



# The Highlands Voice

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## GROUPS PETITION OFFICE OF SURFACE MINING TO TAKE OVER REGULATION OF MINING IN WEST VIRGINIA

By John McFerrin

The West Virginia Highlands Conservancy, the Sierra Club, Coal River Mountain Watch, and the Ohio Valley Environmental Coalition have petitioned the federal Office of Surface Mining to evaluate the West Virginia State surface mining program, withdraw approval of that program, and substitute federal enforcement. If successful, the petition would result in the federal Office of Surface Mining (instead of the West Virginia Department of Environmental Protection) regulating mining in West Virginia.

The focus of the petition is the what is known as the buffer zone rule. This rule says that a mine cannot disturb the land within one hundred feet of a stream unless certain conditions are met. Such disturbance is prohibited unless the "surface mining activities will not adversely affect the water quantity and quality or other environmental resources of the stream and will not cause or contribute to violations of applicable State or Federal water quality standards." This rule became effective in 1983.

Enforcement of this rule would have a dramatic effect upon mountaintop removal mining. The petitioners have long maintained that, if a mine cannot disturb the surface within one hundred feet of a stream, then the filling of a stream would be prohibited. If the stream is filled and, as a result, ceases to exist, then no one could contend that the "water quantity and quality or other environmental resources of the stream." Federal agencies have taken similar positions in other contexts. Judge Charles Haden, II ruled to this effect in his 1999 ruling of

mountaintop removal mining.

The West Virginia Department of Environmental Protection has ignored this rule since its inception. The petition now asks the Office of Surface Mining to step in and enforce it.

The regulation of surface mining is designed to be a partnership. In 1977 Congress passed the Surface Mining Control and Reclamation Act. In that Act, Congress and the federal Office of Surface Mining established minimum standards for the regulation of surface mining. So long as a state established and enforced equally effective standards it could carry out its own program for the regulation of surface mining. When it failed to do so, the Office of Surface Mining would step in and enforce the law.

In 1981, West Virginia convinced the Office of Surface Mining that it had established and would enforce an effective program. The petitioners now believe that—at least so far as the buffer zone rule is concerned—West Virginia has failed to do so. They have asked that the federal Office of Surface Mining step in and enforce the law where West Virginia has failed to do so.

The Office of Surface Mining now must respond to the petition. Before it may take action there will be public hearings, etc. If history is any guide, such public hearings will contain much weeping, wailing, and gnashing of teeth as well as predictions of the end of the world as we know it.

### What's inside:

Thoughts from President Hugh	2	Poetry	8	Wind in the mother state	15
Roster of officers	2	Underground happenings	9	West Virginia Environmental	
Wilderness Act turns 45	3	How to join	10	Council conference	16
Citizens get more rights	4	Get a Hiking Guide	10	Outings	16
Marshall gets great, green book	4	Hiking Seneca Shadows	11		
Valley fills headed to the Supremes	5	Working on wind energy	12		
All about spruce	5	Get a history book	12		
The wrong PATH	6	EPA caves	13		
Special reclamation	7	Letters	14		

## From the Heart of the Highlands

By Hugh Rogers

### He ♥'d Mountains

John Muir is best known as a founder and first president of the Sierra Club; as the man who camped with Teddy Roosevelt in Yosemite, and convinced him to restore it to federal ownership; and as a writer whose essays defended America's natural heritage during the resource-greedy Gilded Age. Activists know of his long, lonely, losing battle against the damming of Yosemite's Hetch Hetchy Valley.

When my brother Alan sent me a pocket-sized story by Muir called *Stickeen*, I enjoyed it so much I reached for the biography by Frederick Turner that had been waiting on my bookshelf. Sometimes it takes a little book to open a big one. Since then, I've been living with the man, and a strange, iconic man he was.

*Stickeen* was published as a book in 1909, twenty-nine years and hundreds of campfire retellings after the events it described. They occurred on Muir's second trip to southeast Alaska to study active glaciers; he was seeking to confirm his theories about the formation of Yosemite and the High Sierras. Muir was unschooled but well read, and his intimate familiarity with mountains gave him an advantage over academic geologists. Shoving their putdowns aside, he made his case until they had to concede.

But *Stickeen* isn't much about science. It's about Muir's adventure with the dog named after the native tribe (usually spelled Stikine) that lived near Fort Wrangell. It was Muir's habit to rise before anyone else in his cedar-canoe crew and set out for an all-day exploration with a bit of bread in his pocket. The gale he stepped into only lured him more, "for many of Nature's finest lessons are to be found in her storms." Despite all his efforts to send it back to camp, the little dog would stick with him (that may explain the spelling) and during the course of a long day as the sky opened and closed they rambled across moraines and over ice-sheets, dodging crevasses thirty feet wide and perhaps a thousand feet down, or leaping across narrower ones. They must have gone at least fourteen miles (Muir doesn't bother to add), up and down both sides of the tongue, before turning around.

Too soon came the snow, which intermittently concealed "the turmoil of chasms and dislocated ice-blocks" and worse, "a series of longitudinal crevasses of appalling width." The heart of the adventure is a psychic wrestling match: Muir must persuade the despairing *Stickeen* to descend ice-steps to a sliver-bridge in a profound crevasse, cross that, and climb more steps up the far side. When at last the dog's superlative effort gets him across, his joy is so unrestrained that Muir fears it might kill him.

For more than twenty years (he was then forty-two), Muir had been essentially solitary; he would tolerate company on his own terms. The tag-along dog surprised him: "Our storm-battle for life brought him to light, and through him as through a window I have ever since been looking with deeper sympathy into all my fellow mortals."

When you know Muir's life, you can see it reflected in *Stickeen*. First of all, he was a Scot, a hard man who'd grown up in hard country on the North Sea and then after the age of eleven as a pioneer on the Wisconsin prairie. His father had yearned for a more fundamental Christianity than the Presbyterianism that prevailed. He'd turned toward evangelical sects and finally emigrated to live among, and preach to, the Disciples of Christ. He beat the Bible into his sons, "making every duty dismal," as Muir later wrote. But Johnnie could thank him, along with a few years of primary school in Scotland, for the impressive memory those "thrashings" induced.

(Continued on p. 8)

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# AMERICA'S WILDERNESS: A CONSERVATION LEGACY TURNS 45

By Mike Costello, Campaign Coordinator, West Virginia Wilderness Coalition

On September 3, 1964, a group of conservation champions and elected representatives converged on the White House lawn as President Lyndon Johnson signed into law one of the most popular pieces of legislation in American history, creating the National Wilderness Preservation System.

45 years later, a similar group would gather to witness Barack Obama sign an historic measure to preserve nearly 2 million acres of pristine wilderness areas nationwide. To this day, the Wilderness Act continues to give the American people the opportunity to leave behind an incredible legacy to future generations, keeping our treasured public lands forever wild.

Unlike so many divisive issues we face, the preservation of wilderness, the very resource that defines our natural heritage, provides shared value for Americans of all walks of life. Thanks to the Wilderness Act, grassroots citizen initiatives in 44 states have successfully preserved special places from Florida's Everglades to California's Trinity Alps, to three expanded areas and three newly-designated areas of West Virginia's own Monongahela National Forest.

In early 2009, the U.S. Congress passed the Wild Monongahela Act, a bi-partisan measure sponsored by all five members of West Virginia's Congressional Delegation. It was with the same foresight as those who worked to pass the Wilderness Act of 1964, that our Representatives and Senators ensured that West Virginians and our visitors will have the opportunity to enjoy these natural treasures in perpetuity.

The Wild Mon Act is a prime example of the opportunities Wilderness provides for citizens to work together toward a common goal. The campaign to protect the Mon forest included conservationists and outdoor enthusiasts, as well as West Virginia's faith community, organized labor groups, municipal governing bodies and hundreds of small business owners throughout the state. This legislation was the first such measure for the Mon since 1983.

As we celebrate the 45<sup>th</sup> anniversary of the Wilderness Act, visitors from across the U.S. will travel to our protected Wilderness areas on the Monongahela National Forest this Labor Day weekend. Some will explore the storied Wilderness Areas such as Cranberry or Dolly Sods, while others will experience some of the newest additions to the National Wilderness Preservation System like Roaring Plains West, Spice Run and Big Draft.

The dense forests, pristine streams and iconic vistas that make our state 'Wild and Wonderful' are found within these very places. These are the places that instill pride in the outdoor heritage that has defined us as Appalachians, a people so closely tied to the land.

The benefits to West Virginians, such as clean air and water, enhanced recreation opportunities and preservation of critical wildlife habitat, cannot be understated. Additionally, as natural resource-based tourism continues to play an increased role in the state's economy, the protection of these wild places significantly adds to the attractiveness of our highlands as a top-tier backcountry destination.

The wild, untrammeled landscapes we have preserved have greatly increased our overall quality of life, making their protection a lasting investment in the future. The places the Wilderness Act has allowed us to set aside are nothing short of an enduring national resource, something every West Virginian should be proud of.



**Bear Rocks**

Photo © Jonathan Jessup

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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.*

Opportunities for conniving violators trimmed**CITIZEN SUIT PROGRESSES**

By John McFerrin

In an August 18, 2009, decision, Judge John T. Copenhaver, Jr. allowed the Sierra Club and the Anstead Historic Preservation Council, Inc. to continue with a citizen suit enforcement action against Powellton Coal (a CONSOL Energy Inc. subsidiary). Powellton Coal had contended that the citizens' action should be dismissed because the West Virginia Department of Environmental Protection was negotiating with Powellton Coal, seeking a correction of the violations.

One common violation of both the Clean Water Act and the Surface Mining Act is a failure to meet what are known as effluent limits. All mines (as well as other facilities) that discharge water to the rivers and streams of the United States must have discharge permits. Such permits contain limits upon the amount of pollutants that can be in the water that is discharged. Failure to meet those limits is a violation of the federal and state Clean Water Acts as well as, for mines, the Surface Mining Act.

A violator of those Acts is subject to enforcement action by the West Virginia Department of Environmental Protection or the federal Office of Surface Mining or Environmental Protection Agency. If these agencies do not act, citizens may file a civil action to enforce compliance with the Acts.

In this case, Powellton Coal had discharged suspended solids, iron, aluminum and manganese into the waters of the United States. Between March 1, 2006, and March 31, 2009, Powellton accrued thousands of violations of the effluent limitation imposed by its WV/NPDES permits. The Plaintiffs asked that these violations be corrected and future violations prevented.

At the time the Plaintiffs filed suit, Powellton had already been negotiating with the West Virginia Department of Environmental Protection over these violations. Powellton Coal asked the Court to dismiss the lawsuit because of these negotiations. It argued that the federal Clean Water Act only allowed citizens to bring actions to compel compliance when the state agency is not taking action.

The Court disagreed. It held that companies were only protected from citizen suits when a state agency was taking enforcement action under a "comparable" state law. In this case, the West Virginia enforcement procedure was not comparable to the federal Clean Water Act.

The Court pointed out that West Virginia law authorized the West Virginia Department of Environmental Protection to "attempt to resolve alleged violations" through administrative proceedings. The federal Clean Water Act, on the other hand, simply authorizes the federal Environmental Protection Agency to assess a civil penalty. The inability of the West Virginia DEP to simply assess a penalty gives it fewer teeth than the federal enforcement procedure. This prevents West Virginia's law from being "comparable" to federal law. When the enforcement proceeding is not comparable, it cannot act as a shield from citizens seeking to enforce the law.

The Court went on to point out that West Virginia law allows alleged violators to terminate administrative proceedings "at any time and for any reason." This creates opportunities for violators to avoid citizen suits. The Court said, "West Virginia law also provides violators with ample opportunity to attempt to avoid citizen suits by manipulation of the West Virginia administrative enforcement process." A conniving violator could enter into administrative proceedings with West Virginia DEP long enough to protect itself from citizen suits and then terminate the proceedings when the threat had passed.

The Court made no determination that Powellton Coal was, in fact, a "conniving violator." It only pointed out a flaw in West Virginia's law that made such a result possible. The flaw in the law exists whether or not Powellton Coal had ever even considered taking advantage of it.

In the view of many environmental groups, it had been DEP practice to enter into settlements with violators on terms that were less demanding of violators than they could have been. With this decision, violators will no longer be able to enter into shield violators from citizen suits by entering into sweetheart deals.



***On August 25, 2009, Cindy Ellis and Carter Zerbe, as alumni of Marshall University and as members of the WVHC board, presented a 40th year history book and commemorative DVD to Christine P. Lewis, Acquisitions Librarian, MU Libraries. Copies of our book, "Fighting to Protect the Highlands: the First Forty Years of the West Virginia Highlands Conservancy" by David Elkinton, have now been distributed to 174 West Virginia public libraries. Eighteen college libraries have received books and also "Celebrating 40 Years—a Video by Bob Gates."***

## ASKING THE SUPREMES TO STOP THE FILLING OF STREAMS

The West Virginia Highlands Conservancy Ohio Valley Environmental Coalition and Coal River Mountain Watch have filed a petition with the U.S. Supreme Court to appeal a recent decision by the U.S. Court of Appeals for the Fourth Circuit in a controversial mountaintop removal mining case. The groups had previously filed suit against the U.S. Army Corps of Engineers claiming that it violated the Clean Water Act by issuing permits allowing companies to dump waste from mountaintop removal mining into waterways without following basic requirements of federal law designed to prevent irreversible harm to the nation's waterways.

The groups had filed this lawsuit challenging several West Virginia mountaintop removal permits in September 2005, challenging the Corps' violation of the Clean Water Act by authorizing the permits to fill 23 valleys and 13 miles of mountain streams in southern West Virginia without first performing even the most basic, legally required

assessment of the harm that would occur when the streams are buried forever.

The U.S. District Court for the Southern District of West Virginia in March 2007 found those permits violated the Clean Water Act. In February, a panel of federal judges in the U.S. Court of Appeals for the Fourth Circuit ruled 2 to 1 in favor of the Corps in the case, with a strong dissent from one judge on the panel. The plaintiffs then requested rehearing by the full court of appeals, but in late May, by a close vote of 4 to 3, with 4 additional judges abstaining from the vote, the court denied that petition. Two judges filed dissenting opinions.

In his dissent, Judge J. Harvie Wilkinson wrote that, "the potentially irreversible effects that the permitted operations will have on the Appalachian ecosystem make en banc review appropriate in this case." He concluded: "The requirements of the Clean Water Act are important. . . . Once the ecologies of streams and rivers and bays and

oceans turn, they cannot easily be reclaimed. More often than not, the waterway is simply gone for good."

In his dissent from the denial of rehearing, Judge M. Blane Michael, who also had dissented from the panel's decision, explained that: "The ecological impact of filling headwater streams with mining overburden is both profound and irreversible . . . . No permit should issue until the Corps fulfills each distinct obligation under the controlling regulations. And this court should not defer to the Corps until the agency has done its job."

Now the groups have asked that the Supreme Court of the United States to reverse the Court of Appeals for the Fourth Circuit, effectively reinstating the earlier decision by the United States District Court prohibiting these permits.

## SPRUCE SYMPOSIUM

By Donald C. Gasper

About 200 scientists gathered a couple of months ago to report on the nature and status of mid-Appalachian and southeast high elevation forests. The group met at Snowshoe Resort on Cheat Mountain in the midst of West Virginia's largest spruce forest.

The meeting was organized – most fairly and openly – by West Virginia University. This considerable effort by the WVU School of Forestry was commendable. It was an ennobling endeavor, but I was disappointed because it did not address spruce ecosystem health.

Information on soil water acidification and lack of nutrients is now certainly known and justifies at least a beginning concern about plant-available nutrients and nutrients required for brook trout streams that drain this infertile ecosystem. The symposium could have contained the timely good science needed for further acid rain control.

Although sponsored by WVU and the U.S. Forest Service, the West Virginia Highlands Conservancy had its logo, alone among the other two, featured on the attractive meeting announcement. The WVHC Public Lands Committee funded some attendees on scholarship.

Highlands President Hugh Rogers was there. Dave Saville, West Virginia Highlands Conservancy's former administrator, presented a paper and had a display with real spruce seedlings. "Spruce Restoration" was the theme of Dave's impressive display. Thus, again, WVHC was looking good.

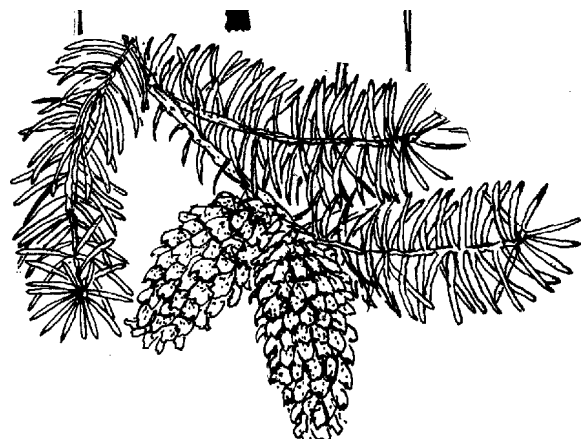
I had a small display of stacks of literature that I thought would be picked up eagerly by the scientists attending. It featured the paper on my spruce concern that was published in the Voice a few months prior to the symposium. Sadly, my display did not receive much attention.

Prior to the conference I used the Voice article and made personal visits to the Monongahela National Forest, the U.S. Fish and Wildlife Service, the U.S.F.S. Plant Health office in Morgantown, and WVU, in an attempt to get symposium presentations that would substantiate my concerns. I had further asked officials from the U.S.F.S. Air Quality Office and the U.S. EPA Air Division to attend.

The keynote speaker was Charles Cogbill, who has more than 20 years involvement in the study of air quality impacts on forests. I was fortunate enough to share lunch and conversation with him. He does share some of my concerns. I wish I could have corresponded with him prior to the meeting.

The Monongahela National Forest receives more leaching by acid rain longer than anywhere else. However, they did not present their data that shows extremely low base saturation of soil particles. Another measure of soil water acidification is the low calcium levels compared to the high aluminum levels. The Monongahela has such disturbing data. Locally, U.S.F.S. at Parsons and Morgantown also have such data, but they also did not offer a paper. The significance of these two measures is that they cause similar physiological damage to plant root hairs and the gills of insects and fish.

The conference consensus seemed to be that spruce and high elevation forests are healthy. However, the scientific data currently available indicate that we should not be reassured about spruce ecosystem health. If the proceedings are published, we will be able to get a closer look at them.



# PATH POWER LINE FACES OPPOSITION IN THREE STATES

By Nancy Williams

Many Marylanders, Virginians, and West Virginians are finding themselves in a real-life David and Goliath battle with American Electric Power (AEP) and Allegheny Energy over the proposed PATH power line. This is not your average power line. The power companies want to construct PATH (Potomac Appalachian Transmission Highline) with 765 kv lines, the largest there is, and with massive towers as high as 200 feet, the size of a twenty-story building. They've applied for a construction-right-of-way of 2200ft, which means that though the line has been drawn in a specific path in the application, it could be moved anywhere within that 2200 ft swath during actual construction.

The proposed line is to extend across three states for 275 miles. It would begin at the John Amos coal-fired power plant substation in Putnam County, WV, cut northeast through 13 WV counties, weave its way through Frederick and Loudoun Counties in VA, Jefferson County in the WV panhandle, and Frederick County in MD, before ending at a substation that is to be built near Mount Airy/Monrovia.

According to the power companies, PATH is needed to prevent significant overloads and voltage problems in the region. They claim that PJM, the regional grid operator, has asked them to construct the line. But residents in all three states are fiercely opposing the proposal, not convinced that "need" is the underlying motivation for the \$1.8 billion dollar project.

Keryn Newman of Shepherdstown, WV shared her take on the subject in a recent letter in the Observer: "PATH is all about greed, not need. The 'need' claimed by PJM is manufactured. As with any math problem, the desired answer can be obtained by playing with the numbers".

"The power companies are guaranteed to make a whopping 14 per cent profit on every dollar they spend. In reality, PATH is not a sincere effort to strengthen America's power grid," noted Kirsten Weiblen of Hampshire County, WV. The Federal Energy Regulatory Commission, FERC, has guaranteed a 14.3% rate of return for the PATH project, reflecting a profit of at least 287 million for the power companies.

In Virginia, in their resolution of opposition against PATH, the Loudoun Co. Bd. of Supervisors states, "The need for the PATH proposal remains unexamined and unanalyzed by credible independent experts as does a review of alternatives."

In West Virginia, more than 250 people have filed to be intervenors in the case against PATH. West Virginia PSC Chairman Michael Albert recently stated "In thirty years I have never seen anything like this", referring to the number

of intervenors. Thousands have signed protest letters and petitions opposing the 200+ mile section that cuts through their state.

Maryland citizens have organized their opposition to PATH in the Sugarloaf Conservancy and CAKES (Citizens Against the Kemptown Electric Substation). On the CAKES website, they claim they are "determined to prevent the highest voltage electric substation ever built by Allegheny Power", and note that "we are not alone in our opposition and this is a battle worth fighting."

Maryland residents are concerned that 1300 homes, one children's center, and two elementary schools are in close proximity to the new substation site. Jefferson County, WV residents are concerned about two of their schools being close to the line. Thousands of children across the three states will be near the lines at home or at school. Parents are fearful of the possible threat of childhood leukemia and other health risks being imposed upon their children from EMF and ELF exposure from the power lines and substations. The resolution from Loudoun County VA also suggests that "the proposal raises public fears about health issues."

At a recent PATH information meeting in Sissonville, WV, their EMF expert, Dr. Bill Bailey, stated, "I would be more concerned about my child getting Lyme disease than being harmed by EMF exposure". But informed citizens are looking beyond paid power company experts for their answers.

In his article "Do High Voltage Power Lines Cause Cancer", Midwest Today, April 1996, Neil Lawrence tells of a cluster of children from Omaha. One mother of a child with cancer noticed at a local swimming pool that there were several children at the pool with hair loss and scars from operations. Once the parents started talking amongst themselves, they discovered that eleven children at that pool had two things in common: The all had cancer and they all lived within one mile of the same substation.

The Draper study performed in the UK revealed that children 15 and under living within 100 meters from high voltage lines were almost twice as likely to get leukemia. It found that children 5 and under had even a higher risk. Most research has been conducted on 400kv or smaller lines. The 765kv lines bring an even higher risk.

WV resident Bill Howley has been researching the PATH proposal for more than a year. He keeps citizens informed on the topic through his blog, The Power Line at <http://calhounpowerline.wordpress.com/>. "I got involved with this when I realized what incomplete and misleading information the power compa-

nies were feeding the public. I wanted them to know the truth", said Howley.

In Loudoun County VA, residents voiced their opposition, noting the adverse effect the line will have especially in the areas of the Gateway to Loudoun County and Lovettsville, established in 1772. They highly value this historic region and its tourism industry. PATH also crosses the C&O Canal, the Appalachian Trail, and [the northern tip of the] Monongahela National Forest.

Property value loss, health issues, devastation through scenic landscapes, fragmentation of wildlife habitat, the use of dangerous herbicides for maintaining clear-cut areas, lack of need and exploring alternatives, polluting water sources—any of these issues would be troubling enough if they were caused by something the public believed was necessary. But, when the overwhelming perception is that there is no convincing need for PATH, the concern intensifies and turns to anger and distrust in our public utilities, government and politicians.

There are numerous causes for concern brought on by the PATH proposal. Perhaps the most disconcerting one to many people is the fact that if this project is approved, it will lock into place for 50 or more years the obsolete practice of producing electricity by coal-fired power plants which is harmful to our planet. To that end, it seems to be incongruous with our current political environment where the new administration is not trying to silence the voices of climate change experts such as James Hansen, but is acknowledging that global warming is not a myth. The emissions from West Virginia power plants go up into the sky and head eastwardly to Virginia, Maryland, and the D.C. area.

"There seems to be something Un-American when average citizens, many of whom are living from paycheck to paycheck, are having to battle such a huge giant with lavish ad campaigns, endless funding, hired experts, huge law firms, and who will be making millions off of our loss and devastation. And we ratepayers will be incurring their costs. It's fundamentally unjust that for-profit companies with millionaire CEOs can take or ruin our most valuable asset, our property, through eminent domain, and put our children's and grandchildren's health and well-being at risk. Those who will rake in millions on this deal won't have to worry about their children playing near the lines", said John Cobb of Lewis County, WV.

*This article appeared in the Sept 1st Washington News. Nancy Williams is a Kanawha County resident and is an intervenor in the PATH case.*

The Good, the Bad and the Ugly**THE ONGOING SAGA OF SPECIAL RECLAMATION**

By Cindy Rank

**THE GOOD**

On August 24, 2009 Judge John T. Copenhaver Jr. (United States District Court for the Southern District of West Virginia at Charleston) granted a motion for summary judgement in our litigation against current practices of the West Virginia Department of Environmental Protection (DEP) at forfeited mine sites.

You may recall that in June 2007, the WV Highlands Conservancy (WVHC) and the WV Rivers Coalition (WVRC) filed suit in both the Northern and Southern District Courts in West Virginia. The complaints alleged that WVDEP was violating effluent limits and standards under the Clean Water Act at forfeited mine sites (18 sites in Northern WV, and 3 in Southern District) where the state was treating (or not) bad water emanating from the sites.

As did Judge Irene Keeley in her January 14, 2009 ruling, Judge Copenhaver reaffirmed that the state has a duty to uphold the same reclamation standards, including water quality and effluent standards, that are expected of the scofflaw operators who got the permit to mine in the first place.

The August 24, 2009 order reads:

*"The court DECLARES the Secretary to be in violation of the National Pollutant Discharge Elimination System permitting requirements of the Clean Water Act. It is further ORDERED that the Secretary apply for, and obtain, NPDES permits for all sites at issue in this action."*

There are three sites at issue in this case. Harvey Energy Corp. in Fayette County, three surface mining permits of Royal Scott Minerals Inc. in Greenbrier County, and five surface mining permits of Triple A Coals, Inc. in Nicholas County

**THE BAD**

Ah, but wait. ... What's happening up north?

In the February issue of the Highlands Voice we celebrated the Keeley ruling in the parallel case in the Northern District Court.

In a June 2009 progress report to the Court the WVDEP indicated that despite a slow start, all was going swimmingly.

WVDEP wrote that training had been done, that permit writers were working on all 18 sites at issue and that 'at this time' WVDEP expected four of the permits to be completed by the end of June. The report went on to say that the agency anticipated permits for all eighteen sites would be completed and submitted to the permitting personnel within the 180-day deadline set by the Court's order.

I don't know what happened in the interim, nor do I know where those applications might be. But on August 24, 2009 WVDEP appealed to the United States Court of Appeals for the Fourth Circuit requesting that the court reverse the previous [Keeley] judgement, vacate the district court's Order granting injunctive relief, and remand the case with instructions to dismiss this matter with prejudice.

**THE UGLY**

Now, a mere three days later the Pennsylvania DEP (PADEP) and the Interstate Mining Compact Commission (IMCC) have filed an amicus (friend of the court) brief in support of WVDEP's appeal for reversal.

For those not familiar with the IMCC, let me quote from their brief:

"The Interstate Mining Compact Commission (IMCC or Commission) is a multi-state governmental agency representing the natural resource interests of its member states. An individual state becomes an IMCC member through legislation authorizing the Governor to ex-

ecute the Interstate Mining Compact and enacting the Compact into state law. .... The states are officially represented by their governors, who serve as commissioners. IMCC came into existence in 1970 with the entry of its first four member states. Since that time, fifteen additional states have enacted legislation bringing them into IMCC, and five states have become associate members while they pursue enactment of legislation to make them full members.

"Among the purposes of the Compact are assisting member states in the reduction or elimination of environmental pollution attributable to mining, advancing the restoration of land and water resources affected by mining, and assisting member states in maintaining a productive mining industry with its attendant economic and social benefits."

The IMCC and PADEP apparently hold to some of the erroneous assumptions WVDEP has professed for years.

They blur the line between truly "Abandoned Mine Lands" which legally refer to mining prior to and deserted before the 1977 enactment of the Surface Mine Act (SMCRA), and those mine sites that have been mined and abandoned since/after 1977 – legally called "forfeited" sites.

Among other things, IMCC and PADEP claim that states are only required to meet standards of land reclamation, but are held to less stringent or no standards when it comes to the water part of true reclamation. And rather than asserting states have the responsibility under SMCRA to guarantee full reclamation by providing bonding structures sufficient to cover all that the Act requires, IMCC and PADEP revert back to the old 'how can we afford to do all this?' whine.

Or, in their words:

"In this regard, IMCC believes the lower court failed to fully appreciate the potential negative impact of its interpretation of the CWA on state mining programs charged with the enormous task of finding ways (both fiscal and technical) to treat abandoned mine drainage—not only at coal mining sites for which SMCRA bonds were forfeited but also at abandoned coal mine sites left from the legacy of pre-SMCRA mining extending back into the 19th century." [emphasis is mine].

**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.

## Poetry Corner

### Single Coin

By Betsy Reeder

In a land of seeming contradictions  
Snow squalls moan across the Sods  
While an echo of desperate cold  
Sounds from the Roaring Plains

But hunkered down are pulses drumming  
Warm and heavy as the thump of waning thunder  
On a muggy summer night

Here are men with faces hard and creased  
As Appalachia's sandstone spines  
With eyes the color of chicory or bluebird egg  
Or autumn sky

Men who gut deer and hook bass  
And melt at the sight of a beagle pup

And all the land is ridge or holler or knob  
Cut by canyon and gorge  
With spittle in the dimples  
That turns out to be whitewater fluid and frenzied  
As the cliffs are solid and still

If you can see the rivers at all hid in morning mist  
While upland balds go blind with light  
And catfish mouths of caves gape black with chill

A feather swings down  
                        down  
                        down  
Its soft symmetry impossible  
Against this rugged terrain

A reminder that life is the underbelly of death  
The two entwined  
    So dearly  
    So prettily  
        here.

### Strip Mine

By Carolyn Moore

The eviscerated earth lies bare  
Beneath staring sun.  
The brute machines stand idle  
Their cruel work done.

The furnaces that hunger for coal  
Can now be fed.  
Silence hangs heavy in the noon  
All living things have fled.

## PRESIDENT HUGH CONTINUED (From p. 13)

(Personal note: My great-grandfather, Hugh Barnes, born in Scotland in 1854, sixteen years after Muir, came to this country when he was sixteen. As he stepped onto the wharf in Boston he declared he would never go to church or eat oatmeal again. According to a granddaughter who knew him, he backslid on the oatmeal; but he held to his opinion that he'd sat long enough in church in his boyhood to have done with that for the rest of his life.)

Though Muir often turned to biblical imagery—"What a psalm the storm was singing!"—he turned away from churches. The natural world was his place of worship. In many ways he was like Thoreau; he read Thoreau carefully, with deep recognition, and Emerson, who knew them both, considered Muir a fulfillment of his wish for Thoreau, in that he finally became a man of action as well as a nature mystic.

What we might consider ascetic practices were second nature to Muir. The higher he climbed, the less comfort he wanted: no blanket, no coat, sleeping as well as he could on an arrangement of stones, he stripped away everything that might veil his direct experience of what-is. He had survived pneumonia, malaria, and frostbite; as a teenager, he had almost died from asphyxiation while digging an eighty-foot well; and his way of recuperating from temporary blindness after a sawmill accident was *A Thousand-Mile Walk to the Gulf*, the title of the book he wrote about his journey from Indiana to Florida when he was twenty-nine.

He felt comfortable with death, perhaps drawn to it at times, only fearing it might come in some ignoble, over-civilized place. He wrote that he told the dog, "Hush your fears, my boy, we will get across safe, though it is not going to be easy. No right way is easy in this rough world. We must risk our lives to save them. At the worst we can only slip, and then how grand a grave we will have, and by and by our nice bones will do good in the terminal moraine."

One more point about *Stickeen*: the summer before, Muir had rescued the dog's master, the Rev. S. H. Young, who had dislocated his shoulder in a fall. Young was a broad-minded missionary, knowledgeable about the country and the natives, but overconfident about his mountaineering. He later wrote: "Muir began to *slide* up that mountain. I had been with mountain climbers before, but never one like him. A deer lope over the smoother slopes, a sure instinct for the easiest way into a rocky fortress, an instant and unerring attack, a serpent-like glide up the steep; eye, hand, and foot all connected dynamically; with no appearance of weight to his body . . ."

More amazing was how he came *down* the cliffs with Young's belt in his grip and collar in his teeth—but Muir couldn't show himself as a hero. In his Alaskan tale, the helpless man was displaced by the game little dog, and it was Muir who learned a lesson.

But how did the quirky Scot who was happiest alone, botanizing, geologizing, and flowing through the mountains, become a public man? We'll save that question for a second installment.



# ORGAN CAVE—A MYSTERY UNRAVELED

By Bob Handley

**Editor's note: If you go to Organ Cave near Lewisburg, part of the tour is the guide pointing out the initials RHH in a spot which, at least upon first examination, it appears no human could reach. So who was this RHH? Some ancient warrior, crawling about by torchlight in the Pleistocene era? Some emissary of Thomas Jefferson, exploring the hinterlands of Western Virginia? An early forerunner of Spiderman? Not at all. It was our own Bob Handley, longtime Highlands Conservancy member and current member of our Board. Since inquiring minds want to know, I asked him how he did it. This is his answer.**

My initials John noted in Organ Cave were placed there sometime in the 1980's when I was re-wiring some of the commercial cave lighting circuits. I was by myself and after finishing a particular job, I took a break and went exploring in the commercial part of the cave. I had traveled the tourist trails many times but hadn't taken time to check out the many ledges and small black holes that most tourists never see.

The RHH in question (considered graffiti now days and is highly discouraged even in wild caves) seems to be a tourist attraction. But

remember – looks can be deceiving. When the inscription is pointed out, one is standing in a low area on the trail in the center of the large passage. The next 30 to 40 feet of the trail rises 10 feet or more and then makes a sharp bend to the left along the right wall. In that corner (the wall wasn't vertical, maybe 75 degrees) at ceiling level, 15 feet up, was a black hole. The corner was easy to free climb and the opening led into an old ceiling channel that was two feet wide and three feet high.

Following this channel I soon came to the top of the large passage. Of course that was the end of that exploration and more as a joke than anything else, I turned up the flame of my carbide lamp and marked my RHH on the wall – sort of around the corner from the small passage – I do have long arms.

I didn't usually put my initials in such public places – only at the very end of difficult passages or at high places that few others could climb up to. This one in commercial Organ Cave is completely out of character. My underground climbing ability and my insatiable curiosity for the unknown were traits that made me a good caver.

## No Bobby Come Lately

# A HISTORY IN CAVING

**Editor's note: Leaving a mark in Organ Cave is not Bob Handley's only claim to fame in the caving world. The following article, written by Bob Flack, appeared in the January, 1949, issue of NSS News, the newsletter of the National Speleological Society, when Bob was a mere sprout. It describes one event in Bob's 30 years of exploring Organ Cave. Today Organ Cave has over 38 miles of passage surveyed. More cave is there to be surveyed but most of it is very difficult to access.**

In spite of poor weather, members of the Charleston Grotto managed to make four trips during the past month. Yours truly, accompanied by Bob Handley, traveled to Cave City, Ky., to visit the lower levels of Floyd Collins Crystal Cave. We went with Jim Dyer, (manager of

the cave) and Bill Austin, two top-notch Kentucky cavers who devote all their caving energy to this one truly "endless" cave.

Accomplishing the 1100-ft. crawl into the lower levels of the cave we worked our way down into the "Bottomless Pit" and the "Big Room" where we spent several hours photographing what are probably the largest gypsum formations in the cave world. After 14 hours underground we were tired and sore despite the Min-



ers knee pads which are a "must" in this extensive but tight cave.

The following week, Handley and I decided to recuperate by spending a quiet day photographing in Hedrick's Cave (at Organ Cave, W. Va.) long known to the Society as a small but very pretty cave. Accompanied by Jack Hedricks and Melvin Bostic of Organ Cave we started to accomplish our purpose when the redoubtable Handley crawled down a hole which by-passed the low water channel, hitherto marking the supposed end of the cave, and found himself in a rocky passage 40 ft. wide and 20 ft. high which provided eight hours of strenuous crawling and takes Hedrick's out of the "small but pretty" class and puts it into that of one of the largest caves in the state. We had to leave several passages unexplored because of fatigue and the lateness of the hour."

## HATS FOR SALE

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

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

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

## T- SHIRTS

White, heavy cotton T-shirts with the ♥ **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% tax. Send sizes wanted and check payable to West Virginia Highlands Conservancy ATTN: James Solley, WVHC, P.O. Box 306, Charleston, WV 25321-0306.

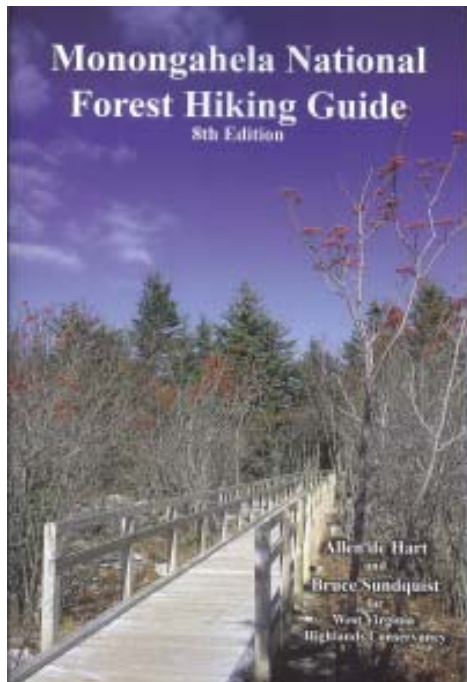
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Mail to West Virginia Highlands Conservancy PO Box 306 Charleston, WV 25321

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



### The Monongahela National Forest Hiking Guide

By Allen de Hart and Bruce Sundquist

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

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New 8TH Edition Now Available on CD

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

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

All pages and maps in the new Interactive CD version of the Mon hiking guide can easily be printed and carried along with you on your hike

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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.

### Voice Available Electronically

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

# CAMPING AND HIKING AROUND SENECA SHADOWS

By Mike Juskelis

MRSHyker and I loaded up the dogs and our camping gear and headed out to West Virginia for four days of camping and some hiking at Seneca Rocks, Dolly Sods and North Fork Mountain. We had a pretty good turnout for this event. Besides regulars Doc, Cognac Jack and the Mad Hatter we were joined by Kelly, Sybelle, Richard, two Steves, Tom, Betty and Mike.

After setting up camp seven of us made the obligatory trek to [Seneca Rocks](#). As usual, I scrambled all the way to the top. As I was shooting a [panoramic view](#) and photographing a couple I could see a storm rolling through the gap from where Seneca Creek Flows. No sooner did I reach the viewing deck then the skies opened up and it began to pour.

After a night of steady rain and then breakfast we set out for a 10.6 mile hike through Dolly Sods. The spoon shaped circuit included the Blackbird Knob Tr, Breathed Mountain Tr and Red Creek Tr with part of the latter forming the handle of the spoon. The first crossing of Red Creek was not too bad and everyone made it across with dry boots. The meadows were full of Dog Bane, St. Johnswort and ripe blueberries. Obviously this last item slowed down the hiking considerably.

The crossing of the Left Fork was a bit trickier. Some opted to change into sandals or go across barefoot while two decided to return to their car. The last time I had hiked Breathed Mountain Trail was in 2004. It seems as if the forest is slowly taking back the wide open heath meadows as they seem somewhat smaller than they did five years ago. I guess that's a good thing.

The trails were pretty water-logged by this point and the lower ford of the Left Fork was totally under water. Although it was running swift the rocks below were large, flat and offered relatively good traction. We all made it across safely and took a long break to enjoy the falls and the huge swimming hole at "The Forks". The climb through the meadows back to the Blackbird Knob Tr seemed easier than on past trips. From there it was a simple matter of retracing our steps along the handle of the spoon.

When we arrived back at camp we were surprised to find that there was no rain in that part of the forest. That night was pretty much a repeat of the previous night sans the rain.

We awoke to sunny skies the following day and set off at 9:15 to arrange the car shuttle for our North Fork Mountain hike. It went pretty well considering the number of people (10). We were on the trail by 10:15.

The Redman Run Tr starts as a wide, gradually climbing fire road but as it turns to make its climb up the west flank of the mountain it leaves the road and follows a footpath to the first of many vistas. If you keep a moderate but steady pace there is usually little problem with making it to the top. We lingered here a bit and enjoyed the views and the cool breeze. From here you can see Champe Rocks and a chicken farm I must have passed a hundred times during my hiking career.

Next came a descent to a low point in the ridge and another long and gradual climb to a vista that I personally call Andrew's Rock. Here you can look through a hiker's window or easily climb to its top and take in a view to the west of the Allegheny Front as well as to the east with the ridges of Shenandoah and Great North Mountains before you.

From this point on the hiking is pretty easy. We visited one vista after another until we finally arrived at the focal point of the hike, Chimney Top. (I still can't figure out how people climbed those sandstone pillars to have their photos taken. Perhaps they were dropped by helicopter.) We took a nice long lunch and looked back on the ridge we had just traversed. Once we made it back to the trail we were a mere 1.7 miles away from its northern terminus.

Along this stretch we managed to see some turkeys with their polts as well as my first black bear in over two years. He was a small thing and wanted no parts of us. No photo op there! Surprisingly we weren't done with the vistas yet.

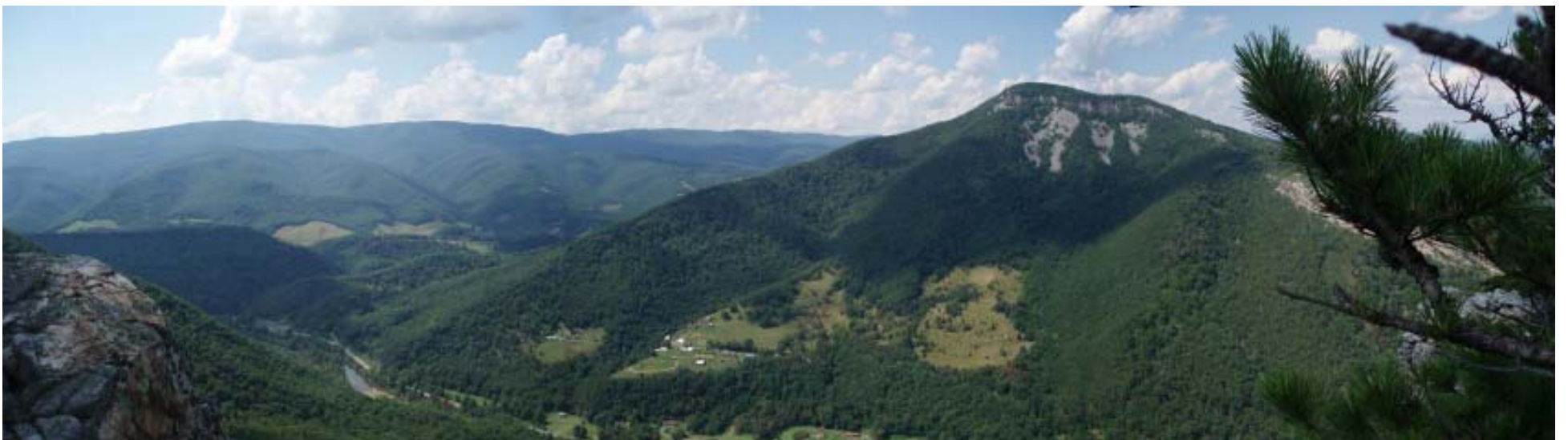
We stopped for views of the North Fork Valley, New Creek Mountain and the village of Cabins. Fortunately the rest of the hike was short, downhill and in the shade. We were through hiking by 4:30.



*The Forks in Dolly Sods Wilderness  
Photo by Mike Juskelis*

We recovered the vehicles at the south end of the hike and headed back to camp. We had another enjoyable night save for the fact that most of us were a bit more tired than when we first rolled into camp.

The next morning we broke camp early, said our farewells and headed out for a hearty breakfast at Mallow's Mountain Inn. There's nothing in the world quite like a nice southern fried steak smothered in sausage gravy with two eggs over easy to top off a great outdoor adventure like this one!!!



*North Fork Valley and New Creek Mountain from North Fork Mountain. Photo by Mike Juskelis.*

# NEW INDUSTRIAL WIND RESISTANCE ORGANIZATION FORMED

By Peter Shoenfeld

Thirty citizens concerned about the regional cumulative impact of industrial wind facilities on the Allegheny Mountains and surrounding areas met in Thomas, WV on August 22, 2009. The meeting was convened and chaired by Dr. Wayne Spiggle of Keyser, Mineral County, West Virginia. Dr. Spiggle plays a strong role in Mineral County civic affairs and is a member of the Highlands Conservancy.

Group attendees included Friends of Blackwater, Friends of Beautiful Pendleton County, Allegheny Front Alliance, Laurel Mountain Preservation Association, and Save our Allegheny Ridges (SOAR).

Representative Alan Mollahan attended and provided a great deal of leadership, including a suggestion, widely accepted, that regulation of industrial wind siting by the West Virginia Legislature should be our initial goal. He pointed out that the Public Service Commission lacks authority to make the sort of decisions that industrial wind interveners ask of them.

In West Virginia, the Public Service Commission has the only oversight of industrial wind but they lack statutory authority to consider environmental and social justice issues. Their current "siting criteria" are limited to listing the information that must be provided in a complete application. The "siting criteria" do not require that the PSC deny applications where certain features are present. They actually give the PSC little guidance on how the information submitted is to be used. There has been considerable anxiety among Liberty Gap opponents that U.S. Wind Force may be able to reverse their loss in this PSC case by providing more information, studies, etc.

Half or more of the attendees were members of the West Virginia Highlands Conservancy. The relationship of the Conservancy to the legislature through the West Virginia Environmental Council (WVEC) was discussed, as was the role of the Sierra Club. The WV Sierra Club tends to favor most local industrial wind projects, whereas the Conser-

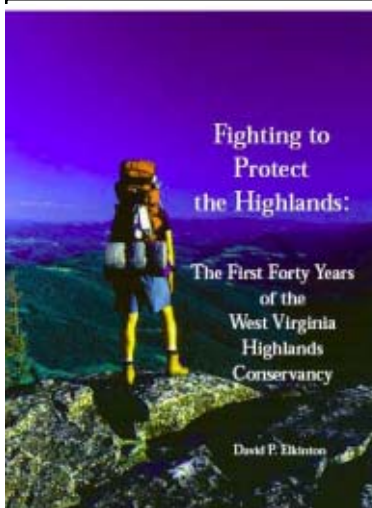
vancy most often opposes them. Both organizations are major funders of WVEC's legislative lobbying.

The history of the Conservancy has long included conflict regarding industrial wind projects. There has always been a strong tendency among industrial wind opponents toward opposition to all projects. However, in the case of the Mountaineer and Nedpower projects, the Conservancy leadership was initially satisfied to negotiate away a portion of each project. This led to controversy within the organization and the involvement of multiple new organizations.

This author has moved to a position of opposition to the proliferation of West Virginia projects and the apparent low yield in terms of "energy density." Others in the organization have stuck to environmental concerns, e.g., the bat hazard and the visual degradation at "special places."

This author was glad to hear that another objective of the new organization is to maintain the core value of truth telling about industrial wind, based on science. This has often not been the case so far and there has been much exaggeration on both sides. For instance, one often hears about the peril of "bird and bat" mortality in the context of industrial wind. The truth of the matter is that there has been terrible bat mortality at West Virginia wind projects, but that the peril to birds has been relatively modest. Early in the game there was a major bird kill at Mountaineer, but this would not have occurred without human error, and has not been repeated. Industry generally exaggerates the prospective yield of their projects in terms of net increase in useable electric power.

The meeting was long and intense. There was not time for issues such as picking a name, organizational structure, and initial strategy. Such topics will be the subject of a follow-up meeting in mid-September.



## GREAT HISTORY BOOK NOW AVAILABLE

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

Learn about how the Conservancy stopped road building in Otter Creek, how a Corps of Engineers wetland permit denial saved Canaan Valley, and why Judge Haden restricted mountaintop removal mining. Also read Sayre Rodman's account of the first running of the Gauley, how college students helped save the Cranberry Wilderness, and why the highlands are under threat as never before.

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

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

518 pages, 6x9, color cover, published by Pocahontas Press

To order your copy for \$24.95, plus \$3.00 shipping, visit the Conservancy's website, [wvhighlands.org](http://wvhighlands.org), where payment is accepted by credit card and PayPal. Or write: WVHC, PO Box 306, Charleston, WV 25321. Proceeds support the Conservancy's ongoing environmental projects.

**Army Corps of Engineers Approves Consol Energy's Peg Fork mine**

**EPA ALLOWS MINE TO MOVE FORWARD**

**DECISION OPENS THE DOOR FOR MORE DESTRUCTION**

The U.S. Army Corps of Engineers issued a Clean Water Act permit in early August for Consol Energy's Peg Fork mountaintop removal coal mine in Mingo County, West Virginia.

This controversial decision marks the first time during the Obama administration that the Army Corps approved a mine permit to which the U.S. Environmental Protection Agency (EPA) had previously objected, opening the door for many new mountaintop removal coal mines in Appalachia. The decision to allow this operation to proceed also demonstrates the Department of Interior's lack of will to enforce the clear mandates of a critical Surface Mining Act regulation.

Representatives of the various groups challenging such actions these last ten years expressed dismay.

"We are disappointed that the administration has approved a new mountaintop removal mine without making any commitment to adopt new regulations or policies that would end this destructive practice," said Ed Hopkins, Director of Sierra Club's Environmental Quality Program. "While we appreciate that the Obama administration is taking a harder look at mountaintop removal coal mining, unless that results in decisions that end the irreversible destruction of streams, the harder look isn't going to do the job."

"We are not willing to sacrifice our homes to the potential of flooding from a mountaintop removal coal mine," said Mingo County resident Wilma Steele. "The Army Corps should protect our homes from being washed away."

The permit would violate the Surface Mining Act as well as the Clean Water Act. This mining operation would be impermissible under the Surface Mining Act's buffer zone rule, which protects intermittent and perennial streams. The Department of Interior, therefore,

has the duty to use the buffer zone rule to prevent giant stream destruction projects like those at the Peg Fork mine from going forward.

**HOPE FOR CHANGE IS FADING**

"The Department of Interior's continuing failure to force the mining industry to comply with the buffer zone rule is a reminder that it is business as usual at Interior," said Joe Lovett, of the Appalachian Center for the Economy and the Environment. Lovett called for Secretary Ken Salazar to "reverse the Bush Administration's refusal to enforce the Surface Mining Act and to protect our irreplaceable streams."

Earlier this year, the EPA conducted a review of 48 applications then pending before the Army Corps for Clean Water Act permits to fill streams. At the end of its review, the EPA identified the Peg Fork mine and five other mines as projects of high concern, and instructed the Army Corps to not issue those permits.

Following the EPA's review, the Army Corps revised Consol Energy's permit for this mountaintop removal mine and issued the permit on Friday, August 7, 2009. But the revised permit still fails to satisfy the requirements for permits issued under the Clean Water Act. The original permit application proposed mining over 800 acres of mountainous terrain and dumping mining waste into eight valley fills and over 3 miles of streams. The revised permit that received EPA approval still allows two valley fills immediately, with the potential for up to six additional valley fills if EPA is satisfied with the results of downstream water quality monitoring from the initial fills. Even with these alterations, the Peg Fork mine would still have unacceptable adverse impacts on local waterways and therefore violates the Clean Water Act.

The Peg Fork permit decision comes just as the EPA begins the process of reviewing more than 80 more applications for Clean Water Act permits for mountaintop removal mining under the coordinated review process

announced by the Obama administration in June. Mining companies have already buried close to 2,000 miles of Appalachian streams beneath piles of toxic waste and debris. Entire communities have been permanently displaced by mines the size of Manhattan.

"The Obama administration needs to commit to ending the devastation caused to our communities by mountaintop removal. The time to make that commitment is now," said Judy Bonds of Coal River Mountain Watch. "We can not live through another generation of permits that will bury hundreds more miles of streams and blast apart our mountains."

"Science and the law are at odds with this permit decision," said Janet Keating of the Ohio Valley Environmental Coalition. "In my opinion, the Corps' decision to issue this and other permits boils down to political pressure from coal-friendly legislators."

**STILL A GLIMMER OF HOPE ?**

"A big part of the problem is that the Obama administration is still operating under the failed and broken regulations adopted during the Bush administration," said Joan Mulhern of the environmental law firm Earthjustice. "The White House and the agencies can and should immediately initiate the process for changing those regulations and restoring the environmental protections that existed prior to 2001."

"Newly appointed Assistant Secretary of the Army Jo-Ellen Darcy now oversees the Army Corps' permitting divisions, and she has the opportunity to take bold action on mountaintop removal coal mining," said Cindy Rank of the West Virginia Highlands Conservancy. "The Corps has shown an inexplicable and inexcusable eagerness to permit new mountaintop removal mining, but we hope that Assistant Secretary Darcy's leadership will mean more protections for the communities, streams and mountains of Appalachia."

**Speakers Available !!!!!**  
 Does your school, church or civic group need a speaker or program presentation on a variety of environmental issues? Available topics include a slide show presentation on mountaintop removal including up to date information on coal sludge pond and coal ash pond failures in Kentucky and Tennessee. Contact Julian Martin at 1525 Hampton Road, Charleston, WV 25314, or Martinjul@aol.com, or 304-342-8989.

**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 WV Highlands Conservancy, PO Box 306, Charleston, WV 25321.

**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.

## Readers Write

Dear Governor Manchin,

I have been very impressed with the new theme of "Coming Home to West Virginia" and the articles in the "Wonderful West Virginia" magazine.

I grew up on the banks of Buckeye Run, a tributary of Middle Island Creek in Doddridge County. I am a 5<sup>th</sup> generation West Virginian, my great great grandfather built the house I grew up in and that has always been a point of family pride. Our creek was quite a popular spot and many of the local churches used our swimming hole for their baptisms. I still have a picture on our wall at home of all the people in their white clothes, before heading down to the creek. Long, lazy summers at our "Swimming Hole" and riding my pony around the fields, provided a foundation for the love of my home and I have been determined to pass this on to my three sons.

I married and moved away to Colorado, having been blessed with a wonderful husband who also appreciates the beauty, traditions, and the people who work hard. here Though we live near Vail Colorado during the school year, we love our cabin on the banks of the Greenbrier River in Pocahontas County and our farm near Lewisburg and are making preparations to return "home" in the future. My sons have been brought here to West Virginia every summer since they were born as I felt it was important for them to experience "real living" and not only the glamour of the ski resort community in Colorado. All my sons are thriving musicians, largely due to the nurturing environment provided by many of the locals here in Pocahontas County. My oldest son is a passionate fiddler and has been taught by the best West Virginia has to offer. His interest turned to classical music and he became the principal violinist/concertmaster for the Colorado Youth Symphony Orchestra at the age of 17, and was recently accepted into the Oberlin Conservatory of Music in Ohio. All this brings me to here, where I begin the rest of my story of returning home to West Virginia.

Last Monday night, August 24<sup>th</sup>, I went 'home' to Doddridge County to spend the night with my oldest son as we were going to Oberlin Ohio the next day to get him settled in at college. My son chose to take that route as it would give him just one more opportunity to cast his line in the waters of Buckeye Run Creek. He headed down to the creek at 9:00 pm and came back saying there appeared to be a "problem". We took flashlights down to our fishing hole, the acrid, oily smell of this red/orange gel met us almost up to the house. I got it on my hands, the smell of which didn't go away for some time despite repeated washing.

Is this the "Come home to West Virginia" we deserve?

It is now Sunday, August 30<sup>th</sup>. After having called the DEP, oil and gas division, we STILL do not know what this is. Though they were quick to respond, and have been very polite, information has been sketchy. Clean up has been ongoing, the employees of which, were in the water with this contaminant all over their bare skin. I



*The stream discussed in the letter. It is bright orange, something that is not apparent in the black and white pages of the Voice.*

have been told that they don't know yet what it is. If you don't know 'what it is' how do you know you are cleaning it up properly and it is safe for people to touch. When I notified my neighbors downstream, they stated they had seen before that time, that the water appeared 'funny' and red. There is no educational outreach to people who live downwind, downstream from possible pollution sources, informing them what to look for and who to call when there is a suspected problem. Neither is there a system in place to notify the people who live along the stream. My neighbors downstream had not been notified, many children play in the creek as mine do.

A sound business climate is very important in keeping and attracting people to our home state. But if we foul up our waters and our lands, keep antiquated laws in place without updating these as new technologies leap ahead through loop holes, we will all be losers. Who wants to live in a state known for razing and polluting their

own home? West Virginia's biggest asset lies in our bright and hopeful children. Their heritage is being plundered and altered by others who do not respect other people's homes and safety. We need to make sure that we are passing on a clean environment, to do otherwise is dishonorable to those who came before us. West Virginia has such bright, passionate people, we could become a leader in this nation in renewable, clean energy, along with industries that abide by good, strong laws to keep our drinking and recreational waters safe.. We can become a state others look to instead of down upon. Laws need to be changed quickly and closer scrutiny of industries with the potential to pollute our homes and make us sick.

The pictures I have sent are not pretty, cancer is not pretty either. I just lost my third sibling to cancer, my sister, who "came home to West Virginia" and used to swim side by side with me in Buckeye Run Creek.

Louanne McConnell Fatora

## More Problems With Gas Wells

Dear Mr. McFerrin

Thank you for the articles on drilling in the Marcellas Shale. Roger and I invite you to come to our home and see firsthand the drilling operation 300ft from our front door. Patterson UTI Rig 738

This company drilled here last July. We got little sleep for about 6 months. I heard some tools got lost in the well. Then last week the head of our water district said the bottom fell in. Anyhow, they are here drilling yet again. We tried to deal with the company but they lied to us, and only consider their own agenda.

We have also read the Dominion Post, and have so many concerns about the air we are breathing and the water supply. We invite someone from the Conservancy to come here—we will provide you food and lodging if needed. They tore up the tar and chip road that we waited 40 years for. They used 90 million gallons of water for the well drilling operation over the hill. Don't know how much they will use on this one—the second time around.

Thank you for your advocacy for the people of WV and for our beautiful state.

Sincerely

Kay and Roger Findley

# HEARING SCHEDULED ON HIGHLAND NEW WIND COMPLIANCE WITH STATE CORPORATION COMMISSION ORDER

By Rick Webb

Highland New Wind Development (HNWD), the self-touted “Greenest Wind Farm in the World,” has initiated clearing, road work, and excavation for its 19-turbine project in the remote Allegheny Mountain, Laurel Fork area along the Highland County-Pocahontas County, Virginia-West Virginia border. Actual construction of turbines and completion of the project, however, remain in question amid escalating controversy, expanding legal issues, and apparent investor uncertainty.

Continuing objections to the project focus on the developer’s failure to meet permit conditions imposed by the Virginia State Corporation Commission, flawed Erosion and Sediment Control Plans, non-

compliance with the federal Endangered Species Act, unauthorized reinterpretation of the Virginia-West Virginia border, and unaddressed impacts to Camp Allegheny, a uniquely pristine Civil War battlefield on the National Register of Historic Places.



The State Corporation Commission has

scheduled a hearing to be convened on September 23, 2009, to receive evidence and testimony from the Virginia Department of Historic Resources (DHR) and Highland New Wind Development concerning the wind energy developer’s compliance with the State Corporations Commission’s December 12, 2007, order requiring Highland New Wind Development to coordinate with the DHR for guidance regarding the need for surveys and studies to evaluate the project’s impacts to historic resources. The State Corporations Commission has also required that Highland New Wind Development submit an “answer or other responsive pleadings” by 091409.

The DHR has sought an “expedited review and response” from the State Corporations Commission based on the DHR’s belief that Highland New Wind Development has “failed to comply with either the letter or the spirit” of the State Corporations Commission order.

The State Corporations Commission has also received letters expressing concern about the impact of the project on the Camp Allegheny from the Pocahontas County Commission, WV Congressman Nick Rahall, the National Park Service, and the WV State Historic Preservation Office.

The developer has reportedly dismissed concerns about Camp Allegheny, stating his opinion that the battlefield is insignificant

## WHAT CONGRESSMAN RAHALL SAID TO THE STATE CORPORATION COMMISSION

I am writing in my capacity as the Chairman of the Committee on Natural Resources of the U.S. House of Representatives, and as the U.S. Representative of the Third Congressional District of West Virginia, which includes Pocahontas County, to express my concern over the impact the Highland New Wind Development project will have on historic resources such as the Camp Allegheny Battlefield, a site on the National Register of Historic Places.

In this regard, I commend the State Corporation Commission (SCC) for its Order dated August 26, 2009, to conduct a public hearing on September 2, 2009, into the allegation filed by the Commonwealth of Virginia’s Department of Historic Resources that Highland New Wind Development has failed to comply with the SCC’s Final Order approving the wind project permit. In addition, I share the views set forth by the National Park Service’s American Battlefield Protection Program in Chief Paul Hawke’s letter to you dated August 26, 2009.

As the Chairman of the Natural Resources Committee, which has jurisdiction over the National Historic Preservation Act, please know that I take serious any threat to a valued and noteworthy historic resource such as the Camp Allegheny Battlefield in the sovereign State of West Virginia. I urge the SCC to not only hold a public hearing on this matter, but to fully investigate the issues raised by the Department of Historic Resources and the National Park Service.

Thank you for your consideration of this matter.

## 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 green-on-white oval Friends of the Mountains stickers. Let Julian know which (or both) you want.

# West Virginia Mountain Odyssey



## Outings, Education and Beyond

**Saturday, September 26, Canaan Valley Spruce Ecosystem Restoration;** Join the USDA Forest Service and the US Fish & Wildlife Service as we work with students and staff from the Adventure WV program at West Virginia University to restore the High Elevation Red Spruce Ecosystem on the Monongahela National Forest and Canaan Valley National Wildlife Refuge. Meet at the Wildlife Refuge Visitor Center at 10am. Come dressed for the weather and bring work gloves to help us plant red spruce trees. Contact Dave Saville at daves@labyrinth.net or (304) 284-9548.

**Saturday to Tuesday, October 24-27,** Douthat State Park Car Camp with 2 Day Hikes, VA. Camp in the oldest park in the Old Dominion. Hikes are moderate to strenuous in difficulty and ranging from 7 to 10 miles in length. Lots of views. Pre-register with Mike Juskelis 410-439-4964, 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.

### West Virginia Environmental Council

#### Join America's #1 Populist Jim Hightower At WVEC's Annual Fall Conference- It's Our 20th Anniversary Celebration!

Friday, September 25th – Sunday, September 27th  
Holly Gray Park, Sutton WV (Braxton County) – Exit # 67 off I 79

Please join us as we celebrate our 20-year history and build from it to pass strong environmental policy in 2010. Founded in 1989 to be the legislative arm for the environmental movement in West Virginia, WVEC now marks 20 years of policy work at the legislature as we continue to be your voice at the capitol.

**Conference will feature:** \* Key-note address- by **JIM HIGHTOWER**, nationally known progressive commentator and co-Editor of America's hottest newsletter, the **Hightower Lowdown**. We expect to hold a Friday evening reception for Jim. And Saturday morning Mr. Hightower will deliver the Keynote Address for our 20th birthday celebration!

\* The best of West Virginia's environmental movement as we hold educational workshops on top issues, and organizing training to help improve the effectiveness of your organization; Setting our 2010 Legislative Priorities – incorporate your voice into our organization through discussions and electing representatives of the regions in WV to our Board of Directors; Saturday evening offers a panel of our founders discussing the fascinating history of WVEC.

\* **The weekend will have it's fun, too:** Our traditional Silent Auction (bring a contribution or two and be prepared to outbid your friends of course); Booths on environmental issues / Artists / Green Businesses; Recreational Outings as we enjoy the gorgeous scenery of Holly Gray Park, fishing lessons and more; Saturday Night Birthday Bash (musicians to be announced).

Please come out to build your connection with the statewide environmental movement in WV, your organization's connection with our lobbying resources - and simply have a great time with our most special guest, **Jim Hightower!**

**Registration:** Only \$15 adult / \$10 seniors, students, low income. Youth ages 12 and under receive free registration.

**Sleeping accommodations:** On-site - includes bunk beds in cabins (\$10 per night) and unlimited camping (\$5 per tent, per night).

**Please see the registration form at <http://www.wvecouncil.org>.** Cost details and off-site accommodations in the area are listed on the registration form.

**Meals:** Breakfasts Saturday & Sunday: \$5 each  
Lunches Saturday & Sunday: \$5 each  
Saturday night dinner – Pot Luck ... Please brings a dish to share.

The full Agenda for the weekend posted on our website.

### West Virginia Environmental Council

2206 Washington Street East, Charleston WV 25311  
(304) 414-0143 [www.wvecouncil.org](http://www.wvecouncil.org)