel Fork South

But, new challenges and new ideas are ahead for us, and our wild spaces, in this Wilderness anniversary year.

One is the controversial notion that we have reached the “Anthropocene” era...a time in which many feel humans are held to be responsible for climate and ecosystem impacts over all the planet--impacts which are chiefly unsustainable. Those who embrace the concept propose a change from protecting wilderness to securing the survival of humans and feel that there must be new approaches

(More on p. 3)

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More About Wilderness as Cynthia D finishes Up (Continued from p. 2)

to the contrasting ideas of developed and wild places. They say the boundaries between the two are much blurred and that people and cities must take up their own forms of bio-mimicry to live. Examples would be wetlands [or even sewage plant wetlands] to block storm surges, and urban farming. If our cities seemed more “natural” would we still crave wildness? Could a city be crafted that would enable views of the night sky such as those from Dolly Sods? Could a city be designed to include water features like the multiple, mossy, tumbling waterfalls of Otter Creek?

There are some who feel wilderness areas do not actually exist any longer and the best we can hope for is be quasi-gardeners of places that are farmed or managed for whatever practical purpose that aids humans. Others resist. Rue Mapp, founder of the group

Outdoor Afro, has said, “The wilderness makes us less obsessed with ourselves, and in that we see interconnections, how our fate is intertwined with everything around us. And that’s solidarity--- recognizing the relationships we normally overlook amid the noise of our lives.”

West Virginia Highlands Conservancy could examine those ideas. One of our visionaries, in the past, was Ed Zahniser. He said, “So I challenge us. Wilderness is our roots. Wilderness is our genealogy. Who else but the West Virginia Highlands Conservancy can and will do it here in West Virginia? We have wilderness in the blood. Let’s go and re-imagine more designated wilderness on the land.”



The many leaves of Spice Run

Photo © Jonathan Jessup

A Big Pipeline: Not the Only Way to Go

By Beth Little

There is a big reason, besides the environmental damage during construction and the massive intrusion on private property, that the Atlantic Coast Pipeline should not be built.

Natural gas is a fossil fuel. Investing 5 billion dollars in major infrastructure for burning more fossil fuel is not the direction we should be going. There is already an extensive network of gas pipelines - see map (and for those who understand the nasty companion to pipelines, see the compressor map). Dominion says that there are only 3 compressor stations planned for the ACP. But with the passage of time, when the capacity of the pipeline needs to be increased, it will be done by adding compressor stations .

It is true that burning coal produces more carbon dioxide than burning natural gas, but it is also true that methane (natural gas) is over 20 times a more potent greenhouse gas than carbon dioxide, and the emissions from natural gas facilities, including pipeline leaks, means that the substitution of gas for coal as an energy source results in increased rather than decreased global warming for many decades (National Center for Atmospheric Research (NCAR) study).

Instead we should be pursuing energy efficiency and renewables.

Besides the cost of solar energy coming down, there are more and more programs to help people go solar with energy credits, loans and community projects. One example that there must be an advantage to solar is that David W. Mohler, Senior Vice President and Chief Technology Officer for Duke Energy, the primary partner with Dominion in the Atlantic Coast Pipeline, has his North Carolina home equipped with solar panels and a storage battery. Duke Energy's commercial power and international businesses

operate diverse power generation assets in North America and Latin America, including a growing renewable energy portfolio.

The great thing about energy efficiency is that it saves money. I am completely baffled by people who get angry about using new light bulbs. My conservative father would roll over in his grave if he heard that I was refusing to save money on light bulbs because I didn't want to change my lifestyle.

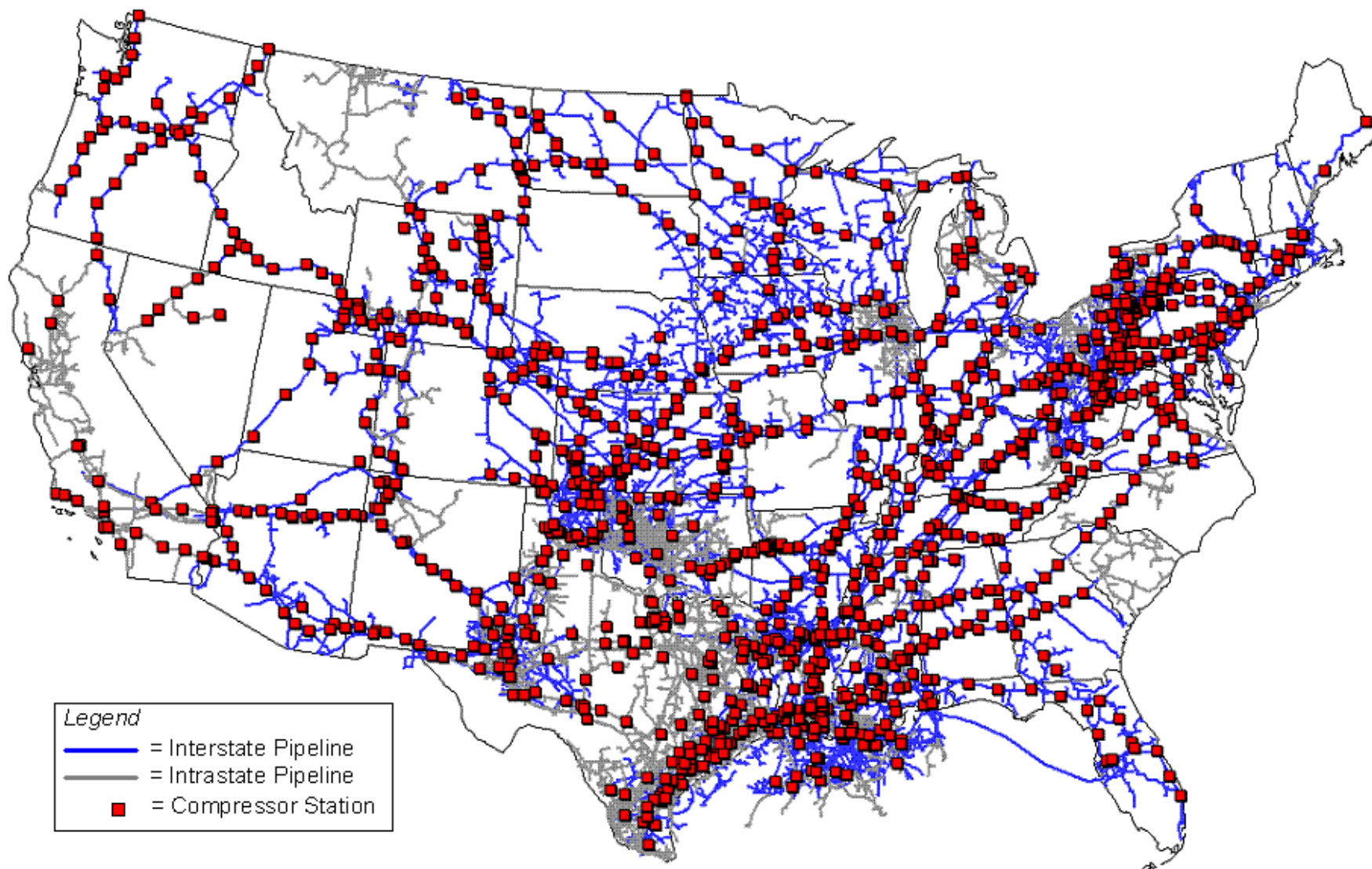
We have learned through decades of experience, that addition of insulation to limit heat loss, will allow us to be just as comfortable and get the same thing done without using more electricity. Investment in better building construction then becomes another electricity resource, just like electricity generation. Energy efficiency investments produce business and residential improvement and eliminate the need for more electrical generation from any source, renewable or fossil fuel. Countless studies have demonstrated that energy efficiency program investments by utilities yield higher returns than do investments in new power plants.

Even with all the subsidies, tax credits, and environmental exemptions for fossil fuels, renewables and energy efficiency are growing exponentially and creating more jobs – healthy jobs. (Two thirds of the miners killed in the Upper Big Branch mine disaster had black lung). Solar power made up over half of new generating capacity in the second quarter of 2014 (GTM Research). According to the Georgetown Climate Center, 10 states have reduced their carbon emissions by at least 30% since 2005 with no decline in economic activity.

There are lots more examples showing that by employing energy efficiency and switching to renewables, we can lower

emissions, create jobs and save money – a win, win, win.

And we don't have to tear up the mountains in the national forest to do it.



Crafts Run to Live Again?

Coal Ash Dump Agrees to Stop Pollution of Monongalia County Stream

By John McFerrin

The West Virginia Highlands Conservancy and the Sierra Club have reached a settlement with Coresco, LLC and Mepco, LLC of claims under the Clean Water Act. The settlement requires the Defendants to improve pollution control from their ash disposal facility in Monongalia County.

The facility is Coresco's coal ash disposal areas near Madsville in Monongalia County. Water from that facility flows into Crafts Run. The settlement also addresses seeps from old mining that are located on the property. Both water from the coal ash disposal and water from the seeps was degrading Crafts Run.



According to a report prepared before filing of the suit coal ash and acid mine drainage have seriously harmed aquatic life and ecosystems in Crafts Run, which spans multiple miles and discharges into the Monongahela River.

The report's data—gathered at specific monitor sites along Crafts Run—show elevated levels of dissolved solids, aluminum, iron and manganese in water samples collected from the stream. High amounts of boron and selenium indicated coal ash pollution specifically. In certain places, the concentration of iron violated state surface water quality standards. The stream's orange color also gave investigators a

clue that there was something wrong.

Self-monitoring data by Coresco LLC—the company that owns and runs the disposal sites adjacent to Crafts Run—showed that violations of state criteria have occurred in the past for dissolved aluminum, iron and pH, all indicators of acid mine drainage pollution.

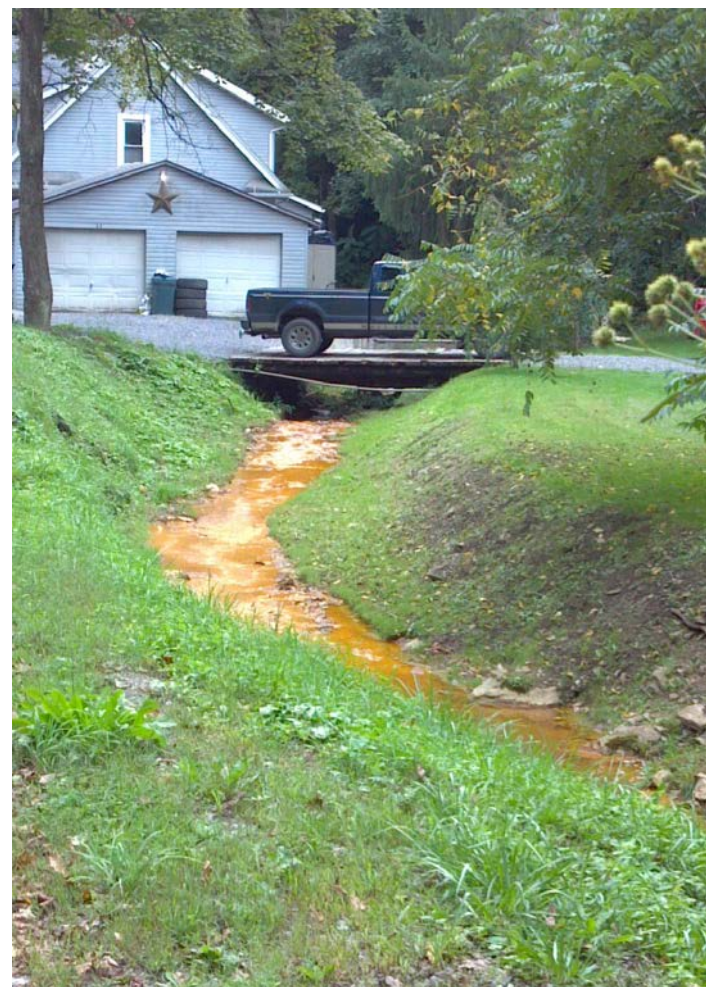
In the settlement, the Defendants agreed intercept the large mine seeps that are killing Crafts Run and divert them to a treatment plant. That will ensure the stream is no longer orange and is no longer acidic. The Defendants expect that construction of the facilities to do this will cost \$700,000. The treatment is to continue so long as Defendants operate the Madsville Preparation Plant or associated refuse disposal facilities.

There were no civil penalties as there are in most Clean Water Act cases although the Defendants agreed to pay the Plaintiffs' attorney fees and expenses.

All this was made more complicated by the Defendants' bankruptcy. After the suit was filed, Defendants (together with certain of its affiliates) filed for what is called Chapter 11 bankruptcy. In other types of bankruptcy, the debtor considers its financial situation to be hopeless. It pays as much debt as it can and then goes out of business.

Under Chapter 11, a debtor hopes to reorganize the business, develop a plan for paying its debts, and continue. The filing of a bankruptcy petition brings to a halt all legal actions pending against the debtor, including the one to enforce the Clean Water Act. Before the settlement could take effect the parties had to ask the bankruptcy court's permission to enter into a settlement. That permission was granted so the bankruptcy is no longer an impediment to the agreement.

Crafts Run



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The Highlands Voice is now available for electronic delivery. You may, of course, continue to receive the paper copy. Unless you request otherwise, you will continue to receive it in paper form. If, however, you would prefer to receive it electronically instead of the paper copy please contact Beth Little at blittle@citynet.net. With electronic delivery, you will receive a link to a pdf of the Voice several days before the paper copy would have arrived. The electronic Voice is in color rather than in black and white as the paper version is.

The birds of the forest matter

By Cynthia D. Ellis

Yes, Kanawha State Forest is renowned as an urban oasis with an abundance of breeding and migrating species of birds. Those who study and appreciate birds can count on seeing them there in all seasons, and especially during spring migration, when the trees have been described as “dripping” with tiny warblers.

So what?

That’s what a lawyer said recently. He was a representative of the mining operation adjacent to the forest, and he was speaking about a different detail in the controversy. But, when it comes to birds at KSF, others may also say, “So what?”

Here is why the birds, and the birds in that forest, matter.

Birds are important. They have been celebrated throughout centuries for their song and beauty that inspire and uplift us. We marvel at, and are envious of their ability to soar and glide in the air, escaping from most dangers in split seconds.

Dollar-wise, birds are invaluable. They help pollinate food and fiber crops and they help protect them from insects. Many places, including Fayetteville, WV are capitalizing on eco-tourism for birders — yes, people will pay to come to our state to see birds. Historically, in underground mines, birds served as an early warning for coal miners. The “canary in the cage,” with its small respiratory system, was more susceptible to dangerous gasses. Agitated birds were a signal to get out.

They may still be serving that purpose. In the same way that studies are linking human illnesses to mining processes, other research is linking defects in birds to those processes, as well. Once again they serve as a warning ... with eggshells that may be too thin to allow hatching or with diminished song that hinders breeding. We should take note, remembering that our own survival depends on intact ecosystems, too.

So what? One edge of a forest in one city in one state cannot matter, can it?

Yes. It is the cumulative effect of all the instances of habitat degradation that make the future for sustained populations of birds uncertain. And in the same way that we are tied to birds in regard to crop and seed growth and protection, we are tied to them in health consequences. What happens to birds affects us all, in time. In this case, there have been predictions of no harm from the near-by mining to Kanawha State Forest. They are not supported by long term studies. Surely any governmental official who has ever used the phrase, “for the children” can make the connection between adverse effects on feathered creatures and our own next generations.

The West Virginia Department of Environmental Protection should include concern for the birds in their actions toward the forest.

So what? Many of those birds will just die in South America from slash-and-burn farming anyway. Or, actually, they may not. There are different patterns of land ownership in Central and South America. In those lands one sees fewer absentee owners of large tracts, such as here, and more small famers. Bird conservationists have made substantive changes in local practices by demonstrating productive land use practices to the owners; changes that preserve birds too.

Whatever the outcome of hearings conducted by the DEP Surface Mine Board, that agency has many reasons to reconsider protecting Kanawha State Forest from destructive mining. These include protection of water resources, protection of air quality, protection of local residents, protection of recreation in the forest and regaining public trust. Added to this should be protection of birds; birds who know no forest boundaries and who are connected to us, and we to them, in ties that should remain unbroken.

Ms. Ellis is an experienced contributor to bird surveys for state and federal agencies and is a past president of Brooks Bird Club, Inc. Contact her at cdellis@wildblue.net. This article previously appeared in The Charleston Gazette.



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.

Send Us a Post Card, Drop Us a Line, Stating Point Of View

Please email any poems, letters, commentaries, etc. to the VOICE editor at johnmcferrin@aol.com or by real, honest to goodness, mentioned in the United States Constitution mail to WV Highlands Conservancy, PO Box 306, Charleston, WV 25321.

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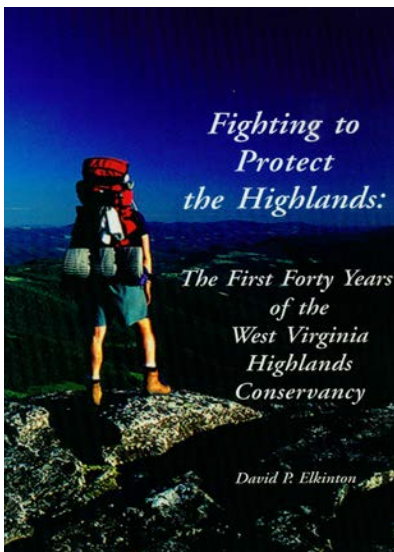
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West Virginia Highlands Conservancy
Working to Keep West Virginia Wild and Wonderful!

GREAT HISTORY BOOK NOW AVAILABLE



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

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

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

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

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

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

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

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.

Congratulations and best wishes to

West Virginia Highlands Conservancy member, supporter, and champion Ken Hechler who turned 100 on September 20. Several years ago we made him a Lifetime Member in honor and appreciation of his support over the years. Looks as if he plans to make the most of it.



News of the Weird, or Not

By John McFerrin

For the last few days there have been news reports/rumors (these days it is hard to tell which is which) that the United States Forest Service was considering a proposal to require a permit to take photographs in a congressionally designated Wilderness Area. It was further reported that the cost of a permit would be \$1,500. This was the subject of news stories, blog posts, and even a mini-rant on the Rush Limbaugh Show.

Were this true, it would truly qualify as News of the Weird. In a time when everybody and their cat has a cell phone equipped with a camera, the idea that the Forest Service would want to chase down everybody snapping photos was just bizarre. Don't they have some fires to put out, trails to maintain, or something else better to do?

It turns out that the proposal may not be so sweeping as it might have seemed at first. It applies to 'evaluation of proposals for still photography and commercial filming on National Forest System Lands.'

There are regulations that define the terms:

Commercial filming—use of motion picture, videotaping, sound recording, or any other moving image or audio recording equipment on National Forest System lands that involves the advertisement of a product or service, the creation of a product for sale, or the use of models, actors, sets, or props, but not including activities associated with broadcasting breaking news, as defined in FSH 2709.11, chapter 40.

So far so good. Cell phone cameras, Brownie Instamatics, etc. are all in the clear. But what about "still photography"? Isn't that what we do with cell phones?. Not exactly:

Still photography—use of still photographic equipment on National Forest System lands that takes place at a location where members of the public generally are not allowed or where additional administrative costs are likely, or uses models, sets, or props that are not a part of the site's natural or cultural resources or administrative facilities.

So there we have it. As best I can tell, there is no new policy requiring a permit for casual photographers in Wilderness Areas. If you want to see the proposal itself, and even comment upon it, go to https://www.federalregister.gov/articles/2014/09/04/2014-21093/proposed-directive-for-commercial-filming-in-wilderness-special-uses-administration?utm_campaign=email+a+friend&utm_medium=email&utm_source=federalregister.gov

Even if the Forest Service is not pursuing a too-weird-to-be-believed policy of requiring permits for casual photographers, there is another aspect to the story. Some are concerned about the First Amendment implications of allowing a government agency the authority to say what may and may not be photographed. To read about that aspect of this policy, go to http://seattletimes.com/html/localnews/2024629853_forestpermitxml.html

Groups Seek to Take Away West Virginia's Authority to Regulate Water Quality (Continued from p. 1)

to regulate this source of pollution.

2. West Virginia is not enforcing what are called "narrative water quality standards." The main tool for keeping the water clean is the discharge permit; it limits the amount of pollution which may be added to a waterway. Sometimes these permits, and the limits they contain, are not enough. That is why the law has a backup system which lists things that are not allowable in state waters. These are things such as a visible scum, odors, or anything that is harmful to people or aquatic life. The groups say that West Virginia is not enforcing its narrative water quality standards, particularly when it comes to coal mines.
3. West Virginia Department of Environmental Protection is not making information about discharges available to the public. Companies who have permits are supposed to test the water that comes from their operations. They are then supposed to give the results to the Department of Environmental Protection which is supposed to make the data available to the public. The Department of Environmental Protection is either not making the data available or making it available in a manner that makes it completely unusable.
4. West Virginia Department of Environmental Protection is acting illegally when it has to issue permits to itself. Sometimes a mine operator deserts a mine, leaving the DEP with the responsibility to clean up the mess, including getting a NPDES permit for the water discharge from the mine. When this happens, DEP is required to issue itself a NPDES permit. The groups say that, when DEP must give itself a permit, it does not follow the applicable regulations.

Now that the groups have filed the petition, the EPA is required to respond. EPA could also schedule a public hearing. Depending upon the public hearing, the West Virginia Department of Environmental Protection's response, and other information, the EPA could withdraw approval of West Virginia's program. If it did that, it would begin enforcement of the Clean Water Act in West Virginia.

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.

WVHC Provides Support for Taylor County Homeowners Impacted by Longwall Mining

By Kendra Hatcher, Downstream Strategies

As the longwall at the Leer Mine in Taylor County moves along underground, resources are available to homeowners with questions or concerns about the impact of mining. With support from WVHC and TEAM, the Taylor Environmental Advocacy Membership, a helpline was established and an informational brochure was created to inform the local population about steps they can take to protect their property. Morgantown-based consulting firm Downstream Strategies will man the helpline, and offers other services for Taylor County residents, such as pre- and post-mining water resource surveys and data storage and management for survey data, photographs, and videos collected during pre-mining surveys conducted by the mine operator, or data collected by the landowner. These services are offered free to Taylor County residents impacted by the mine, although the services may not be available indefinitely due to funding for the project.

The brochure offers information beyond the services that Downstream Strategies can offer. The brochure lists three steps that landowners can take to protect their property, whether they are in Taylor County or elsewhere in the state with active longwall mining:

- Let mine representatives collect data from your property. The mine operator will generally hire contractors to collect data from your property. Do allow these contractors to collect data, as your claims against damages done can be negated if you refuse entry to your property. Accompany the contractors as they document conditions, take notes and pictures if possible. Do request to have a complete copy of the information sent to you.
- Keep records and record your own data. Do photograph and/or video the inside and outside of structures on your property. Do photograph and/or video your water sources, such as ponds, cisterns, springs, and streams. If possible collect flow information. If possible collect information in different seasons of the year.
- Ask questions and stay informed. As your property will potentially be impacted, do seek out as much information as you can. Contact or get involved with local environmental groups.

Do call the West Virginia Department of Environmental Protection (WVDEP) immediately if problems arise or if you are concerned about changes to your property, changes to the roadways, or if you have not received appropriate notification from the mine company.

The brochure also lists a few contact numbers for people with questions or concerns about mining near their property. While the TEHLL helpline was established for Taylor County residents, the WVDEP numbers are applicable to anyone in the state.

TEHLL-Taylor Environmental Help Line for Longwall (304) 292-2450

WVDEP Region 1 Office-Philippi (304) 457-3219

WVDEP Environmental Advocate-Wendy Radcliff (800) 654-5227

For a health, safety, or environmental emergency call WVDEP Emergency Spill Line(800) 642-3074

These resources are in conjunction with a long-term water monitoring project that has been ongoing since 2008. Downstream Strategies has been collecting water samples from streams, springs, and wells to monitor for any changes in quality or quantity that may occur due to mining activity.



EPA Wins Another Round on Spruce Mine Veto

By Ken Ward Jr.

The U.S. Environmental Protection Agency on Tuesday won another round in the long legal saga involving one of the largest mountaintop removal mining permits in West Virginia history.

U.S. District Judge Amy Berman Jackson concluded that the agency's veto of a Clean Water Act permit for Arch Coal's Spruce No. 1 Mine in Logan County was "reasonable, supported by the record, and based on considerations within EPA's purview."

In a 50-page opinion, the judge ruled with EPA on the merits of the agency's January 2011 decision to use its water pollution oversight authority to rescind a permit that had been previously issued to Arch Coal by the federal Army Corps of Engineers.

The EPA veto has been the subject of much criticism from coal company officials and coalfield political leaders, who viewed the move as unfair and as part of a broader Obama administration effort to destroy the mining industry.

Neither EPA officials nor Arch Coal offered an immediate comment on Tuesday's ruling.

The decision comes after a decision in March by the U.S. Supreme Court not to take up Arch Coal's challenge of EPA's legal authority to veto the permit in the first place.

At issue in the Spruce case was an Army Corps-issued permit for the Spruce No. 1 Mine, an operation environmentalist groups have been trying to stop since 1998, when it was first proposed as a 3,113-acre extension of Arch's Dal-Tex Mine that would have buried more than 10 miles of streams.

U.S. District Judge Charles H. Haden II blocked the permit in 1999, putting more than 300 United Mine Workers union members at Dal-Tex out of work. Since then, Arch has transferred the site to its nonunion operations, and the Spruce Mine has undergone one of the most detailed environmental studies ever in the coal industry.

Under Section 404 of the Clean Water Act, the corps generally reviews and approves these permits, which allow mining operators to bury streams with millions of tons of waste rock and dirt. The law says the EPA can "restrict, prohibit or withdraw corps approval of any site for waste disposal" if the discharge will have unacceptable adverse effects on municipal water supplies, shellfish beds and fishery areas, wildlife, or recreational areas. In the more than 40 years that the EPA has had this veto authority, it has used it 13 times.

Corps officials in January 2007 issued a permit for a scaled-back 2,300-acre operation that would bury more than seven miles of streams. The mine eventually would employ 250 workers and mine about 44 million tons of coal over about 15 years.

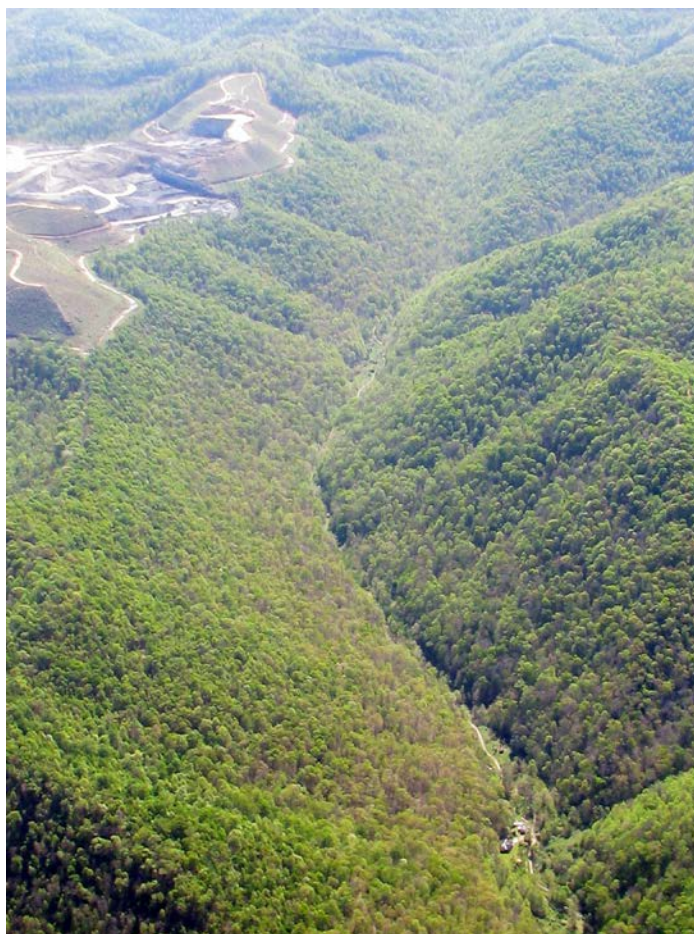
EPA officials have questioned the Spruce Mine from the beginning and, in a comment letter submitted to the corps under

President George W. Bush in 2006, complained about the potential impacts and said more changes in the operation were needed.

In January 2011, the EPA rescinded the corps' approval for Arch to dump waste rock and dirt into 6.6 miles of Pigeonroost Branch, Oldhouse Branch and their tributaries. The agency said it would allow mining to continue on another portion of the site, burying nearly a mile of streams in the Seng Camp Creek watershed, because work there already had begun. The EPA cited the growing scientific evidence that mountaintop removal mining significantly damages water quality downstream, and noted an independent engineering study that found Arch Coal could have greatly reduced the Spruce Mine's impacts.

Arch Coal's Mingo Logan subsidiary appealed the EPA veto. In a March 2012 ruling, Berman Jackson sided with the company, saying the veto was "a stunning power for an agency to arrogate to itself when there is absolutely no mention of it in the statute." In its ruling a year later, the appeals court said the Clean Water Act contains "unambiguous language" that "manifests the Congress's intent to confer on EPA a broad veto power extending beyond the permit issuance."

In Tuesday's ruling, Berman Jackson said that she was "not unsympathetic" to Arch Coal's concerns about "the importance of finality in the permitting process," saying that was part of her reason for previously ruling against EPA. Noting that decision was overturned, the judge wrote in Tuesday's ruling, "that battle has already been fought and lost, and this court is not free to take up the issue again."



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

Too Limited A View

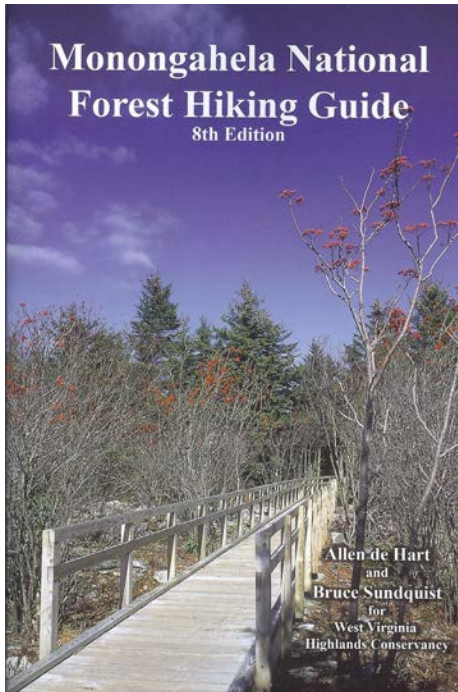
By Marion Harless

When
I was
a little girl,
I kept
a never voiced aloud worry
that people
would kill
all of the gorillas
and
all the red foxes.

Little did I know.

The Monongahela National Forest Hiking Guide

By Allen de Hart and Bruce Sundquist



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

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

New 8TH Edition Now Available on CD

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

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

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

Price: \$20.00 from the same address.

BUMPER STICKERS

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

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



WVHC/WVEC Fall Review Conference 2014

Cedar Lakes Conference Center- Ripley, WV (Jackson County)

Friday October 17th through Sunday October 19th, 2014

Highlights of Conference: Keynote Speaker: Wendy Radcliff, Environmental Advocate; Conference theme: Climate, Water & Wilderness. Panels or presentations on Global Warming, Energy Efficiency, Water Quality Issues, 50th Anniversary of the Wilderness Act, Birthplace of Rivers National Monument campaign; Dominion Pipeline, Setting WVEC's 2015 Legislative Priorities, Table Displays, Silent Auction (please bring auction items), Improvised Live Music Friday and/or Saturday night!

Please return form with payment to: Karen Yarnell, WVHC/WVEC Fall Conference, 21 Beverly Circle, Fairmont WV 26554; or send the information requested below to Karen Yarnell at karen.yarnell@fairmontstate.edu. Alternative payment method: Pay at the conference, or online at <http://www.wvecouncil.org/join/index.html>. When paying online, where it asks for "Organization" please write "WVHC/WVEC Fall Conference".

Please make an effort to register before October 1st so we can better plan for the weekend. (Reservations will be accepted at time of the conference for registration only. Late lodging based on availability. Meals must be booked in advance.)

For more information, call: (304) 367-4878 or email Karen Yarnell at karen.yarnell@fairmontstate.edu

Directions to Cedar Lakes: Exit off I-77 at Exit # 132, turn right if coming from Charleston, (turn left if coming from Parkersburg), go 1/10th mile, then turn right at traffic light onto Cedar Lakes Drive. Follow this (two lane) road approximately 3.5 miles; turn right across bridge into Cedar Lakes campus.

LISTEN UP! IMPORTANT ANNOUNCEMENT

The West Virginia Highlands Conservancy will hold its annual meeting at 9:00 a.m. on Sunday, October 19, 2014, at the Cedar Lakes Conference Center, Ripley, West Virginia.

The board meeting will include the election of at large Board members as well as any other business that may come before the meeting.

This year all the officers are up for election/re-election. There are also six Board seats to be filled. If you know of anyone (including yourself) you think would be suited for a seat as an officer or a Board member, please feel free to contact a member of the nominating committee. The current nominating committee is LeJay Graffious, Wayne Spiggle, and Cindy Rank. They welcome suggestions. Their contact information is on page 2.

You do not have to contact the Nominating Committee to make a nomination. There will also be an opportunity to make nominations from the floor at the annual meeting. Immediately following the annual meeting will be the quarterly Board meeting.

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.

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

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

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

WVHC/WVEC Fall Review Conference 2014

Registration Form

Name(s): _____

Organization (If applicable): _____

Address: _____

Phone: _____ Cell: _____

E-Mail: _____

Registration Fee: No fee, but donations are encouraged- \$ _____

Meals: (check here if vegetarian) _____

Friday Evening: Pizza and other snacks – will you be present? Yes _____ No _____

Saturday Breakfast: \$ 6.25 per person (number of meals _____) Total: \$ _____

Saturday Lunch: \$ 7.75 per person (number of meals _____) Total: \$ _____

Saturday Dinner: \$ 9.00 per person (number of meals _____) Total: \$ _____

Sunday Breakfast: \$ 6.25 per person (number of meals _____) Total: \$ _____

Sunday Lunch: \$ 7.75 per person (number of meals _____) Total: \$ _____

Total for all meals: \$ _____

Accommodations:

Holt Lodge: Full sized lodge room with 2 double beds, \$ 72.00 / night for 1 or 2 people, \$77 for 3 people, \$82 for 4 people

Check: _____ Friday _____ Saturday _____ number of people Total \$ _____

Dormitory (sleeps 10) \$ 15.00 / night Please check: _____ Friday _____ Saturday _____ male _____ female _____ coed

(Please bring your own bed linens and towels for dormitory lodging) Total = \$ _____

Lakes Lodge: Fully furnished motel type room, private bath \$50 / night per room (1 or 2 people) _____ # of people

Please check: _____ Friday _____ Saturday. All of these rooms have two twin beds.

Mountaineer Lodge: Fully furnished motel type room, private bath \$60 / night per room (1 or 2 people) _____ # of people

Please check: _____ Friday _____ Saturday. All of these rooms have two double beds.

Please assign me a roommate: _____ (Cost reduced to half the price per night if roommate is assigned)

Total = \$ _____

We are sorry, but Cedar Lakes does not allow tent camping:

What to bring: For dormitory lodging only, bring bed linens and blanket or sleeping bag, towels; All bring: toiletries, flash light, insect repellent (for fire circle), silent auction items, musical instruments.

Would you like to donate to help sponsor attendees? Amount donated: \$ _____ *(thank you!)*

Conference Total: \$ _____ *(Please make checks payable to WVEC)*

WVHC/WVEC Fall Conference Schedule
CLIMATE, WATER, WILDERNESS
October 17-19, 2014
Cedar Lakes, Ripley, WV

FRIDAY EVENING – MOUNTAINEER LODGE LOUNGE

4:00 PM Registration Begins: Place your dot on the map

WV environmental groups and green businesses set up Tables/
Posters/Booths in Curriculum Lab

WVEC Sales (t-shirts, etc.); crafters; Silent Auction in Curriculum
Lab. Bring items to donate, musical instruments

4:20 – 5:50 Hike around Cedar Lakes

6:00 PM Pizza Party/BYOB

7:00 PM Birthplace of Rivers Presentation – Karen Yarnell and
Frank Young,
WV Wilderness Coalition
Wilderness film

8:00 PM Wilderness 50th Anniversary Party with cake

SATURDAY – CURRICULUM LAB

7:30 - 8:15 Breakfast and Registration in Lakeview Dining Hall,
place your dot on the map

7:50 – 8:20 Bird watching with Cindy Ellis, meet at Lakeview Dining
Hall

8:30 – 9:00 Welcome and Introductions of the member groups, at
large members, and guests – WVEC Board President Bill Price
– WVHC Board President Cindy Ellis

9:00 – 10:00 Keynote Address: Wendy Radcliff, WVDEP
Environmental Advocate

10:00 – 10:15 Break

10:15 – 11:45 Water Quality Panel – Moderator Chris Hale, Friends
of Water
Chuck Wyrostok/Sierra Club, Vernon Haltom/CRMW, Dianna
Strickland/Elk River, and Elise Keaton/Friends of the Mountains

12:00 – 1:00 Lunch in Lakeview Dining Hall

12:20 – 1:05 Bird watching with Cindy Ellis, meet at Lakeview
Dining Hall

1:15 – 3:15 Climate Change Panel – moderator Jim Kotcon, WV
Sierra Club

Overview of EPA's Power Plant proposal – Fred Durham, Director
of WVDEP Division of Air Quality

Citizen's Climate Lobby proposals – Jim Probst

Approaches to climate outside the DEP (WV Legislature, PSC, and
others)

3:15 – 3:30 Break

3:30 – 4:30 Effects of Climate Change:

From Appalachia to Alaska and Back Again, Robin
Blakeman, Ohio Valley Environmental Coalition
Climate Change and the Allegheny Highlands - What's at
Stake, What's at Risk, and What Are Our Choices? –
Tom Rodd, Allegheny Highlands Climate Change
Impacts Initiative

5:00 – 6:00 Dinner in Lakeview Dining Hall

6:15 – 7:15 Energy Efficiency – Emmett Pepper, Energy Efficient
WV

7:15 – 7:30 Break

7:30 – 9:00 Gas Pipeline Panel

Pipeline across the Mountains - Natural Resources at Risk – Rick
Webb, Allegheny-Blue Ridge Alliance

The Legal Perspective on the Pipeline – Dave McMahon, WV
Surface Owners' Rights Organization

9:00 PM Fun & Refreshments / Campfire / Bring instruments

SUNDAY – CURRICULUM LAB/MOUNTAINEER LODGE LOUNGE

7:30 – 8:15 Breakfast in Lakeview Dining Hall

9:00 – 12:00 WV Highlands Conservancy Board Meeting in
Mountaineer Lodge Lounge

9:00 – 10:00 Legislative Overview –2014 WVEC Legislative
Coordinator Don Garvin in Curriculum Lab

10:00 – 10:15 Break

10:15 – 11:45 Setting Legislative Priorities Discussion – WVEC
Governmental Affairs chair
Elise Keaton in Curriculum Lab

12:00 – 1:00 Lunch in Lakeview Dining Hall

1:15 – 4:30 WV Environmental Council Board Meeting in
Curriculum Lab

Want to Become a Bird Brain?

By John McFerrin

My efforts at bird identification have always been frustrated by a simple fact: the birds won't cooperate. For me to make a proper identification they have to strike the exact pose found in the field guide and hold it while I fumble through the field guide, find the picture, and match it to the bird. This works best if they find a spot where they are unobstructed by sticks, leaves, grass, etc.

For all my entreaties, they just won't do it. They insist upon hopping about, slipping behind grass, flying away, etc.

Now I have now stumbled upon a resource that takes me away from all that. Cornell Lab of Ornithology has a series of videos which have given me a different approach. There are four short (10 minutes each) videos which teach how to focus your thinking about bird identification based upon (a) size and shape, (b) color pattern; (c) behavior, and (d) habitat.

For example, if you see a large bird cruising low to the ground in a swampy area, it is probably a harrier, sometimes called a marsh hawk. They make their living cruising over grasslands, waiting for a mouse to get careless. Your identification doesn't depend entirely upon finding the right page in the field guide.

I used this technique recently to identify a scarlet tanager. It was way up in the treetops. Around here the only bright red birds we have are cardinals and scarlet tanagers. You see cardinals hopping around on the ground and in low bushes but you don't see them way up in the treetops. A red bird way up there had to be a tanager. I could verify my suspicion with the bird book but it started with habitat.

If you would like to try the video series, go to <http://www.birds.cornell.edu/courses/home/tutorial/> and then click on Inside Birding.

Largely irrelevant but moderately interesting aside: the Harrier jet was named for the Harrier Hawk. Like its namesake, it can take off and land vertically, not requiring long runways, and even hover. It is used by several militaries around the world, including that of the United States.



The Horsemen

By Louise McNeill, past West Virginia poet laureate from Pocahontas county

Who are these horsemen here riding and roaming over our forest trails?

Why are they combing each little patch of pine here on the river?
See how the heml...ocks shake -
Why do they quiver?

Who are these nice rich men out of the city?
Come to our cabin doors - sober with pity -
Offer us fifty cents - hills by the acre -
Leaning upon our fence -
"leave her or take her."

See how their watch fobs swing golden and shining.
Handing the deed to us...
Now we are signing.

See how their blue serge suits fit on the shoulder;
See how their blue eyes shine down through our boulders;
See how their watch fobs swing dancing and merry...
Buying the River Coal,
Buying the Cherry,
Buying the old Tug Fork,
Buying the Sandy
Giving our little kids red sugar-candy.

Who are these men who ride off with the lawyers?
Talking of Elder Tide, speaking of sawyers,
Asking for hill galoots handy with axes,
Taking delinquent land, cheap for the taxes,
Searching the courthouse names,
Thumbing the pages-
Thousands of empty claims-
Dust of the ages,

See how their blue eyes move trying to follow
Something that's underground, black in the hollow?
See how their blue eyes lift slow as a measure
Scaling the popular trunks?
What is their pleasure?

All of our hills so steep - no good for sowing -
Lonesome and rocky-deep, even for mowing;
Nothing but ups and downs...levels so shallow,
Lying one hundred years worthless and fallow;
Hills that are black and sheer, covered with timber -
Nothing a man could clear now to November -
Hills that our fathers found - bitter and narrow
Coal that the ages wound black in the marrow...

Who are these nice rich men riding and riding?
See how their blue eyes move carefully sliding
Over the black that grow out of the ridges -
Talking of railroad grades, tunnels and bridges -
Money to burn and jobs,
Jobs for all takers-
Who are these men who ride?

HIGHLANDS CONSERVANCY BOUTIQUE



► The baby shirts are certified organic cotton and are offered in one infant and several toddler sizes and an infant onesie. Slogan is "I ♥ Mountains Save One for Me!" Onesie [18 mo.]---\$17, Infant tee [18 mo.]---\$15, Toddler tee, 2T,3T,4T, 5/6---\$18

► Soft pima cotton adult polo shirts are a handsome earthtone light brown and feature the spruce tree logo. Sizes S-XXL [Shirts run large for stated size.] \$18.50

► Order now from the website!

Or, by mail [WV residents add 6 % sales tax] make check payable to West Virginia Highlands Conservancy and send to West Virginia Highlands Conservancy, Online Store, PO Box 306, Charleston, WV 25321-0306

T- SHIRTS

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



HATS FOR SALE

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

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

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