



# The Highlands Voice

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Not there yet; is it on the way?

## MARCELLUS GAS DRILLING COMING TO THE MONONGAHELA NATIONAL FOREST?

By Beth Little and John McFerrin

Although there has been considerable news and discussion about drilling for gas in the Marcellus shale, there are no wells currently within the Monongahela National Forest. At the same time, whenever there are published maps of the extent of the Marcellus Shale formation, the entire Monongahela National Forest is within the boundaries of that formation. With some 38 per cent of the minerals in the Monongahela National Forest privately owned, it is reasonable to assume that Marcellus gas drilling is a possibility.

Even if it is a possibility, it is not inevitable. Although it all looks the same on a map of the surface, all Marcellus shale is not created equal. Geologic conditions such as folding and faulting may make it an unlikely target for gas drilling on Monongahela National Forest land. Even though drilling is not inevitable, exploration and wells near the Forest make drilling in the Monongahela a possibility worth watching.

**What's going on now?**

There are no wells and no permits for wells within the Forest itself. There are, however, six permits for Marcellus wells within the Proclamation Boundary in northern Greenbrier County. (The "proclamation boundary" is the area which Congress designated as appropriate for a national forest and where the Forest Service is authorized to acquire land.



**A Marcellis shale drilling site.  
The future of the Mon?**

*Photo courtesy [www.marcellus-shale.us](http://www.marcellus-shale.us)*

Most of the land within the proclamation boundary has been acquired over the years and makes up the Monongahela National Forest itself. There remains some land within the proclamation boundary which has never been acquired and, as a result, is not yet part of the National Forest.) There is now a steady truck traffic hauling rock for new roads and wellpads at these sites that are within the proclamation boundary but not within the Forest itself.

In addition to these permits, there is currently seismic testing going on in a large area of the

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## Asymmetrical Ignorance and Bliss

In late August, the United States Geological Survey published a new estimate for the Marcellus Shale. The formation stretching from New York to West Virginia was said to have about 84 trillion cubic feet of “technically recoverable” natural gas.

That number was drastically lower than recent estimates by the federal Energy Information Administration (410 trillion cubic feet) and the industry-supported Potential Gas Committee (350 trillion cubic feet). The Energy Information Administration (EIA) is a branch of the U.S. Department of Energy. It quickly cut its estimate by nearly 80 percent. A spokesman said, “We consider the U.S.G.S. to be the experts in this matter. They’re geologists; we’re not.”

So what are they? And where did they get their figures? At least partly, they are cheerleaders for the industry on which they depend for the information they supply to Congress, investors, and the public.

Other cheerleaders put a smiley face on the news. The Marcellus Shale Coalition described it as “further affirmation that the Marcellus Shale will continue to safely produce prolific amounts of clean-burning American natural gas for generations to come.” (“Safely” appears in all their statements. And “clean.”) They pointed out that the new figure was actually higher than the previous U.S.G.S. estimate, which had come out in 2002. Fracking made the difference.

No one really knows what’s “recoverable.” A chastened spokesman for the EIA said that while the new estimates were important, “well performance” could have a larger impact on future natural gas production. Well, yes. It’s hard to argue with a tautology.

Still, the gross estimates influence government officials as they make decisions about subsidies and other energy policies. But for concerned citizens, the numbers are less important than the wild fluctuation. Here was further evidence that the experts don’t know what’s down there—or how it will come up.

In the past year, Marcellus wells have blown out because the gas was “over-pressured” (the initial cause of BP’s disaster in the Gulf of Mexico) or because the drillers hit a pocket of methane in an inactive mine they should have known about. That sort of ignorance doesn’t coincide with bliss. The explosion and fire in the northern panhandle burned seven workers and destroyed the drilling rig.

Accidents on the surface provoke more doubt about what’s underground. Recently we have learned about gas-tainted water wells in Jackson County. In the increasing number of lawsuits in other counties, settlements have required successful plaintiffs to keep mum about the facts. Meanwhile, the industry’s public relations machine keeps running ads with the familiar assurances of safety. One ignorance-bliss connection cannot be denied: citizens’ ignorance promotes industry’s bliss.

The West Virginia Highlands Conservancy has called for a moratorium on drilling permits until stronger regulations can be enacted by the Legislature. Tainted groundwater is not our only concern. Air pollution and toxic waste disposal; noise, spills, and local road destruction; opportunity for public comment on proposed permits; and surface owners’ input on well placement and spacing are some issues that must be addressed. Enforcement of these

**(More on p. 7)**

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## GAS DRILLING IN THE MON? (Continued from p. 1)

Monongahela Forest east of Richwood on both sides of Rt 39. The testing is on both land owned by the Forest Service (and thus part of the National Forest) and on land owned by Plum Creek (a forest products corporation) but within the Proclamation Boundary. The seismic testing started last fall and was supposed to be finished by this past spring. The contractor said the winter weather interfered to delay them, but the Gauley District Ranger says they are only 50% finished now, in August. For more about the testing, see the article in the April, 2011, issue of *The Highlands Voice*.

Many people – hikers, anglers visiting the North Fork of the Cherry River and Summit Lake, and people driving through the area are alarmed by the sight of wires and flags “everywhere” especially since there was no publicized project to comment on beforehand.

### What is the Forest Service doing?

The Forest Supervisor granted a Categorical Exclusion to the seismic testing. The Categorical Exclusion means that the Forest Service has concluded that the testing is one of a “category of actions which do not individually or cumulatively have a significant effect on the human environment. Neither an environmental assessment nor an environmental impact statement is required.” With a Categorical Exclusion, there would be no National Environmental Policy Act (NEPA) process with the public input that NEPA requires. There were extensive restrictions placed on the activity to minimize impacts to the Forest.

There is some question as to whether there will be NEPA analysis with an opportunity for public comment on gas drilling in the Mon where the minerals are privately owned (38% of the minerals under the Monongahela National Forest are privately owned). Although one might assume that such a process would be required, actions in other National Forests in other states raise some doubt whether that would be the case.

Management of the Monongahela National Forest is currently guided by the management plan which the Forest Service adopted in 2006. In 2006, drilling for Marcellus shale was unknown. While the Forest Service considered more conventional gas drilling in developing the Plan, Marcellus drilling was not part of its considerations.

Because of this, and in response to inquiries on the subject, the Forest Service considered whether it should reopen the 2006 Plan because of the new information and the new drilling techniques involved in Marcellus shale wells.

In March, 2011, Forest Supervisor Clyde Thompson signed a Review of New Information concerning Marcellus shale gas drilling in the Mon. To read the whole thing, go to [http://www.fs.usda.gov/Internet/FSE\\_DOCUMENTS/stelprdb5288559.pdf](http://www.fs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb5288559.pdf). The summary says: “Based on this review, the MNF Forest Supervisor has determined that new information related to gas exploration and development in the Marcellus shale does not require correction, supplementation or revision of the Environmental Impact Statement prepared for the 2006 Forest Plan or the environmental analysis of any ongoing project.”

A major deficiency identified in the Review of New Information is that, even if the Forest Service conducts environmental analysis, it would be “site specific.” The reality demonstrated in areas of drilling activity in West Virginia is that it is the cumulative impacts of a number of wells that causes serious problems with air emissions, truck traffic, noise, sedimentation, and other unavoidable effects that

would affect wildlife, forest ecology and recreational visitors. This failure to consider cumulative impacts by the Forest Service has been a longstanding bone of contention with those concerned about the environmental health of our federal lands.

Another deficiency in the Review of New Information is the failure to adequately consider the increased impacts of water consumption. The Review of New Information assumes that, although the wellpads are larger, the fact that there are fewer of them would mean that the impacts are similar to previous drilling. But each of the well bores on a pad would use dramatically more water than previous drilling techniques.

Though the Review of New Information admits that “the Forest Service has complete authority for approving, not approving, or approving with conditions, the source, timing or method of freshwater withdrawal on NFS land” it assumes that the West Virginia Department of Environmental Protection “provides for protection of water and aquatic resources not on NFS land from being substantially adversely impacted by large volume water withdrawals.” The experience of residents in areas where there is Marcellus gas development testifies that this is patently wrong. So if drillers were prevented from taking water on federal land, they could be depleting supplies in streams and rivers on adjacent private land.

A secondary impact of the volumes of water needed by Marcellus drilling over previous drilling is the increased number of trucks needed to supply the water. These are large diesel trucks that require a high standard of road, even if gravel surfaced, and they would be coming and going over a period of many months.

There is an additional clue that the Forest Service may be complacent regarding Marcellus shale drilling impacts. In a letter from the Pocahontas County Commission President, David Fleming, Forest Supervisor Clyde Thompson said, “The Forest Service has no authority to deny private oil and gas owners the right to use **common and accepted** industry practices to develop their mineral estate beneath National Forest land.”

Many have questioned just how “common and accepted” the practices are. Whenever it speaks of Marcellus shale drilling, the industry brags about its “new technology” for “unconventional” drilling that enables it to extract previously inaccessible gas from shale. This hardly makes it common.

So far as “accepted” is concerned, “accepted” by whom? Were it “accepted” by anyone outside of gas industry boardrooms there would not be a national public outcry against fracking.

So is Marcellus shale drilling in the Mon’s future? No one can say for certain but there are straws in the wind. We know there is prospecting in and around the Mon and drilling within the proclamation boundary. We also know that, so far as it has said publicly, the Forest Service is not all that worried about the possibility.

Stay tuned.



# MARCELLUS SHALE: DEP FILES EMERGENCY DRILLING RULES

By Donald S. Garvin, Jr., West Virginia Environmental Council Legislative Coordinator

On August 22 West Virginia Department of Environmental Protection Cabinet Secretary Randy Huffman filed emergency rules governing the drilling of Marcellus Shale gas wells with the Secretary of State's office. Secretary of State Natalie Tennant approved the emergency rules on August 29.

The new rules will remain in effect for 15 months, unless the Legislature intervenes and passes additional legislation during that time period. DEP says the agency will propose a permanent rule by September 8, triggering a 30-day public comment period.

The rules were authorized by Acting Governor Earl Ray Tomblin in an Executive Order issued on July 12, and the rules filed by Huffman are virtually the same as those mentioned in the Executive Order.

So what's in these new emergency rules?

Well, for starters, the new rules only apply to horizontally drilled wells. They do not apply to conventional (shallow) vertically drilled wells, including vertically drilled Marcellus Shale wells.

Specifically, for horizontally drilled wells, the new rules:

- a. Require that applications for well work permits involving well sites that disturb three acres or more of surface (excluding pipelines, gathering lines, and roads) contain a site construction plan and an erosion and sediment control plan certified by, and constructed in accordance with plans certified by, a WV registered professional engineer.
- b. Require a **Water Management Plan** for wells that will withdraw from waters of the State more than 210,000 gallons of water during any month for drilling, fracturing or stimulating the well. The Water Management Plan must include the following information: the type of water source and the location of each anticipated withdrawal location; the anticipated volume of each water withdrawal; the anticipated months when water withdrawals will be made; the planned management and disposition of wastewater from fracturing, stimulation, and production activities; and a listing of the anticipated additives that may be used in water used for fracturing or stimulating the well. Upon well completion, a listing of the additives that were actually used

must be submitted, as part of the well completion report (*does not require listing the amounts of the additives used*).

- c. For all surface water withdrawals, the Water Management Plan must also include: identification of the current designated and existing water uses, including any public water intakes within one mile downstream of the withdrawal location; a demonstration that sufficient in-stream flow (protective of the identified use) will be available immediately downstream of the point of withdrawal; and methods to be used to minimize significant adverse impact to aquatic life.
- d. Require all well work permittees to protect the quantity and the quality of water in surface and groundwater systems both during and after drilling operations and during reclamation by maintaining sufficient in-stream flow immediately downstream of the withdrawal location; casing, sealing or otherwise managing wells to keep fluids or natural gas from entering ground and surface waters; and using best management practices to prevent "to the extent practicable" additional contributions of suspended or dissolved solids to stream flow or runoff outside the permit area.
- e. Require well operators who withdraw more than 210,000 gallons during any month to identify the location of the withdrawal and verify that sufficient flow exists to protect designated uses of the stream, and provide notice as prescribed by the Secretary of the WVDEP within forty-eight hours but no less than twenty-four hours prior to the withdrawal of water. All surface water withdrawal locations and facilities identified in the water management plan are to be identified with a sign that discloses that the location is a water withdrawal point and the name and telephone number of the operator for which the water withdrawn will be utilized.
- f. Require well operators to maintain records for all water used in connection with hydraulic fracturing activities and for all produced water from production activities, of the quantities of flowback and produced water from hydraulic fracturing of the well, and the method of management or disposal of the flowback and produced water, including the

quantity of any water transported off-site for disposal, the collection and delivery or disposal locations of that water; and the name of the water hauling company.

- g. Require all applications for well work permits involving well sites that disturb acreage in excess of three acres to include a well-site safety plan.
- h. Require for wells that disturb more than 3 acres of surface and/or withdraw more than 210,000 gallons of water in a calendar month that all "drill cuttings," and associated "drilling mud" be disposed of in an approved solid waste facility or managed on site in a manner otherwise approved by the Secretary (this is a continuation of DEP's current policy).
- i. Establishes some additional casing and cementing standards.
- j. And require applicants for well work permits seeking to drill the first horizontal Marcellus Shale well on any particular well pad located in an area within the boundaries of any municipality to publish public notice of the application (there are no provisions for receiving public comments or requests for public hearings).

The Executive Order issued by Acting Governor Tomblin contains some additional measures not covered by the emergency rules.

It continues the Memorandum dated July 30, 2010 (the "July 30, 2010 Return Fluids Memorandum") issued by the Office of Oil and Gas to **prohibit land application** of any return fluids from drilling or fracking Marcellus wells. Land application of these fluids is still allowed for conventional vertical shallow wells.

It says that DEP will continue to take steps necessary to prohibit the disposal of return fluids from any Marcellus Shale gas well into any **publicly-owned wastewater treatment plant**, "unless the DEP has approved in writing the discharge of such return fluids into the publicly-owned wastewater treatment plant or plants in question."

It says that DEP shall take steps necessary to increase the regulatory oversight of practices and equipment to further ensure that no pollutants are disposed of or discharged into waters of this State in

**(A little more on the next page)**

# MARCELLUS: SENATOR STALLS SELECT COMMITTEE WORK

By Donald S. Garvin, Jr., West Virginia Environmental Council Legislative Coordinator

While House members of the WV Legislature's Select Committee on Marcellus Shale Drilling continue to work on crafting a comprehensive regulatory bill, Senator Doug Facemire (D-Braxton), Senate chairman of the Select Committee, is taking a different approach.

He's stalling.

In June Interim Committee meetings the Legislature formed the "Select Committee" to attempt to develop Marcellus Shale drilling regulations, something they had been unable to accomplish during the 2011 Regular Session. The goal was to develop a bill that both the House and Senate could agree upon.

Acting Governor Earl Ray Tomblin has said publicly that he would call a Special Session to deal with a Marcellus bill if the House and Senate could reach agreement on a bill.

The Select Committee consists of ten members, five from the House of Delegates and five from the Senate. The Senate members are Senator Doug Facemire (D-Braxton), Co-Chair, and Senators Karen Facemeyer (R-Jackson), Orphy Klempa (D-Ohio), Corey Palumbo (D-Kanawha), and Herb Snyder (D-Jefferson).

The House members are Delegate Tim Manchin (D-Marion), Co-Chair, and Delegates Bill Anderson (R-Wood), Tom Campbell (D-Greenbrier), Barbara Fleischauer (D-Monongalia), and Woody Ireland (R-Ritchie).

The Select Committee met twice during the July Interim Session, in mainly informational meetings. They agreed to use SB 424, the bill that the Senate passed during the Regular Session, as a "base" bill to begin negotiations.

During the August regular Interim session, which was extended due to the first Special Session on redistricting, the Select Committee met twice. At the first meeting the committee adopted seven amendments offered by the House members. At the second meeting the committee could not come to agreement on an amendment dealing with how oil and gas inspectors are hired.

Senator Facemire then refused to schedule another meeting during the Special Session.

A week later, when the Legislature had to reconvene in Special Session to fix the House redistricting bill, Facemire again refused to schedule additional meetings of the Select Committee.

Facemire told one reporter that emergency rules ordered last month by acting Gov. Earl Ray Tomblin - which were not yet in effect - would be enough to tide the state over until lawmakers meet early next year.

When asked about possible meetings of the Select Committee during the second redistricting session, Facemire told the reporter:

"The thing of it is, we're not going to be there. The Senate is going to convene Thursday at noon; then we're going to recess until Sunday," Facemire said. "I'm not even coming down until Sunday. I've got to work. I've got a business to run."

The Select Committee has scheduled two meetings during the upcoming Interim meetings, Sept. 12 - 14. The House members have prepared at least a dozen additional amendments for the committee to consider. And they have not even begun to talk seriously about increasing permit fees in order to fund the Office of Oil and Gas and hire more inspectors.

From my vantage point, it is looking a lot less likely that the House and Senate can agree on a bill before next year.

But we will see.

## REGULATIONS: THE REST OF THE STORY

(Continued from previous page)

violation of any applicable State or federal water quality standards and effluent limitations (**DEP was not already doing this?**).

And it orders DEP to "evaluate its overall regulatory authority over drilling activities related to horizontal wells . . . and identify additional areas of critical regulatory concern, including but not limited to well construction and design standards, air emissions, drill cuttings management, recycling of produced fluids and water management."

So the Executive Order and the emergency rules do some good things, but they also allow the continuation of some bad practices, like continuing to allow drill pits to be buried on site and allowing public waste water treatment plants to accept Marcellus frac water at the discretion of DEP.

They are at best a beginning, but fall far short of providing the comprehensive regulatory structure necessary to protect the public and the environment from the impacts of Marcellus Shale drilling.

## SUSTAINABILITY FAIR COMING UP

Kanawha Valley Connections will hold its 3rd annual Kanawha Valley Sustainability Fair on Saturday, September 24, 2011. This year's event will be held from 10 a.m. until 4 p.m. at the Columbia Gas Transmission Building, 1700 MacCorkle Avenue SE in Charleston.

The Fair will introduce participants to and educate them about economic, environmental and social sustainability. Fair goers will experience sustainability through a variety of themes, including locally grown food, conservation, renewable energy, green building, green jobs, government and community resources, recycling, health and wellness, economic development, culture and history. The event will feature food, interactive and hands-on exhibits, activities for children, performances and practical ideas for residents and businesses. We are expecting vendors with a variety of goods to sell. Over 2,000 participants attended last year's Fair and associated events, taking advantage of activities, products and services offered by more than 100 exhibitors and off-site sponsors.

## Join Now !!!

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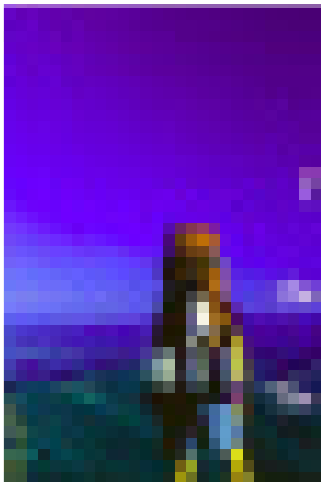
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| Sustaining   | \$100      | \$ 150 | \$ 200  |
| Patron       | \$ 250     | \$ 500 | \$ 500  |
| Mountaineer  | \$500      | \$ 750 | \$ 1000 |

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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](http://wvhighlands.org), where payment is accepted by credit card and PayPal.  
 Or write: WVHC, PO Box 306, Charleston, WV 25321. Proceeds support the Conservancy's ongoing environmental projects.

### SUCH A DEAL! Book Premium With Membership

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

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

### SAVE THAT DATE!!!

Mark your calendar now for West Virginia Highlands Conservancy Fall Review. Saturday and Sunday, October 29 and 30. Hawk's Nest State Park. Fayette County, West Virginia. Hawks circling right outside your window (avian cooperation not guaranteed), close to Mystery Hole, New River Gorge, etc. etc. etc. Watch for program details in next month's *Voice* and on our website.

### 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](mailto: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.

# THE BATTLE FOR BLAIR MOUNTAIN CONTINUES

By Cindy Rank

Though Soledad O'Brien's August 14, 2011 hour long CNN special titled "Battle for Blair Mountain" gave very little time or attention to Blair Mountain itself or to the bloody 1921 labor battle that is such an important part of West Virginia and coal mining history, the court battles continue.

In response to the June 2<sup>nd</sup> frivolous dismissal of the Blair Mountain Battlefield lands unsuitable petition by the WV Department of Environmental Protection (WVDEP) [see *Highlands Voice* August, 2011], citizen and labor groups have challenged WVDEP's actions.

On August 4<sup>th</sup> the WV Highlands Conservancy joined the National Trust for Historic Preservation in the United States, the Sierra Club, Ohio Valley Environmental Coalition, Friends of Blair Mountain, and the West Virginia Labor History Association in a law suit against the WVDEP in the Circuit Court of Kanawha County alleging WVDEP was legally in error when denying our Petition to declare the narrow 10 mile long portion of Blair Mountain ridge top as unsuitable for mining.

The complaint calls for court review and/or mandamus action to compel the WVDEP to accept the Petition, hold hearings and gather whatever additional records that might be needed to make a truly informed decision.

On the national level the battle to reinstate Blair Mountain Battlefield to the National Register of Historic Places continues as well.

In the Washington DC court action [also mentioned in the August issue of the *Highlands Voice*] in which the same groups have appealed the Park Service action that removed Blair Mountain from its listing on the National Register of Historic Places, the Department of the Interior had requested the case be transferred to a federal court in West Virginia.

Acknowledging the national significance of the issue U.S. District Judge Reggie Walton denied the request in the August 4, 2011 court order in these words:

"..it is evident to the Court that the defendants' motion to transfer this case to the Southern District of West Virginia must be denied. Although it is true that local residents in West Virginia will be affected to the greatest degree by the outcome of this litigation, the remaining considerations are either neutral or weigh in favor of denying the transfer request. In particular, the Court deems critical that the focus of the plaintiffs' lawsuit concerns the removal of the Blair Mountain Battlefield from the National Register, a decision with national implications that was made by federal officials in the District of Columbia. The Court finds that this factor, especially when viewed together with the other public and private considerations, counsels against transferring this case to the Southern District of West Virginia."

regulations will require many new inspectors. The moratorium ought to remain in place until they are trained and in the field.

Money for inspectors and testing may be the first problem that comes to mind, but it should be the least of our worries. Environmental protection is a cost of doing business. Permit fees and taxes should be set high enough to assure safe operation.

The less obvious pressure we are pushing against is a waning confidence in government. One might suppose that the petroleum industry's successful effort to get itself exempted from the Safe Drinking Water Act could be seen as a perverse compliment to environmental law, but too much has happened since then, most prominently the Deepwater Horizon disaster. There's a feeling that regulation can't prevent calamities large or small. Across the Marcellus Shale region, there is pessimism about states either passing or enforcing truly effective regulations.

In New York, where a moratorium on hydrofracking expired this summer and new regulations were adopted, citizen distrust has spawned a movement to ban shale drilling outright, town by town. We've heard talk about bans here as well.

Meanwhile, the Environmental Protection Agency's comprehensive study of hydrofracking won't be completed until next June. Its reception will depend at least in part on what happens while we're waiting.

It must be said that the Obama administration did not encourage our optimism when it gave a crucial go-ahead to the Keystone XL pipeline. That is the 1,711-mile conduit from tar sands in western Canada to refineries in Oklahoma and the Gulf Coast of Texas. Tar sands are a different form of shale, and oil is extracted from them by strip mining, not drilling. The process is dirty, destructive, poisonous, and expensive, and the transport will be dangerous. According to the New York Times, "The State Department said in an environmental impact statement that the pipeline's owner, TransCanada, had reduced the risks of an accident to an acceptable level and that the benefits of importing oil from a friendly neighbor outweighed the potential costs."

To us, it seemed to be another front in the administration's campaign to soothe the country: calm down, we're doing OK, things are going along as well as can be expected, it's business as usual and there's no need to make a change.

Business as usual isn't working, and we can't wait for 2012 or 2013. We need a change in the regulations *now*. You can help by contacting your senators and delegates and demanding strong regulation of hydrofracking, and a time out on permits for new wells until the regulations are in place.

## 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

# West Virginia Mountain Odyssey



## Outings, Education and Beyond

**September 3-5, 2011, Reddish Knob Backpack, George Washington National Forest, VA:** 20 mile Circuit featuring views from one of the highest peaks in VA at the halfway point. Daily mileage: 3/12/5 (Subject to change.). Pre-registration required. Contact Mike Juskelis @ 410-439-4964 or [mjuskelis@cablespeed.com](mailto:mjuskelis@cablespeed.com).

**September 11, 2011, Dolly Sods,** meet at Red Creek Campground, Introduction to the Allegheny Front Migration Observatory bird banding station. Pre-register with Cindy Ellis [cdellis@wildblue.net](mailto:cdellis@wildblue.net)

**Saturday September 17, 9:30 am, Red Spruce Ecosystem Restoration, Canaan Valley National Wildlife Refuge Visitor Center.** Join us for a day of volunteer work to help restore the red spruce ecosystem. We'll be planting red spruce seedlings as part of a landscape scale restoration effort on the National Wildlife Refuge. 9:30 am gathering and educational program followed by car pooling to the restoration work site at 10:00 am. Dress for the weather, wear sturdy shoes or boots and bring work gloves and a water bottle. Lunch will be provided. For more information, visit [www.restoreredspruce.org](http://www.restoreredspruce.org) or call Dave Saville at 304 692-8118.

**September 25, 2011, Monroe County,** meet at trail parking lot, Introduction to Hanging Rock Migration Observatory annual fall hawk watch. Pre-register with Cindy Ellis [cdellis@wildblue.net](mailto:cdellis@wildblue.net)

**October 29-November 1, 2011, Coopers Rock State Forest Car Camp, WV:** Two hikes: Scotts Run Loop and a hike through a virgin Hemlock Forest, both about 8 miles. Campsite reservation and pre-registration required. Contact Mike Juskelis @ 410-439-4964 or [mjuskelis@cablespeed.com](mailto: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](mailto:martinjul@aol.com) or Larry Gibson (304) 542-1134; (304) 549-3287

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





**Tentative WVEC Fall Conference Schedule**  
**October 7-9, 2011**  
**Camp Pioneer - Beverly, WV (Near Elkins)**

|                                   |  |               |  |
|-----------------------------------|--|---------------|--|
| <b>Friday afternoon / evening</b> |  | TBD           | Nature Walk – Don Gasper   |
| 4:00 PM                           | Registration / Set-up begins (Booths / Silent Auction)<br>– <u>bring items to donate</u>   | 1:00 – 4:30   | <b>TRACK TWO</b><br><b>West Virginia Energy Policy Workshop: Sponsored by Energy Efficient West Virginia and Coalition for Reliable Power – Bill Howley and Cathy Kunkel</b> |
| 6:00 PM                           | Home-made Pizza and Salad  |               | 2:15 Utilities (lack of) incentives for energy efficiency and what needs to change   |
| 7:00 PM                           | WVEC Committee Meetings (E Day, Communications, Fundraising)   |               | 3:00 Break   |
| 8:00 PM                           | Socializing / Campfire / Music - <u>bring musical instruments</u><br>Booths: WVEC Sales ( <i>t-shirts, etc.</i> ); crafters; WV Environmental Groups; green businesses |               | 3:15 Public Service Commission: What do they do and how do we get involved?  |
|                                   |  |               | 4:00 Integrated Resource Planning: Finding the Right Mix of Energy Sources   |
| <b>Saturday</b>                   |  |               |  |
| 7:00 – 8:30                       | Breakfast  | 4:30 – 6:00   | <b>Implications for Strategy – Bill Howley, Cathy Kunkel, John Christensen;</b>  |
| 8:45 AM                           | Welcome and Introductions by WVEC Board President Kevin Smith  |               | <b>WVEC Renewable Energy Committee – Citizens Energy Plan</b>  |
| 9:00 – 9:45                       | Short Self-introductions “We All Live on a Dot” (Your Issues and What Brought You Here)  | 6:30 – 7:30   | Potluck Dinner ( <u>please bring a dish to share</u> )   |
| 9:45 – 10:00                      | Break  | 7:30 – 9:00   | <b>Keeping the Pressure on: The Need for a Gas Regulation Bill – Don Garvin, legislators (tentative: Tim Manchin, Barbara Fleischauer)</b>                                   |
| 10:00 – 10:50                     | <b>NATURAL RESOURCE ISSUES</b><br>Coopers Rock State Forest: Challenges with Environmental Stewardship – Gwen Jones  | 9:00 PM       | Fun & Refreshments / Campfire / Music - <u>bring musical instruments</u>   |
| 11:00 – 11:50                     | Water Quality Issues/Chesapeake Bay Initiative – Shanda Minney   |               |  |
| 12:00 – 1:00                      | Lunch with your Region (select board representatives – give names to Secretary Karen Grubb)  | <b>Sunday</b> |  |
| 1:00 – 1:50                       | <b>TRACK ONE</b><br>Impacts of Hydrofracturing Gas Development at Fernow Experimental Forest – Mary Beth Adams   | 7:00 - 8:30   | Breakfast (Silent Auction ends)  |
| 2:00 – 2:50                       | Solar Water Heaters – James Richards of Sunbank  | 8:45 – 9:15   | Legislative Overview by WVEC Legislative Coordinator Don Garvin  |
| 3:00 – 3:50                       | Tentative: Don't Feed the Monster (A Guide to Alternative Energy) – Mark Moran   | 9:15 – 10:45  | Setting Legislative Priorities Discussion  |
|                                   |  | 1:00 – 2:30   | WVEC Board of Directors Meeting  |
|                                   |  | 12:00         | Lunch Break  |
|                                   |  | 2:30 PM       | Group Clean Up immediately following board meeting adjournment   |

## Registration

Visit our web site: [www.wvecouncil.org](http://www.wvecouncil.org) for registration forms. Please return to: WVEC Fall Conference, 2206 Washington Street East, Charleston WV 25311 or e-mail form to Karen Grubb at [karen.grubb@fairmontstate.edu](mailto:karen.grubb@fairmontstate.edu).

**Deadline for mailing reservations is October 1st** (Payments will be accepted at the conference. Please make an effort to register early so we can better plan meals for the weekend.)

Visit our web site: [www.wvecouncil.org](http://www.wvecouncil.org) for additional forms, conference agenda, speakers and updates.

For more information, call the WVEC office: (304) 414-0143 or email Denise Poole at [deniseap@earthlink.net](mailto:deniseap@earthlink.net) or Karen Grubb at [karen.grubb@fairmontstate.edu](mailto:karen.grubb@fairmontstate.edu)

**Highlights of Conference:** West Virginia Energy Policy Workshop presented by Energy Efficient WV and the Coalition for Reliable Power. Evening Panel on the Need for a Marcellus Gas Regulation Bill. Presentations on Coopers Rock State Forest, Chesapeake Bay, Fernow Experimental Forest, Solar Energy. Setting the WVEC 2012 Legislative Priorities. Booths, Nature Walks, Silent Auction.

**Directions to Camp Pioneer:** Just outside of Elkins.

Traveling South on Route 219/250 – turn left on Files Creek Road in Beverly (first left after passing Campbell's Market.)

Turn right on to 4-H Road and continue for approx. 1½ mile. Camp Pioneer is on the right.

Traveling North on State Route 219/250 - Turn right on Scott's Lake Road, between Dailey and Beverly (turnoff located near Bruce Hardwood Plant.)

Travel approx. 2 miles. Camp Pioneer is on the left.

**Transportation:** If you would like to ride share (offer to drive, or need a ride) Call Kevin at (304) 476-3259.

# DON'T UNDERESTIMATE THE ECONOMIC IMPORTANCE OF BATS TO THE AGRICULTURAL INDUSTRY

By Larry Thomas

*Science* magazine recently published an article concerning the economic importance of bats which stated that “insectivorous bat populations, adversely impacted by white-nose syndrome and wind turbines, may be worth billions of dollars to North American agriculture”. The article suggests that “loss of bats in North America could lead to agricultural losses estimated at more than \$3.7 billion a

year” and emphasizes that urgent efforts are necessary to educate both the public and policy makers about the ecological and economic importance of insectivorous bats as well as the necessity of developing practical conservation solutions.

Although many in the public and some policy makers view this loss of bats merely of academic interest, the economic consequences are substantial. The \$3.7 estimate may be low as the other extreme of the estimate is

Based on the study, the agricultural industry in West Virginia owes the bats an estimated \$51.3 million per year. That’s nothing to sneeze at in my opinion.

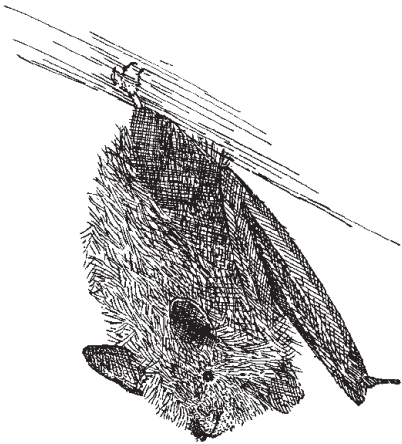
Initially, the “Economic Importance of Bats in Agriculture” article was intended to attract attention to the white-nose fungus virus, an emerging infectious disease affecting populations of hibernating cave-dwelling bats throughout eastern North America. “We were getting a lot of questions about why we should care about white-nose syndrome,” said author Justin Boyles, a post-doctoral fellow in bat research at the University of Tennessee. “Really, it’s the economic impact that makes people listen.”

White-nose syndrome is compounding the industrial wind turbine problems by devastating bat populations (killing more than a million) across the eastern

United States during the past four years, causing “the most precipitous wildlife decline in the past century”, according to biologists. As this relentless disease keeps spreading into new areas, Bat Conservation International is working with agencies, organizations and individuals to understand and stop white-nose syndrome and to begin restoring these decimated bat populations.

During the same time, bats of several migratory tree-dwelling species are being killed in unprecedented numbers at wind turbines across the continent. Why these species are particularly vulnerable to wind turbines remains a mystery, and several types of attraction have been hypothesized. There are no continental-scale monitoring programs for assessing wildlife fatalities at wind turbines, so the number of bats killed across the entire United States is difficult to assess. However, by 2020 an estimated 33,000 to 111,000 bats will be killed annually by wind turbines in the Mid-Atlantic Highlands alone. Obviously, mortality from these two factors is substantial and will likely have long-term cumulative impacts on both aquatic and terrestrial ecosystems.

The report summarizes the importance of our bat populations by stating that “bats are among the most overlooked, yet economically important, non-domesticated animals in North America, and their conservation is important for the integrity of ecosystems and in the best interest of both national and international economies”. It is extremely important that solutions which will reduce the population impacts of white-nose syndrome and reduce the mortality from wind-energy facilities are found ASAP, but identifying, substantiating, and applying solutions will only be fueled in a substantive manner by increased and widespread awareness of the benefits of insectivorous bats among the public, policymakers, and scientists. No matter what your view of bats, the economic consequences to the agricultural industry are significant and cannot be ignored.



**Brown bat**



**Lunch**

a high of \$53 billion per year.

Bats are proven to be voracious predators of nocturnal insects, including many crop and forest pests. They have been called something of a one-species stimulus program for farmers, every year gobbling up millions of bugs that could ruin a harvest. But the same ecosystem that allows the winged creatures to sweep the night sky for fine dining also has made them susceptible to West Virginia’s proliferation of industrial wind energy projects.

Bats annually save the agricultural industry a significant amount of money, about \$74 per acre, according to the report which calculated the economic value of bats on a state-by-state and county-by-county basis across the country. Estimating the economic importance of bats in agricultural systems is challenging, but published estimates of the value of pest suppression services that are provided by bats ranges from about \$12 to \$173/acre.

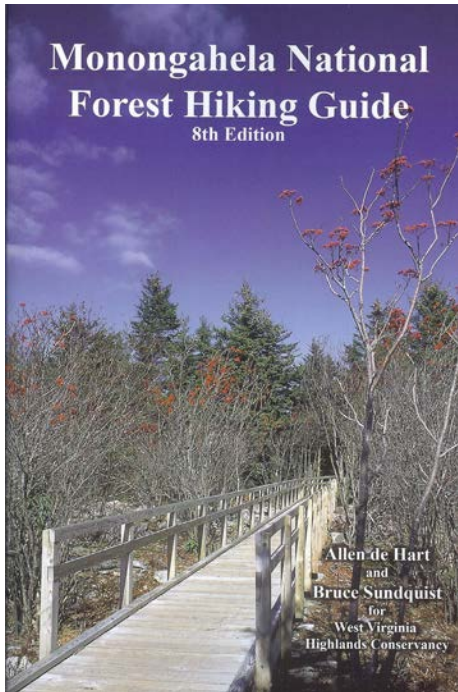
These estimates only include the reduced costs of pesticide applications which are not needed to suppress the insects consumed by bats. They do not include the “downstream” impacts of pesticides on ecosystems, which can be substantial, or other secondary effects of predation, such as reducing the potential for evolved resistance of insects to pesticides or the benefit provided by bats in the suppression of insects in our forest ecosystems because such economic data on pest-control services provided by bats in forests are lacking.

“Bats are nature’s pesticide, consuming as many as 500 insects in one hour, or nearly 3,000 insects in one night”, said Miguel Savioff, the agricultural financial manager at the Penn State Cooperative Extension in Somerset County, Pennsylvania. “A colony of just 100 little brown bats may consume a quarter of a million mosquitoes and other small insects in a night,” he said. “That benefits neighbors and reduces the insect problem with crops.” If one industrial wind turbine kills 25 bats in a year, that one turbine will have accounted for about 17 million uneaten bugs in every year of the bats’ remaining lifetime. The cumulative impact is devastating.

*If one industrial wind turbine kills 25 bats in a year, that one turbine will have accounted for about 17 million uneaten bugs in every year of the bats’ remaining lifetime.*

# The Monongahela National Forest Hiking Guide

By Allen de Hart and Bruce Sundquist



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

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

## New 8TH Edition Now Available on CD

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

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

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

Price: \$20.00 from the same address.

## 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 ♥ Mountains on the back. It is soft twill, unstructured, low profile, sewn eyelets, cloth strap with tri-glide buckle closure.

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



## T- SHIRTS

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



# FULL TREATMENT AT FORFEITED MINE SITES

... A LONG TIME IN COMING

... A LONG TIME YET TO GO

By Cindy Rank

## WHENCE COMETH BONDING

Apologies for sounding like a broken record, but the West Virginia Highlands Conservancy has both quietly and loudly been beating the Special Reclamation/bonding drum since at least the early 1980s....

The 1977 Surface Mining Control and Reclamation Act (SMCRA) included provisions that were to allow any regulatory agency (federal or state that had received primacy for enforcing the newly created permitting program) to collect from any company that received a permit to mine sufficient enough funds that would allow the agency to complete reclamation if the company failed to meet the requirements of its permit and went belly up, just disappeared, or otherwise split the scene leaving an unreclaimed open sore.

In 1983 West Virginia was awarded primacy for enforcing the new federal surface mining act and provisions for a bonding program in the state surface mining act (SCMRA - Surface Coal Mining and Reclamation Act) were approved as being sufficiently similar to the federal act.

West Virginia chose to rely on an 'alternative bonding system' which consisted of a flat bond amount for every acre in a mine permit area (\$1,000/acre back in the early 1980's) and a backup bond pool funded by a fee on every ton of coal that was sent off from the prep plants once excess rock and other impurities were processed out of the raw coal. (The fee started out as \$.01/ton to be added to a pool known as the Special Reclamation Fund.)

Once West Virginia achieved primacy our bonding program (the upfront bond for each permit together with the Special Reclamation Fund as cushion) has never once to my knowledge had sufficient money for the state to adequately reclaim mine sites that have been forfeited since passage of SMCRA in 1977.

[Mind you this bonding program was not created for reclamation at the tens of hundreds of mine sites that were abandoned BEFORE 1977.... Those sites were to be dealt with under another section of the Act utilizing another fund generated from fees known as the Abandoned Mine Lands Fund — which of course has also never been

sufficiently funded to take care for all the sores of the past.]

## BABY STEPS AD NAUSEUM

The adequacy of the bond program – both the individual bond amounts and the pennies/ton to be paid into the Special Reclamation Fund/bond pool – has been the focus of numerous comments, testimony to Legislative and Congressional Committees, administrative appeals, mandamus action and litigation by the WV Highlands Conservancy over the decades.

Odds and ends of articles in *the Highlands Voice* through the years have provided snapshots of the now over 30 year struggle to fully fund the fund and WV Highlands involvement in those efforts.

In sum and in no small part prompted by our actions with other allies, the amount of bond/acre and number of pennies/ton of coal have changed over the years. Bonds eventually increased to a site specific max of \$5,000 per acre and contributions to the bond pool raised to 3 cents in the early 1990's, then to 7 cents with an additional 7 cents for several years, then to 14 for real, etc.

However, over the years, WVDEP has failed to accurately define – or accept its responsibility for – the liabilities incurred when mine permits are forfeited. With pressure from industry crying the blues about how it is the most overregulated industry in the state and how more fees would make them pick up their bags and go elsewhere, neither the agency nor the Legislature have acceded to the utmost urgency of resolving the mounting problems with the underfunded Special Reclamation Fund and the cost to repair the fouled water and destroyed land that will someday pass on to the citizens of WV.

The hole got deeper and darker with every passing year.

## MOST RECENT ACTIONS

But all hope is not lost. The long and winding trail has taken on new clarity these past few years. Important advances have been made as a result of two major legal pursuits WV Highlands Conservancy has been party to.

### 1) Inadequate Funding of the Special Reclamation Fund

Our 1999 Citizen Suit sought a

takeover by the federal Office of Surface Mining of portions of the regulatory program in order to force WVDEP to assess coal companies sufficient fees to fully fund the Special Reclamation Fund.

WVDEP's response and promises to do better, to make an accounting of all forfeited sites and present actuarial reports about the funds needed to reclaim the sites, were all too familiar. But the addition of a Special Reclamation Advisory Council with representation from agencies, industry and plaintiffs would assure at least the minimum amount of review and oversight to keep the process moving.

When, during the Wise administration, WVDEP proposed increasing the special reclamation fee to 7 cents a ton, plus 7 more cents until the fund reached a certain level Judge Haden agreed with WVDEP that such an effort was worth the wait and so basically allowed WVDEP to proceed. He did however, retain jurisdiction over the litigation in case there would be cause in the future to revisit our claim that Office of Surface Mining should be brought into play to either take over the program itself or to strong arm WVDEP into doing a better job [my choice of words, but pretty much how our current Congressional reps see anything federal agencies might do to help protect the environment and those who depend on it].

There has been some additional progress but industry influence has kept WVDEP from fully supporting even its own Special Reclamation Advisory Council's recommendations. And since increased funding must be approved by the Legislature, the foot dragging gets even more complicated.

At the start of the 2010-11 legislative session the Special Reclamation Advisory Council again recommended increased funding to resolve inevitable bankruptcy of the fund. When the Legislature refused to act (with WVDEP's tacit approval), we went back to court asking Judge John T. Copenhaver Jr. (who now has jurisdiction over the case after Judge Haden's death) to reopen our citizen suit and bring in the Office of Surface Mining

**(Continued on the next page)**

## MORE ABOUT MINE BONDING (Continued from previous page)

But wait.... Another set of cases has a bearing on how Judge Copenhaver will rule in our Office of Surface Mining pursuit.

### 2) Inadequate Reclamation of Forfeited Mine Sites

In addition to inadequate funding of WV's alternative bonding program, reclamation where it is being done on forfeited sites is often also inadequate.

Even where WVDEP admitted a responsibility to reclaim forfeited mine sites the agency did not admit to, or assume responsibility for, bringing water discharges from those sites into compliance with either the Surface Mine Act (SMCRA) or the Clean Water Act (CWA).

Even after a 1994 WV Supreme Court Mandamus Action that expressly stated WVDEP is responsible for water treatment at forfeited mine sites, the agency continued to act as though they had no legal obligation to do more than reclaim the land at forfeited sites and maybe install some passive and partial treatment systems to deal with bad water as part of the cleanup – hardly sufficient to meet the requirements of SMCRA or CWA.

Back to the courts, we won two citizen suits (2009) against WVDEP and obtained injunctions from U.S. District Judges Irene M. Keeley (re: 18 permits in the Northern District) and John T. Copenhaver Jr. (re: 3 permits in the Southern District) requiring WVDEP to obtain NPDES water discharge permits for the 21 bond forfeiture sites which were identified in the court actions and were discharging acid mine drainage. The permits are to be written to include water quality based effluent limits (WQBELs) which would force WVDEP to take necessary actions and install active treatment systems where necessary to meet those limits.

In November 2009 the Fourth U.S. Circuit Court of Appeals affirmed the Keeley decision and WVDEP had basically lost its previous arguments.

We plaintiffs (WV Highlands Conservancy, WV Rivers Coalition and Sierra Club) filed a Notice of Intent to Sue on January 11, 2010 notifying WVDEP that discharges from an additional 131 bond forfeiture sites would be our next targets and then another 40 reared their ugly heads and we included them as well.

WVDEP agreed to negotiate about the universe of permits now in question. It has since been working with our lawyers on a possible Consent Decree. The proposed twelve page agreement was presented to

Judge Copenhaver on August 2, 2011.

### THE CONSENT DECREE

The new decree would cover the additional 171 bond forfeiture sites in WV—88 in the Northern District and 83 in the Southern District—and require WVDEP to do the following:

By August 15, 2011, prepare an inventory of the 171 sites with their flow and pollutant loading, based on water sampling at each site.

By October 15, 2011, prepare a priority ranking of sites based on their loading and other factors, such as whether they discharge into an impaired stream. The ranking will be used to determine the order for issuing permits, setting compliance schedules and installing necessary treatment, including equipment, so as to maximize the environmental benefit with available money and resources. New sites identified in the future will have a lower ranking than existing sites unless the parties agree otherwise.

By December 1, 2011, prepare a Treatment Cost Report in which WVDEP determines the capital cost and annual operation and maintenance cost of treating the water discharged from each Site to meet applicable Water Quality Based Effluent Limits. [This will be key information for the Special Reclamation Advisory Council to use when it (hopefully) recommends a fee increase in its 2011 report, which is due in January 2012.]

By July 2, 2012, prepare a second Treatment Cost Report that refines the first with a more accurate assessment.

Issue NPDES permits with Water Quality Based Effluent Limits for sites on a staggered basis according to a schedule laid out in the Consent Decree which basically allows DEP to complete 50 sites each year.

### WHAT LIES AHEAD

By now you see how the inadequate reclamation at forfeited mine sites and the inadequacy of the Special Reclamation Fund meant to cover the cost of reclamation at these sites are intertwined.

If as required by law and the courts the state meets its legal responsibility to fully reclaim these hundreds of forfeited sites the fund is obviously in bigger trouble than already predicted. And if nothing is done to more adequately fund the Special Reclamation Fund, the state will be unable to meet its legal responsibility to reclaim those sites.

To add insult to injury, the 171 mine

sites now being addressed in this consent decree (and the additional 21 already addressed in Circuit Court Decisions) are not the sum total of what might be expected. There are a number of mines currently classified “inactive” where land reclamation is complete but companies continue to treat water to meet effluent limits (e.g. the old Enoxy/Island Creek Coal/now ICG Tenmile mine site in Upshur County where nearly one million dollars is spent every year to maintain the water quality flowing into the Buckhannon River upstream of the Buckhannon water intake). If and when any of those sites are forfeited, and if any of the big selenium producing active mines where millions of dollars are being spent to install and operate adequate treatment systems go belly up, the Special Reclamation Fund will take another giant hit.

The Consent Decree is being reviewed by Judge Copenhaver. He seems to have some doubts as to whether or not WVDEP is still dragging its feet by agreeing to do only 50 permits each year. In public comments he has asked the Legislature to “beef up” WVDEP and expressed his fears that even the schedule laid out in the Consent Decree won't be met and more delay will occur.

Judge Copenhaver is also weighing our other legal action to decide if bringing the Office of Surface Mining more directly into the picture might be wise and might move things along more quickly.

As always, stay tuned.....

***Nothing in the world can take the place of Persistence. Talent will not; nothing is more common than unsuccessful men with talent. Genius will not; unrewarded genius is almost a proverb. Education will not; the world is full of educated derelicts. Persistence and determination alone are omnipotent. The slogan 'Press On' has solved and always will solve the problems of the human race.***

**Calvin Coolidge**

# DRILLING IN THE FERNOW: HOW NOT TO DO IT

By John McFerrin

A chronic problem in gas well drilling is what to do with the waste water that results. In order to do hydraulic fracturing, companies pump thousands of gallons of a mixture of water and various chemicals into the well. In the Fernow, the company used approximately 95,000 gallons of water which they trucked from a reservoir on the Fernow. Much of the mixture comes back to the surface and must be disposed of in some way.

In the summer of 2008, a natural gas company used land application. This turned out to be a demonstration of what not to do.

Land application is simple. Drag a hose out into the woods and spray the waste water out into the forest and understory. While it gets rid of the water, there are what researchers later described as unexpected side effects.

This well was in the federally owned Fernow Experimental Forest in the Monongahela National Forest in West Virginia. The Fernow, established in 1934, is dedicated to long-term research and is part of several national and international research and monitoring networks. Unlike wells drilled and water disposed of on private land (where the effects would go unexamined), the Forest Service prepared a report-- Effects Of Development Of A Natural Gas Well And Associated Pipeline On The Natural And Scientific Resources Of The Fernow Experimental Forest. To see the

whole report, go to [http://www.fs.fed.us/nrs/pubs/gtr/gtr\\_nrs76.pdf](http://www.fs.fed.us/nrs/pubs/gtr/gtr_nrs76.pdf).

Unlike the wells that have been the subject of such controversy of late, this particular well did not tap the Marcellus Shale. It did, however, reach a depth of 2,387 meters, a depth that is comparable to the typical Marcellus Shale well. After completion of drilling, the rock layer was fractured to release natural gas in the formation (a process known as hydrofracing). The drill pit fluids were land applied. The remaining pit contents were solidified by adding cement and buried in place.

Assuming that the operation was carried out as specified in the company's permit (which it was), the staff of the Fernow had expected the impact upon the foliage to

be minimal. Contrary to their expectations, obvious and measureable damage to the vegetation occurred wherever the water was land applied. This included damage to trees immediately adjacent to the well pad as a result of materials which were unexpectedly released into the air and drifted off the well pad.

The study of the incident is left to speculate about the exact mechanism that resulted in the killing of the vegetation. It could have been low pH or a high chloride concentration. In any event, the study authors concluded, "Clearly, a better knowledge of the chemical makeup of the drilling and hydrofracing fluids is needed in order to understand and predict possible impacts on the resources."



*What they did*



*"Unexpected side effects"*

**Note:** If you are looking at this online and seeing it in color this photo is striking. Everything the company sprayed is brown; everything it didn't is green. If you have the printed version of The Highlands Voice, it is shades of gray. To get the full effect, you can see the Voice with color pictures at [www.wvhighlands.org](http://www.wvhighlands.org). Either that or round up a nine year old. They usually come equipped with markers and can add the needed color.

# SUPPORTING EPA'S VETO OF THE SPRUCE NO 1 MINE PERMIT

--- selected excerpts from the August 18, 2011 court filing via Cindy Rank

Rather than my rambling on trying to explain what arguments we have advanced in support of the Spruce No. 1 mine veto by the Environmental Protection Agency, allow me to quote a few salient points from the legal brief submitted on our behalf by our erstwhile legal representatives from Earthjustice, Appalachian Center for the Economy and the Environment (now Appalachian Mountain Advocates).

*"The West Virginia Highlands Conservancy, Coal River Mountain Watch, Ohio Valley Environmental Coalition, and Sierra Club (collectively "Conservation Amici") submit this brief as Amici Curiae to address four points that demonstrate that the veto of the Spruce No. 1 Mine permit by the U.S. Environmental Protection Agency ("EPA") pursuant to section 404(c) of the Clean Water Act ("CWA"), 33 U.S.C. § 1344(c), is lawful, well-supported, and should be upheld by this Court.*

*"The West Virginia Highlands Conservancy, Coal River Mountain Watch, Ohio Valley Environmental Coalition, and Sierra Club (collectively "Conservation Amici") submit this brief as Amici Curiae to address four points that demonstrate that the veto of the Spruce No. 1 Mine permit by the U.S. Environmental Protection Agency ("EPA") pursuant to section 404(c) of the Clean Water Act ("CWA"), 33 U.S.C. § 1344(c), is lawful, well-supported, and should be upheld by this Court.*

*"First, as shown in the administrative record, EPA's veto is greatly needed because the Spruce Fork watershed and Coal River sub-basin have suffered substantial, lasting impacts from past surface mining and cannot afford the additional cumulative impacts of the proposed Spruce valley fills. It is partly because such impacts have been "routine" ... that allowing 6.6 more miles of these impacts to occur on such a dramatic scale would be unacceptable under CWA Section 404(c).*

*"Second, EPA's authority to protect waters under the CWA Section 404(c) takes precedence over a state's preference to allow the disposal of mining waste under the CWA or the Surface Mining Control and Reclamation Act ("SMCRA"). Although Plaintiff [Mingo Logan Coal] argues the contrary, a state may not tie EPA's hands from addressing unacceptable adverse impacts and force it to allow*

*a valley fill to proceed.*

*"Third, EPA's CWA § 404(c) authority is a true right to veto, and as such is both paramount and unconstrained by the timing or substance of a choice made by the U.S. Army Corps of Engineers ("Corps"). The statute has authorized EPA to issue a veto "whenever" there are waters that need its protection, in part to ensure that EPA may consider new science and information relevant to the environmental impacts of a Section 404 discharge.*

*"Finally, the Court should ignore attempts by other amici to inject into this case economic arguments that are not lawful factors for consideration."*

Perhaps my favorite quote from the 'friend of the court brief' which fairly well sums it all up and casts a spotlight on the sad state of Congressional affairs where our own West Virginia representatives would shamefully cut the legs out from under the authority of the Environmental Protection Agency:

*"In its history of regulating surface coal mining under the CWA, the state has proven to be anything but the "bulwark in the effort to abate water pollution" that it portrays itself as. ... The record suggests instead that the state's permitting agency has worked to ensure that mining can continue regardless of the mounting costs to the environment and the local communities whose interest it is supposed to be protecting. ... In this climate, EPA's veto authority is the last safeguard for the aquatic life and ecosystems in the Spruce Fork watershed and Coal River sub-basin."*

... And, I might add, EPA may well be the last safeguard for the homes and hearts and culture of the people who inhabit our ancient and proud mountain communities.

**Note: The July, 2011, issue of *The Highlands Voice* reported that we had rushed to support the EPA in its decision on the Spruce No. 1 mine. This story reports what we had to say once we got there.**

*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](http://www.wvhighlands.org).

The West Virginia Highlands Conservancy is a non-profit corporation which has been recognized as a tax exempt organization by the Internal Revenue Service. Its bylaws describe its purpose:

The purposes of the Conservancy shall be to promote, encourage, and work for the conservation—including both preservation and wise use—and appreciation of the natural resources of West Virginia and the Nation, and especially of the Highlands Region of West Virginia, for the cultural, social, educational, physical, health, spiritual, and economic benefit of present and future generations of West Virginians and Americans.

# SierraFest 2011

Sept 30 - Oct 2

Camp Caesar, Webster County (on Rt. 20 at Cowen, WV)

## Distinguished Speakers/Guests at SierraFest Program for Sierrafest 2011

**Deborah "Deb" Nardone** is Sierra Club's national Natural Gas Reform Campaign Director. She directs the Club's national campaign aimed at getting the natural gas industry to fully protect our water, air, wildlife, open spaces, and communities. Nardone comes to the Sierra Club from the Pennsylvania Council of Trout Unlimited where she served as a Coldwater Resource Specialist, developing conservation plans to protect the headwaters of streams from inappropriate development that would destroy water quality and trout habitat.

**Harvard Ayers** is Professor Emeritus of Anthropology at Appalachian State University in Boone, NC. Ayers has founded or co-founded several nonprofit organizations, most recently the Friends of Blair Mountain. He is now a plaintiff in a lawsuit challenging the actions of the Department of Interior in taking the Blair Mountain Battlefield off the National Register of Historic Places, where it had earlier been listed. West Virginian **Kate Long** has worked as a media writing coach with the Charleston Gazette for 22 years. Her fiction, songwriting, video editing, radio production, and newspaper stories have won national awards. She frequently produces programs for West Virginia Public Radio and Television, and teaches writing workshops for teenagers, songwriters, and other groups. Her simple yet thoughtful style of putting life's political, environmental, and social dramas to music has lightened the hearts and raised the spirits of many listeners.

### Registration

Name(s): \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_ email: \_\_\_\_\_

Please send your registration form and a check for room reservations and meals, made out to WV Sierra Club to:

**Karen Grubb**  
SierraFest 2011 Registration  
21 Beverly Circle  
Fairmont, WV 26554

Alternatively, you may pay online at: <http://westvirginia.sierraclub.org> and e-mail your reservation form to: [karen.grubb@fairmontstate.edu](mailto:karen.grubb@fairmontstate.edu)

Question about reservations?

Call 304-367-4878 or Email: [karen.grubb@fairmontstate.edu](mailto:karen.grubb@fairmontstate.edu)

**Dormitory style rooms** – \$20/night per person  
(very limited number of private rooms available for couples)

Please mark room and meal choices.

Cabin Room Reservation:

Friday night \$20 x \_\_\_\_\_ (number) = \$ \_\_\_\_\_

Saturday night \$20 x \_\_\_\_\_ (number) = \$ \_\_\_\_\_

Motel Rooms: Mineral Springs Motel (13 miles away at Webster Springs)

For Reservations, call: 304-847-5305

Meals: Cost is \$6/\$7/\$9 for Breakfast/Lunch/Dinner

Saturday: Breakfast \_\_\_\_\_ Lunch \_\_\_\_\_ Dinner \_\_\_\_\_

Total room and meal charges \_\_\_\_\_

### Friday – September 30

4 PM + — Arrive, Check-In, Begin silent "Auction for Action!"

6 PM — Informal reception for Ed Wiley (pizza, chips/dip, drinks, etc.)

7 PM — Introduction of featured film, remarks by Ed Wiley

7:30 PM — Film: **On Coal River**, featuring Ed Wiley (81 minutes)

9 PM — Bonfire, improvised music (bring your musical instruments)

### Saturday – October 1

*Silent Auction for Action continues all weekend, final bids by Sunday morning*

8:00-8:45 AM: *Breakfast*

8:45-9:15 AM: Welcome / Ice-Breaker / Kickoff

9:15-9:45 AM: Kickoff Speaker: **Deb Nardone**, Director, SC Natural Gas Reform Campaign

9:45-10:00 AM: *Break*

10:00 AM: Session 1 Workshops

1.1 Outings Leader Training — Dan Soeder

1.2a Water Sentinel Program — Tim Gilfoil (45 min),

1.2b Dunkard Creek, 90-species wipeout — Ann Payne (75 min)

12 *Noon, Lunch*

1:00 PM: Session 2 Workshops

2.1 Outings Gear — Dan Soeder

2.2 Legislative Outlook: "Looking Back, and Forward"  
— Delegate Barbara Fleischauer, and others TBA

2:15 – 2:30 PM: *Break*

Short Updates

2:30-3:00 PM: Coal and Related Energy Issues

3:00-3:30 PM: Campaign for More Wilderness — Mike Costello

3:30-4:00 PM: Marcellus Shale Gas — Campaign for Regulation

4:00-5:00 PM: *Free Time* — Recreational activities (weather dependent)

5:00 PM: *Dinner*

6:00-6:30 PM: Keynote Speaker: **Harvard Ayers** — Blair Mountain Project

6:30-6:45 PM: *Break*

6:45-7:15 PM: West Virginia Sierra Club Awards

7:15-9:00 PM: "Celebrating Victories" — PATH, People Concerned about MIC, New Hill West Mine, recent legal victories in court

9:00 PM— Party Time! Music, featuring writer/musician **Kate Long**

### Sunday – October 2

8:00-8:45 AM: *Breakfast*

8:45-9:00 AM: End of *Silent Auction for Action!*

9:00-9:15 AM: Ending ceremony — Departing Speaker

9:15 AM: *Pick up bag lunch\*\* for field trip or outing*

1. Educational Field Trip: visit a functioning home-sized wind turbine and solar panel array at local resident's home.

2. Recreational Outing / Hike: Dan Soeder, Leader

3. Fly Fishing / Casting: Tim Gilfoil

\*\* LUNCH for these outings will be a "brown bag" lunch prepared by the camp.

It includes a meat sandwich on wheat bread and a PB&J on white, cookies, small bag of chips, carrot sticks, and water.