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# The Highlands Voice

The Monthly Publication of the West Virginia Highlands Conservancy

Volume 45 No. 8 September, 2012

## FLYING SQUIRREL KICKED OFF ENDANGERED SPECIES LIST (AGAIN)

By John McFerrin

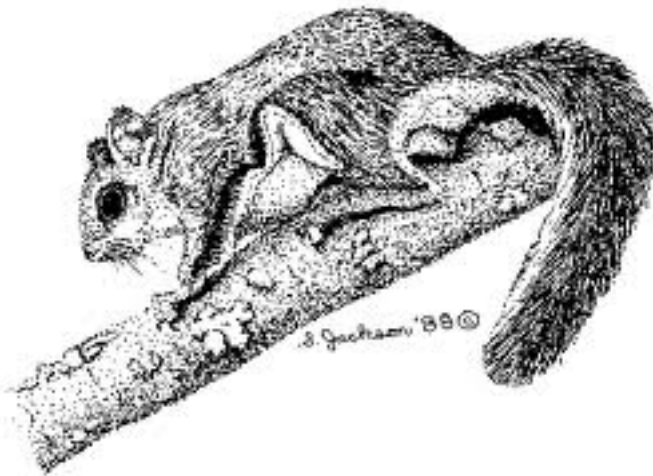
The United States Court of Appeals for the District of Columbia has reversed a lower court and kicked the West Virginia Northern Flying Squirrel (*Glaucomys sabrinus fuscus* to Latin scholars) off the list of endangered species. Over the last five years the squirrel has been added to or taken off the list three times.

### A little history

The U.S. Fish and Wildlife Service first placed the West Virginia northern flying squirrel on the endangered species list as an endangered species on July 1, 1985. At the time, the threats identified included: species rarity; habitat loss; human disturbance; and competition with, and transfer of, a lethal parasite from the more common southern flying squirrel.

In 1990, the Fish and Wildlife Service did a recovery plan covering the West Virginia northern flying squirrel. The recovery plan is a series of steps that the agency is supposed to take to help the species recover to the point that it can safely be taken off

the endangered species list. If things went well, then the squirrel would first be moved to the less protective "threatened" listing. If things continued to go well, then it would



be removed from Endangered Species Act protection altogether.

The historic range of the Squirrel is believed to correspond roughly to the distribution of old-growth red spruce and

northern hardwood forests that existed prior to the extensive logging and accompanying fires that occurred at the turn of the 20th century in the Allegheny Highlands, a section of the Appalachian Mountains extending into West Virginia and Virginia. This historic range encompassed an estimated 500,000 to 600,000 acres of old-growth red spruce forests.

This habitat was important in both the decision to put the squirrel on the list and in the recovery plan. It got on the endangered species list in part because its original habitat had changed so that it was restricted to isolated areas at high elevations separated by vast stretches of unsuitable habitat. Its remaining habitat was under pressure from human disturbance such as logging and development of skiing or other recreational activities.

In the recovery plan, the Fish and Wildlife Service agreed not to delist

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## Ramblin' the Ridges

By Cynthia D. Ellis

### LOOKING BACK; LOOKING FORWARD; HAPPY BIRTHDAY

An understatement is that Bob Burrell was instrumental in the early years of the West Virginia Highlands Conservancy. Naturally, reflections of our past will be a part of tributes to him.

Great stories abounded in Morgantown on August 26 at the Life Celebration in memory of Bob. When asked in recent years, "How are you?"--- he reportedly once sighed, smiled wryly and said, "I'm decomposing." It was told that years ago he had sent spring ramps, as requested, to a young couple expecting their first child. The only note in the package was, "Poor fetus." After the stories, one of Bob's friends of 5 decades played, on the Irish pennywhistle, "I'm Asleep and Don't Wake Me!"

Bob Burrell came to WVHC through his love of activities on our wild or scenic rivers. Many Highlands members, past and current, did and do come to us from other activities and groups. One such group is Brooks Bird Club, which celebrates its 80<sup>th</sup> birthday this year! Brooks Bird Club, with 4 chapters, continues its traditions of fun, friendship, and serious bird studies throughout West Virginia. Some of us, including Bob Burrell belonged to both WVHC and to BBC.

As we organized, West Virginia Highlands Conservancy was viewed positively by Brooks Bird Club. Already 35 years old, BBC took note of the "new" group. Ralph Bell, also a member of both, was banding birds at Dolly Sods in 1967 when Highlands held one of its early Fall Reviews nearby. His diary for October 6 reflected on the fog and clouds and, "Lots of Conservancy members at campground tonight... [next day]Just 3 birds to show [them]..." Meanwhile, the minutes of the BBC's Handlan Chapter in Charleston featured WVHC three times that same year. In August, that Fall Review was announced. In October---"Ken Anderson gave a report on the West Virginia Highlands Conservancy week-end outing of October 7 & 8. Regardless of the fog and poor weather a tremendous crowd attended, and most enthusiastically entered into all events. The fog was a handicap for hawk watchers and bird banders, but no handicap for other activities. A question period after the talks brought out the determination of the Highlands Conservancy to preserve our wilderness areas... The Conservancy... deserves our full support." December minutes included a reminder of a WVHC workshop at Blackwater Falls for the following June. Brooks Bird Club and the West Virginia Highlands Conservancy have had people and passions in common for a long time and we wish them many more happy years!

It is likely that Bob Burrell would want us to look to the future as well as the past. So we are. While continuing our usual efforts, we are taking steps toward keeping current. We are on Facebook. Trivial? Maybe. A frivolous fad with a short life span? We'll see. Meanwhile, we are trying to determine its usefulness to our goals. So far, our presence there continues to grow. The topics which have garnered the most attention seem to be anything about coal or Canaan Valley.

We tweet; we are on Twitter. We have much to learn there, but we have begun.

We have a very well-maintained website. Even some of us

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(More on p. 23)

Finding out where the line is**COURT LIMITS EPA'S AUTHORITY**

By John McFerrin

The United States District Court for the District of Columbia has invalidated a Final Guidance which had been issued by the United States Environmental Protection Agency. The Guidance was an attempt by the EPA to provide direction to states on how to regulate the water quality aspects of surface mining. The Court determined that the federal Clean Water Act did not give the EPA the authority to issue the Guidance.

The West Virginia Highlands Conservancy, as well as the West Virginia Sierra Club and the Ohio Valley Environmental Coalition, had intervened in the case in support of the EPA.

This is yet another skirmish in the ongoing battle over who should regulate coal mining. From an industry perspective, state officials should have the maximum possible control over regulation. The nominal justification for this position is that West Virginians know best the problems in West Virginia and can best address them. Buried not too deeply behind this justification is the realization that the coal industry has enormous political power in West Virginia. Regulation controlled by West Virginians would prove more congenial.

From a citizens' perspective, the coal industry is too politically powerful to be effectively regulated in West Virginia by West Virginians. They would prefer that some outside force—in this case the EPA—step in, provide oversight of West Virginia regulators, and encourage more vigorous enforcement. While few citizens have been consistently satisfied with the performance of the EPA, it does act as some check on state actions.

Congress made this battle inevitable by creating joint federal-state authority for

regulation of the coal industry. Both the federal Surface Mining Control and Reclamation Act and the federal Clean Water Act establish state-federal partnerships. The two Acts establish national standards and then provide an opportunity for states to establish their own regulatory programs to carry out the purposes of the Acts. West Virginia has created such regulatory programs.



The battle arises because Congress took this divided approach. It could have stayed completely out of the pollution regulation business, allowing states to foul their air and water as they wished. It could have decided that federal agencies were going to do pollution regulation with no state involvement. Instead, it wrote statutes with lines running through them, lines that separate state and federal authority. Because the lines are not always clear, courts routinely have to

decide whether someone has stepped over them.

The line at issue in this case was over water quality standards. Federal and state clean water laws require what are known as "water quality standards." These are standards of how clean a stream needs to be—how many parts per million of various pollutants should be allowed in a stream. The Guidance that the EPA had issued effectively set water quality standards, primarily for water conductivity. Conductivity is a measurement that tells, in general terms, how much pollution is in the stream. High conductivity would tend to indicate that there is a lot of pollution in the stream.

The Court ruled that setting water quality standards was a state function. Because of this, the EPA could not issue a guidance telling states that they had to set standards for conductivity or how to set them.

In issuing permits for mining, states establish what are known as "effluent limits." These effluent limits decide how much pollution may be in the water leaving an operation. They are supposed to be set low enough that they will not cause a violation of the water quality standards. In other words, the water leaving an operation must be clean enough that it will not cause the water in the stream to become so dirty that it violates water quality standards.

Under the Clean Water Act, States have to decide if a particular effluent limit has the "reasonable potential" to cause violation of water quality standards. If the effluent limit does have that potential, then the state would have adjust the effluent limit.

**(More on p. 23)**

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The West Virginia Highlands Conservancy web page is [www.wvhighlands.org](http://www.wvhighlands.org).

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

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

# THE LOSS OF A FRIEND

West Virginia Highlands Conservancy founding member, past president, Voice editor, and friend passed away on July 23, 2012. We will begin with just the facts--his obituary--followed by some remembrances.

## THE OBITUARY

Robert Guthrie Burrell, 78, passed away quietly at home in Morgantown, WV, on July 23, 2012, due to brain cancer. He was born in Springfield OH, the son of the late Nial Lanson Burrell and Helen Louise Cline Burrell. He was educated in the public schools of Springfield and earned bachelor's and graduate degrees in bacteriology from The Ohio State University in Columbus OH.

After serving three years on the faculty of Carnegie Institute of Technology in Pittsburgh, he was appointed in 1961 to the West Virginia University School of Medicine in Morgantown WV where he taught and conducted basic medical research in immunology and microbiology for 35 years, retiring to Colington Harbour NC in 1996. In recognition of his immunological achievements, he was elected to membership by the American Association of Immunologists in 1965. He specialized in diseases of the lung caused by the inhalation of occupational and environmental dusts and because of this was helpful in locating the NIOSH facility in Morgantown. He was a leader in the injurious effects of the inhalation of mineral and microbially-contaminated dusts. He served as the first guest investigator in environmental health at the University of Gothenburg, Sweden in 1980 and was a consulting immunologist for several medical products companies.

Bob chose to be an active participant wherever he was living. He was an environmental activist in West Virginia where he served in many leadership capacities, particularly in the fields of protection of wildlife habitat and free-flowing rivers and was the co-author of the first reliable guide to the whitewater rivers of West Virginia. Continuing these kinds of interests while living on the Outer Banks of North Carolina, he was a volunteer with the Pea Island National Wildlife Refuge and the North Carolina Aquarium. He returned to Morgantown in 2004 and was a volunteer at Mon General Hospital and a teacher in Appalachian Life Long Learner, the WVU Herbarium, and Mountaineer Audubon. He became very active in the Sterile Processing Production, Surgicare, and Pathfinder Service. In 2007, he became a certified Master Naturalist of the WV-DNR.

Bob liked to sample and become involved in a number of widely different activities. At various times he was a folk musician, writer, chorister and water colorist. He had been a member of the Dare and Pasquotonk County (NC) Arts Councils.

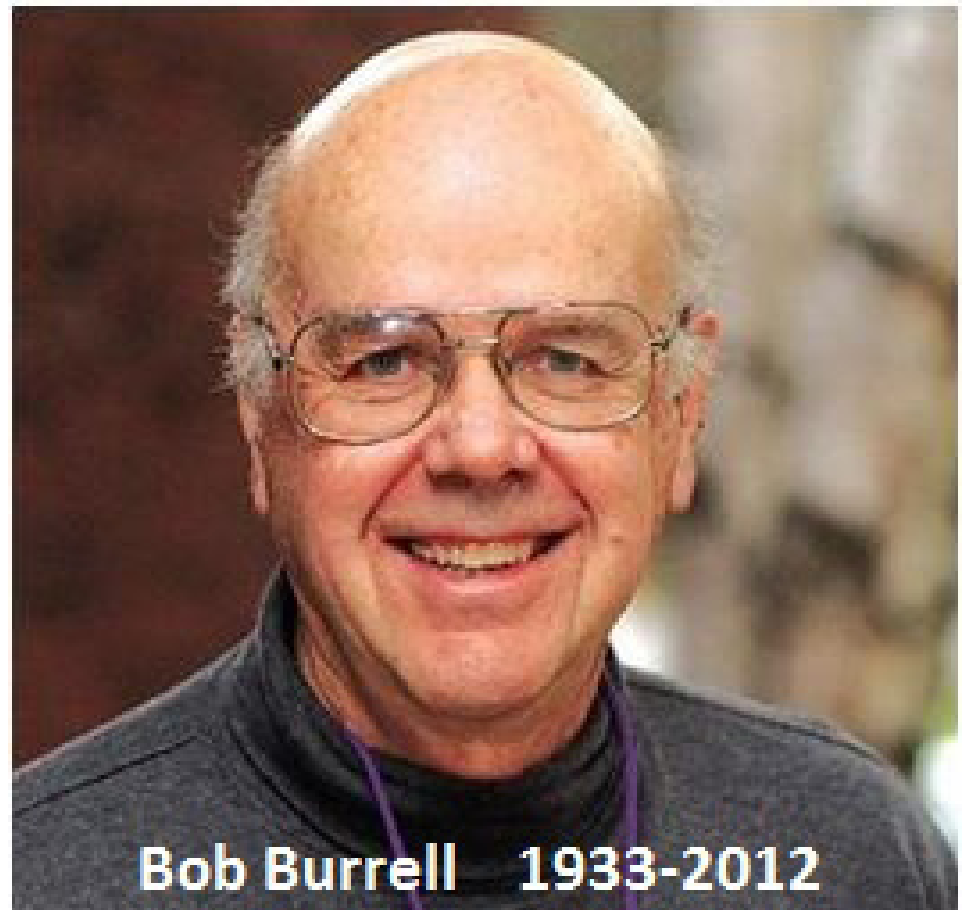
He is survived by his wife of 57 years, Elaine Barrows Burrell; one son, Doren Burrell of Charleston WV; one daughter, Chara Whittemore, and her husband Jesse of Friendsville MD; a granddaughter Sierra Ellyse O'Brien, also of Friendsville; and a sister, Patricia Burrell Ream, of Cambridge OH, as well as numerous nephews and nieces.

Hastings Funeral Home of Morgantown is in charge of the arrangements. Send condolences online at [www.hastingsfuneralhome.com](http://www.hastingsfuneralhome.com).

### Memorials:

In lieu of flowers or other gifts, the family suggests that donations may be made to any of the following charities: Morgantown

Hospice, PO Box 4222, Morgantown, WV 26504; Friends of the Cheat, 119 S. Price Street, Suite 206, Kingwood, WV 26537; West Virginia Botanic Garden, PMB #121, 714 Venture, WV 26508, 304-376-2717 or to Volunteers of Monongalia General Hospital, 1200 JD Anderson Dr., Morgantown, WV 26505, 304-598-1328



## MORE SQUIRREL NEWS

Even though the West Virginia Northern Flying Squirrel may have a hard day in court (see story on p. 1), it did not do so badly otherwise. It had a good victory in the Forest Service's proposed Upper Greenbrier Timber Sale. This 60,000 acre, 10-year-long project would have allowed for logging in squirrel habitat, including capture sites. Thanks to great expert and public comments, the Fish and Wildlife Service issued a wonderful Biological Opinion, based on good science that set high standards for squirrel protection. For now the Forest Service has dropped all timbering plans in the Upper Greenbrier proposal, and will only restore streams in the area and retire roads. This all happened because we challenged the original and unwise plans in this proposal.

# BOB BURRELL: A REMEMBRANCE

Dave Elkinton

My first Conservancy event was a Fall Review Weekend in 1970 soon after Linda

and I had started looking for support in fighting the Davis Power Project. Bob was the Voice Editor, and as a board member, was key in being sure the Conservancy didn't adopt any pro or con position unless it was fact-based. I think he authored a Voice article simply asking questions that needed answers before positions were established. I knew then he was a fact-oriented person, which as a scientist, was hardly surprising.

Some years later, I had the honor of following him as president of the Conservancy. During his tenure as second president, he had continued to write a monthly column, begun when he was the first editor prior to his assuming the presidency. I asked him to continue it, and he graciously accepted. So for a decade he was the "voice" of the Conservancy in print, often quoted and occasionally appearing in the general press.

But for all Bob's organizational work, writing, office and back room support, his real passion was on the water. I am sure his years researching and writing the first canoe and kayak guide in West Virginia, *West Virginia Wildwater*, was among his most happy projects. It went through many editions and his comments have guided countless thousands through rapids across the state.

He was a complete outdoorsperson. I remember him gathering a preparing wild mushrooms one year at a Fall Review. I know he was an active Audubon member, and very active volunteer naturalist on the Outer Banks after he and Elaine retired there. I was not surprised to hear he became a certified Master Gardener after returning to Morgantown.

I had the pleasure to discover that Bob loved cowboy songs and on several occasions he shared his music with guests at various venues. He was a multi-talented, high energy guy.

The success of the Highlands Voice as a publication, the involvement of a second generation of its leaders, and therefore the Highlands Conservancy as we know it today, is in no small way a direct result of the talents of Bob Burrell. He will be missed.

## BOB BURRELL REMEMBRANCE

By Lowell Markey

I moved to West Virginia in 1971 and soon thereafter was urged to attend a meeting of the West Virginia Highlands Conservancy by Dave Elkinton. Bob Burrell was president of the Conservancy at that time.

I was a young adult at the beginning of a career and I saw Bob as a prototypical leader.

The Conservancy was then and is now a coalition of different interests. Many of these interests were recreation-based: climbers, canoeists, backpackers, birders, etc. Mix in those who came to the organization to promote a particular resource: water, forests, air, etc. There was also a mix of scientific expertise with pure, unadulterated love of "nature." Board meetings were exciting discussions with many voicing passionately-held positions, sometimes countervailing

As I remember, Bob chaired these meetings with a remarkably steady and even-handed demeanor. He was able to calmly guide the group toward consensus and a positive course of action on many issues of those days with wilderness protection often taking the fore.

Credit my Dad for igniting my life-long interest in environmental issues. He was a Pennsylvania physician who planned many weekend jaunts to seek out wild-flowing streams and teasing native trout to the end of his fly line. Despite a very busy practice, he found time to type out letters on a manual machine to politicians asking that this or that stream be preserved from dams, development, etc.

Credit Bob Burrell for guiding and crafting the ability of several young Conservancy members to devote tremendous amounts of time to research, data collection, lobbying, publicity, and other efforts to urge wise use the resources of the precious West Virginia Highlands. Credit Bob Burrell for guiding and influencing the expertise of more senior members and helping them shape objectives. His steady hand was vitally important as the infant Conservancy organization gained credibility and standing in the eyes of West Virginia political, media, social, and commercial leadership.

Bob's personal stationary in the 1970's included a little saying that went something like: "Turn off a light and listen to a free-flowing West Virginia stream whisper thanks." Anyone with a Gmail account can see my personal Gmail "slogan" in 2012 in amazingly similar to Bob's 1970's saying. Thanks for everything, Bob!

### BOB BURRELL: VOICE EDITOR

Among Bob Burrell's many contributions to the West Virginia Highlands Conservancy was his role as the first editor of *The Highlands Voice*. Here is the opening paragraph from the opening issue, March, 1969:

This newsletter inaugurates an attempt to keep members of the West Virginia Highlands Conservancy as to the status of, action on, and trends in matters pertaining to conservation in West Virginia particularly in the Highlands region. It shall be our intent to broaden lines of communication on these matters among members and other interested parties. The quarterly newsletter will inform as fully as possible, it will relate items of interest from other sources, and it will provoke. It is intended to provoke discussion, constructive criticism, and action by offering opinions at times designed solely for this purpose. Unless otherwise indicated, the opinions will be those of the editor. It is hoped that these opinions will invite correspondence and discussion. A vigorous newsletter can then be the result of the collective effort by all of the members. The newsletter will act as a crossroads for such correspondence. Please send any material for the newsletter to 1412 Western. Ave., Morgantown, WV 26505.

Among many its many features, this opening paragraph addresses an issue that is still with us today. The *Voice* occasionally hears from readers who assume that everything that appears in *The Highlands Voice* is an official Conservancy position. Even from the beginning this was not true. What is in the *Voice* represents the opinion of the editor or one of our members. It is "intended to provoke discussion", and only occasionally announce positions of the Conservancy.

# SUMMER BOARD MEETING HIGHLIGHTS

On July 21, the Board of the West Virginia Highlands Conservancy met at Old Hemlock, a historic house in northern Preston County.

President Cindy Ellis appointed a nominating committee of Cindy Rank, Larry Thomas, and Hugh Rogers. She encouraged members to suggest names for candidates for positions to be filled at our annual meeting on October 28.

Cindy, Marilyn Shoenfeld, and Buff Rodman had begun planning a Fall Review for that weekend at Canaan Valley State Park. The theme will be wind energy and eagles. Representatives of WVU's Golden Eagle wintering grounds monitoring program will be with us, along with Kelly Fuller from the American Bird Conservancy.

News of the serious illness of Bob Burrell, a founding member of the Highlands Conservancy, prompted us to recall Bob's dedication and many-faceted service. Bob died on the following Monday.

Cindy reported on the West Virginia Land Study, an effort to completely update a 30-year-old study.

It will document patterns of property ownership and taxation and their impacts on state and local economies. We are reminded that West Virginia ranks at the bottom on measures of government transparency. Cindy was on a recent conference call to review progress of the study with representatives of Alliance for Appalachia, WVU Extension Service, American Friends Service Committee, WV Center on Budget and Policy, Ohio Valley Environmental Coalition, Keepers of the Mountains, Coal River Mountain Watch, and Citizens Action Group.

Mike Withers commented that there are more acres in "managed timberland" than in all types of public land combined. The land companies lease these holdings to private hunting clubs, a lucrative arrangement for them, limiting access to a very few people. We should take a hard look at this tax break. Opening the lands to public recreation would provide some public benefit in exchange for the cost to county treasuries. Most of the corporate owners are from out of state.

Membership Secretary Beth Little reported that the web site is by far our chief recruitment tool. Our Webmaster, Jim Solley, wants to train a backup-and-successor to run all our web business. Beth had some people in mind and she will continue to explore this.

Meanwhile, our Facebook page is "cooking": in a short time we've gone from 74 to 500+ "friends," and 34,000+ "like" us. Most "hits" have to do with coal and Canaan Valley. For a more precisely targeted outreach, Cindy E. displayed a model for the "I [heart] Mountains" onesie (it has a subtitle, "Save One for Me").

Treasurer Bob Marshall annotated the budget spreadsheet at the halfway point of our year. We are doing well, considering the overall economy. Balsam/Spruce funds expected from the federal government (such as seedling purchases by Forest Service or Wildlife Refuge) come in slowly but surely. Now we've wiped out the negative carryover from last year and we're well ahead for this year. Bob said we've sold almost the entire inventory of the Hiking Guide and plan to reprint about 2,000 copies later this year.

Mining committee chair Cindy Rank briefly summarized

continuing activities. We're involved in the lawsuit complaining of power plant coal ash dumped on old mine sites. Office of Surface Mining (OSM) is reconsidering how it deals with the coal ash exception to EPA regulation of toxic wastes. The older, simple-minded view was that ash is alkaline so it balances acid drainage. Evan Hansen and Downstream Strategies are researching the real effects.

On Spruce #1, EPA's appeal has been filed and we along with our allies will file an amicus brief in support. On selenium, there are plenty of culprits besides the companies with whom we recently signed multi-million-dollar settlements. We are suing them. With our organizational member TEAM, we're supporting Downstream Strategies water quality monitoring around the new longwall mines in Taylor County. Cindy is working with Citizens Coal Council on the proposed reorganization of OSM and Bureau of Land Management within the Department of Interior. Finally, Cindy noted coal trends: steam coal producers are laying off miners; met coal sales are rising.

On gas drilling, Beth Little reported that the Sierra Club has invited Monogahela National Forest Superintendent Clyde Thompson and Planner David Ede to explain their RONI (predicting *no* impact, and thus more sweeping than a FONSI, which claims no *significant* impact) on gas drilling in the Forest. Anyway, what control does the Forest Service have where it doesn't own the minerals? A recent court decision on the Allegheny National Forest stopped that agency from doing an Environmental Impact Study on proposed drilling. Sierra Club lawyers are working on the issue across the border in Ohio, and they will share their research.

In the Gauley District, one company surveyed for a pipeline but then pulled out—perhaps discouraged by low gas prices. No other area in the Mon has seen such interest. However, in the Forest around Richwood private ownership of mineral rights is common.

Beth recalled the frenzy of private land leasing in Pocahontas County in 2008. Most leases were written for a 5-year period. Before next year, companies will do everything they can to keep them alive. Beth and her colleagues got WVU's Extension Service to sponsor a workshop with attorney Bill Thurman of Buckhannon on the issues involved in lease renewals and/or expirations. Comments on the new Department of Environmental Protection (DEP) regulations on fracking were due July 31.

By legislation, county water resource plans are due next year. Most counties are way behind schedule. At the following week's interims, the DEP was supposed to report on progress. Would the legislators dig into agency ineptitude? Pocahontas, an exceptional county in Beth's experience (and in part *because of* her experience) hired Downstream Strategies as a consultant and a local VISTA has been coordinating and publicizing.

Further on public lands, Don Gasper reported that the WV Land Trust has a growing fund (from consent decrees in selenium cases) available to retire development rights and buy land outright. He recommended purchases in several drainages.

**(Continued on the next page)**



## MORE ABOUT THE BOARD (Continued from previous page)

On highways, specifically Corridor H, Hugh Rogers stood pat with his report in the July issue of the *Voice*.

On wind energy, Cindy Ellis posted a list of comments on this topic that had appeared in the *Voice* since our invitation. All were anti-turbine, at least concerning sites on Allegheny/Potomac Highlands ridges. Wayne said that the committee will present a revised resolution for board consideration in the fall.

Larry Thomas noted that the wind energy production tax credit is set to expire Dec. 31<sup>st</sup>. He expected it to be extended by Congress. Allegheny Highlands Alliance (AHA) was preparing five fact sheets on wind (including one for kids) for publication this fall. Kelly Fuller of American Bird Conservancy (ABC) came to AHA's meeting and Larry recommended that we invite her—as reported above, we have done so. ABC's comments on the new eagle protection regulations were strong.

Wayne Spiggle reported that the WV Environmental Council's alternative energy committee had a thorough debate about wind as they worked on a Citizens Energy Plan. He thought there had been some movement toward a consensus on what is best for the whole state.

After lunch, many of us toured the house with LeJay Graffious, Old Hemlock's administrator (and a long-time member of WVHC), and his wife, Helen Ann. He had been pleased to invite us, as our goals are in harmony with their foundation's educational mission.

## SENATOR BOB HENRY BABER?

Bob Henry Baber has filed candidacy papers to run for the United States Senate as the nominee of the Mountain Party

In a prepared statement, Mr. Baber said, "I am pleased to throw my hat in the ring and provide a real progressive alternative to the virtually politically indistinguishable Republican and Democratic nominees. I hope to bring a measure of balance, as well as excitement, to what will otherwise prove to be a rather boring race with an equally predictable outcome."



In 2011, Mr. Baber ran for Governor as the Mountain Party candidate. He managed to provide some interest in a race between two largely indistinguishable candidates.

Mr. Baber is a member of the Board of the West Virginia Highlands Conservancy. Neither of the other two candidates is a member.

Etymological lesson for today: The term "Throw one's hat into the ring" originated as a boxing term; one way of issuing a challenge was to throw one's hat into the ring, then an actual ring of spectators rather than the square bounded by ropes we have today. To date there is no indication that Mr. Baber intends to engage in any fisticuffs, other than an occasional jab and possibly a haymaker or two.

## REYLAS MINE: THE BATTLE GOES ON

By Ken Ward

Handed a negative ruling from U.S. District Judge Robert C. Chambers on an Alpha Natural Resources mountaintop removal permit, citizen groups are now hoping the judge will block the mine temporarily — at least long enough for them to have a chance to get an appeal heard by the 4th U.S. Circuit Court of Appeals.

This morning, lawyers for the Ohio Valley Environmental Coalition and other groups asked Judge Chambers to issue an emergency injunction in the matter, arguing that if work begins at Alpha's Highland Reylas Surface Mine, an appeal concerning the operation's Clean Water Act "dredge-and-fill" permit might be pointless. Once the stream is buried, they feared, the case would be moot.

Alpha has apparently agreed to hold off any mining until Aug. 27, giving Judge Chambers time to schedule a more detailed injunction hearing next Thursday morning.

I've posted a copy of OVEC's legal brief seeking the injunction here. The other parties — The U.S. Army Corps of Engineers and Alpha — have until early next week to file their responses.

Keep in mind that to get this type of injunction, OVEC's lawyers will have to show: They are likely to succeed on the merits of their appeal, they are likely to suffer irreparable harm in the absence of the injunction, that the balance of equities tips in their favor, and that the injunction is in the public interest.

Long-time followers of mountaintop removal litigation know that the 4th Circuit has been where previous West Virginia court rulings — by Judges Charles Haden, Joseph R. Goodwin and Judge Chambers — aimed at curbing mountaintop removal go to be overturned (see here, here, here and here). But remember that the 4th Circuit now has six new members appointed by President Obama. The Baltimore Sun explained in a story late last year:

The federal appellate court that covers Maryland has for years been considered one of the more right-leaning in the nation, finding that women can be banned from a military institute, that the FDA can't regulate tobacco and that confessions count even when suspects haven't been read their rights, among other conservative opinions.

But the 4th Circuit U.S. Court of Appeals now appears to have taken a left turn.

"There's been a marked change," said Ilya Shapiro, a senior fellow at the Cato Institute, a libertarian think tank in Washington. "Historically, this has been one of the most, if not the most, conservative circuits. Now it's almost one of the most liberal."

**Note: This originally appeared in *The Charleston Gazette*. It is part of the Coal Tattoo blog that Mr. Ward does. To see the original and follow the links he mentions, go to <http://blogs.wvgazette.com/coaltattoo/2012/08/16/groups-seek-to-block-alpha-permit-during-appeal/>. For a more detailed discussion of what the Reylas litigation is all about, see the story in the June, 2012, issue of *The Highlands Voice*. The West Virginia Highlands Conservancy is also a party to the litigation.**

# OBJECTIONS TO FRACKING POPPING UP ALL OVER

By Beth Little

Fracking has become an international issue with demonstrations in multiple states, the US capitol, and other countries.

In California a surfer paddled 300 miles down the coast this summer to raise awareness about fracking (<http://www.surfermag.com/features/frack-off-california-paddle/> includes awesome pictures) and the Center for Biological Diversity launched federal litigation challenging the Bureau of Land Management for failing to properly evaluate hydraulic fracturing's threats to endangered species on public land leased for oil and gas activities in California.

New York has had so many rallies it's impossible to keep track of them all. This August over 1000 people showed up in Albany, the state capitol, to tell Governor Cuomo to ban fracking.

Earth First got into the act in Pennsylvania by shutting down an EQT drilling site with a blockade and a couple of treesitters.

Protesters marched through downtown Columbus and temporarily occupied the front hall of the Ohio Statehouse. The group Don't Frack Ohio organized the protest and three days of workshops, which featured big name speakers such as "Gasland" director Josh Fox and climate author Bill McKibben.

Representatives from several environmental groups in WV (including the West Virginia Highlands Conservancy) traveled to Washington, DC on July 28 to join with over 5000 members of groups from around the country in the FRACK ATTACK rally featuring Josh Fox, Bill McKibben, Sierra Club President Allison Chin, and Dish TX mayor Calvin Tillman in front of the Capitol followed by a march in blistering heat to deliver frack water to the American Natural Gas Alliance and the American Petroleum Institute.

Along with these actions, and many more, moratoriums and bans have been passed in towns (such as Lewisburg, WV), counties (such as Boulder, Co), states (such as Vermont), and even nations (such as France - they want to protect their wine by keeping their water safe).

Those calling for a ban have become convinced that fracking is inherently unsafe and will eventually pollute the groundwater with toxic chemicals migrating through the earth. The more moderate voices call for moratoriums until studies are completed and/or better regulations are in place to avoid the growing number of spills, accidents, well contaminations and health problems. Not to mention the nightmare for those living where gas development is happening.

The oil and gas industry has spent and continues to spend millions of dollars on campaign contributions and lobbying to influence our political leaders. They tout the increased jobs and tax revenues and cloak their rhetoric with claims of providing domestic energy for 100 years and freedom from dependence on foreign oil, while they move ahead with plans to export natural gas to Asian markets where the price is higher.

The Obama administration has paid lip service to a concern about regulations, but has done nothing to slow down the drilling frenzy or block the exports. Meanwhile, Republicans are calling for even less regulation and more drilling in more areas for both gas and oil. It looks like the earth is going to be one big pin cushion with pipelines everywhere and more and more spills and accidents until we have no clean water left anywhere.



PO Box 306 Charleston, WV 25321

## West Virginia Seed Source Conifer Seedlings

The West Virginia Highlands Conservancy continues its efforts to conserve and restore the High Elevation Red Spruce Ecosystem in West Virginia, and the Central Appalachian Mountains, by offering high quality seedlings grown from seed collected locally by volunteers.

**All proceeds support red spruce ecosystem restoration efforts in West Virginia.**

### Red Spruce

10-18 inches, these are a 2 inch plug 6 inches deep.

#### Spring 2013

Thru August 31, 2012	1,000 minimum
\$0.85 each	
Beginning September 1, 2012	1,000 minimum
\$0.95 each	
Beginning September 1, 2012	100 minimum
\$2.00 each	

#### Spring 2014

Thru August 31, 2012	1,000 minimum
\$0.80 each	
September 1, 2012 - August 31, 2013	1,000 minimum
\$0.85 each	
Beginning September 1, 2013	1,000 minimum
\$0.95 each	
Beginning September 1, 2013	100 minimum
\$2.00 each	

## Canaan Valley Balsam Fir Seedlings

14-20 inches, these trees, are a 1 year plug grown in a transplant bed for 2 additional years.

### Spring 2013

Beginning September 1, 2012	100 minimum
\$2.50 each	
Beginning September 1, 2012	1,000 minimum
\$1.25 each	

25% deposit will reserve your trees.

Flexible availability from late March thru early May.

Quantities Limited

All prices FOB Morgantown, WV

For more information visit [www.restoreredspruce.org](http://www.restoreredspruce.org) or contact:

Dave Saville, Program Coordinator

304-692-8118

daves@labyrinth.net



# PATH POWER LINE IS OFFICIALLY DEAD

By Frank Young

Year old and longer predictions that the nearly 300 miles long PATH (Potomac Appalachian Transmission Highline) project was dead or dying were not exaggerations. In late August the thirteen state regional electrical grid operator PJM- often referred to as an energy "cartel"- officially cancelled its demand that its member companies American Electric Power (AEP) and First Energy (formerly Allegheny Energy) construct a three-state, 765 Kilovolt electricity transmission line across West Virginia, through Virginia, and into Maryland. PATH was quietly cancelled simply by an August 28th PJM internal letter.

The PJM Board of Managers terminated the PATH project and removed it from the planning process, effective immediately. In a letter to PJM's Transmission Expansion Advisory Committee, PJM Planning Vice President Steve Herling said that an analysis shows that "reliability drivers no longer exist for the project."

Herling's brief letter continued, saying that, "The analyses incorporated the continued trends of decreasing customer load growth, increasing participation in demand response programs and the recent commitment of new generating capacity in eastern PJM"

In other words, and as project opponents have said all along during the course of the three year unsuccessful attempt to get PATH permitted by state regulatory commissions in three states, PJM now admits that the originally claimed needs for such a 200 feet tall and three hundred miles long monstrosity "no longer exist."

After PJM placed the PATH project in "abeyance" in March, 2011, the project's many opponents declared then that the estimated \$2.2 billion dollar project was "dead". The late August PJM announcement is the official declaration that PATH is dead. AEP and First energy cannot fight for continuation the project without the PJM system's support.

In West Virginia, the PATH case at the WV Public Service Commission (WVPSC) generated approximately 225 interveners (officials parties to a case) against PATH- several times more interveners than had any other case in WVPSC history.

But what does it mean when a giant electrical power transmission project is declared "dead". The adage that, "You can't take it with you" apparently does not apply to such projects.

Although the line will not be built, its developers claim to have incurred about \$225 million in early project expenses- advertising costs, legal fees, property easement costs, etc. A large and effective citizen group opposing Path- called StopPATH WV- has gotten involved in the process that will decide how much of that \$225 million will be allocated to electricity ratepayers.

According to StopPATH WV member and leader Keryn Newman, by the end of 2012 PATH will have already collected more than \$95 million from PJM region ratepayers since PATH was awarded a 12.4 percent "incentive return on equity" authorized by the Federal Energy Regulatory Commission (FERC) in 2008.

Reportedly the PATH partners also may be allowed to recover an additional \$130 million in capital investment in the project, if they convince FERC that they had no fault in the abandonment of the project and that all expenditures were prudently incurred. "The PATH project could end up costing electric consumers nearly a quarter billion dollars by the time it's all said and done," Newman said.

So while PATH is dead, its memory lives on in the pocket books of ratepayers, and in the bank accounts and financial statements of AEP and First energy.

## BUCK MOON

time, land fenced, deer driven out  
save two, more wily, double back, hide  
among dense brambles, where we cannot walk  
banging pots, noise makers, shooting cap guns,  
to chase them through the gap, now forever sealed.  
If both or neither grow velvet I can relax,  
give them names, let them live out their lives,  
even though they browse on Solomon's Seal,  
nip the tops off Hazelnut and Mountain Ash.

I see their tracks, delicate double ellipses,  
by the pond, on the hiking trails, at the spring.  
Before the meadows blooms, when grass  
is young and green, they wander by the house field,  
ever alert, pause, heads high, ears perked.  
The smallest movement, two hundred yards away,  
click of farmers rifle, taking aim, sends them  
ballerina leaping, to the cover of woods.

Linda J. Himot

### CHECKLIST FOR ELECTED OFFICIALS' "ALL OF THE ABOVE" ENERGY STRATEGY

It has become a commonplace for public officials to say that they have an "all of the above" energy strategy. This means that they favor all types of energy production while fuzzing over the questions about which they favor, what they are willing to do to demonstrate their favor, etc.

Now Hugh Rogers has compiled a checklist of things that come along with "all of the above." Feel free to add your own items.

The all of the above strategy:

- selenium
- mercury
- acid drainage
- particulates
- 50% greater risk of fatal cancer
- 42% greater risk of birth defects
- black lung disease
- heart disease
- dead streams
- poisoned aquifers
- lost habitat
- bat and bird kills

---

all of the above (and more)

## Join Now !!!

Name \_\_\_\_\_

Address \_\_\_\_\_

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

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

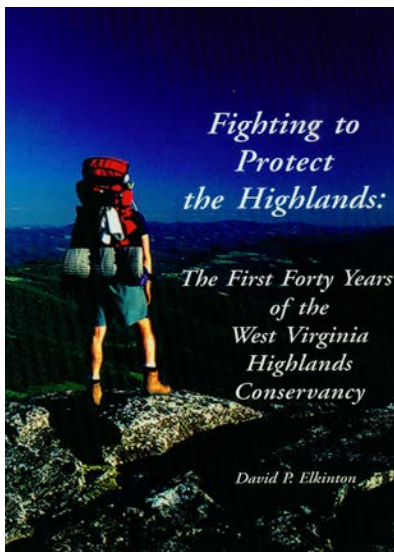
### Membership categories (circle one)

	Individual	Family	Org
Senior	\$ 15		
Student	\$ 15		
Introductory			
Other	\$ 15		
Regular	\$ 25	\$ 35	\$ 50
Associate	\$ 50	\$ 75	\$ 100
Sustaining	\$100	\$ 150	\$ 200
Patron	\$ 250	\$ 500	\$ 500
Mountaineer	\$500	\$ 750	\$ 1000

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

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

### GREAT HISTORY BOOK NOW AVAILABLE



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

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

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

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

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

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

### SUCH A DEAL!

#### Book Premium With Membership

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

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

### DOCUMENTARY FILM ON LEGENDARY CONSERVATIONIST

Canaan Valley National Wildlife Refuge invites you to a free public screening of *Green Fire!* the first full-length documentary film ever made about legendary conservationist Aldo Leopold. The film will be shown at Canaan Valley Institute, 494 Riverstone Road near Davis, WV, on Saturday, September 15, at 7 pm.

*Green Fire!* shares highlights from Leopold's extraordinary career, explaining how Leopold shaped conservation and the modern environmental movement. Canaan Valley National Wildlife Refuge, the Friends of the 500th, and Canaan Valley Institute are co-hosting this free screening of *Green Fire* for the community. Please join us! Call Cindy at 304.866.3858 for more information.

## Wellness & Water Health Impacts of Fossil Fuel Extraction

Join us on Saturday, September 8, 2012, for the Wellness & Water Conference sponsored by OVEC, Sierra Club (WV Chapter) and WV Highlands Conservancy.

With a range of workshops and panels, hear about the extreme human health impacts of mountaintop removal coal mining and deep shale gas drilling and fracking. Meet with impacted residents and experts including: keynote speaker, Wilma Subra; Dr. Ben Stout, whom you may have seen in *The Last Mountain* and *Burning the Future*; and Dr. Michael Hendryx, whose research is shining a much-needed light on these health impacts.

### About our Keynote Speaker — Wilma Subra

Wilma graduated from the University of Southwestern Louisiana and the University of Louisiana at Lafayette in Microbiology, Chemistry and Computer Sciences. She worked for the Gulf South Research Institute and served as vice-chair of the EPA National Advisory Council for Environmental Policy and Technology. Wilma is President of the Subra Company and was featured in *Gasland*. She has received numerous awards and recognitions.

**WHEN:** September 8, 2012

**WHERE:** First Presbyterian Church  
456 Spruce Street  
Morgantown, WV

- Registration begins at 8:00 a.m.
  - Coffee and tea available.
  - Keynote at 9:00 a.m.
  - Closing reception at 1:00 p.m.
  - Finger food snacks available.
- \$10 suggested donation to help with the cost of the program and snacks.*

**CONTACT:** Robin Blakeman at [robin@ohvec.org](mailto:robin@ohvec.org) or 304-522-0246 for more information.

For directions and other information:  
<http://www.firstpresmorgantown.org/maps.html>

*“I believe I now have post-traumatic stress disorder from all the health problems I’ve had to deal with over the past several years – both within my family and neighborhood.”*

—Maria Lambert  
Prenter, WV



# West Virginia Mountain Odyssey



## Outings, Education and Beyond 🗺️

**September 11-13, 2012, George Washington National Forest, VA, Massanutten Trail-Edinburg Gap to Shawl Gap Backpack Shuttle:** 23 miles, 4000 feet elevation gain. Rocky ridge walk with views. Seasoned backpackers only. Preregistration required. Contact Mike Juskelis at 410-439-4964 or [mjuskelis@cablespeed.com](mailto:mjuskelis@cablespeed.com).

**September 15, Red Spruce Ecosystem Restoration, Canaan Valley National Wildlife Refuge. - VOLUNTEER OPPORTUNITY -** Join us as we continue our efforts to restore the red spruce ecosystem in the West Virginia Highlands. We will meet at the Wildlife Refuge Headquarters on Rt. 32 in Canaan Valley, at 9 AM. Come dressed for the weather, wear sturdy shoes or boots and bring gloves. Lunch will be provided. Please RSVP. For more information, visit [www.restoreredspruce.org](http://www.restoreredspruce.org), or contact Dave Saville at [daves@labyrinth.net](mailto:daves@labyrinth.net), or 304 692-8118.

**September 22-24, 2012, Monongahela National Forest, WV, [Roaring Plains Base Camp Backpack and Day hike](#):** Hike in 2.5 miles and set up camp on Day 1. Day hike (no backpacks) 12-14 miles around the canyon rim with 1100 feet of elevation gain on Day 2. Retrace Day 1 steps on Day 3. Seasoned backpackers only. Contact Mike Juskelis at 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 Daniel Chiotos, (304)886-3389 – cell, (304)205-0920 – office.

### 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.



## GARLIC MUSTARD WHACKED!

The Monongahela National Forest, Potomac Highlands Cooperative Weed and Pest Management Area (CWMPA), and the Appalachian Forest Heritage Area (AFHA) joined forces to sponsor the fourth annual "Garlic Mustard Challenge." These partners wanted to provide an opportunity for people of all ages to learn about non-native invasive species while making a difference in the forests across their home states.

Garlic mustard has gained much attention in recent years for its ability to rapidly invade wooded habitats from disturbed areas. The plant threatens the abundant wildflowers and diverse forest ecosystem of West Virginia.

After weeks of searching, pulling, and bagging, the results are in for the 2012 Garlic Mustard Challenge and they are amazing! We absolutely destroyed our goal of pulling 35,000 pounds of garlic mustard. Volunteers from across Indiana, Illinois, Ohio, Virginia, and West Virginia pulled **160,665 pounds** of garlic mustard from public lands. Additionally, **over 5,335 volunteer hours** were logged equaling around **\$ 116,250** that local governments, organizations, and private landowners saved in not having to hire field crews to remove garlic mustard (hourly rate based on 2011 Independent Sector Rate).

On the Monongahela National Forest, volunteers pulled more than **15,558 pounds** of garlic mustard and logged over **2,607** volunteer hours! That's almost half of the total logged volunteer hours! "Our goal couldn't have been reached without the help of each and every one of our volunteers pulling together and the successful collaboration of our partners," said Cynthia Sandeno, Ecologist of the Monongahela National Forest.

"We want to congratulate everyone on their hard work and commitment to stopping the spread of garlic mustard and protecting our native habitats and wildlife," said Rebecca Urbanczyk, AmeriCorps Volunteer. "Whether you were pulling in your own back yard, telling

your neighbor about garlic mustard, teaching in classrooms, or leading your own event, we thank you."

This year, our individual achievement award goes to Benjamin Reed who pulled 2,485 pounds of garlic mustard across the state of Ohio! Way to go, Benjamin! For this incredible effort, the Monongahela National Forest, Appalachian Forest Heritage Area, and Potomac Highlands CWPMA are proud to award him with the "2012 MVP - Most Valuable Puller Award." The overall winner of this year's competition was the Chicago Botanic Garden who bagged a total of 36,150 pounds of garlic mustard!

We would like to give a special thanks to the generous

partners and sponsors for their great prizes and contributions including: AFHA, American Mountain Theater, Applebee's, All Creatures Great and Small, Brewstel: Microbrewery and Hostel, Cooper and Preston, PLLC., George Washington and Jefferson National Forests, Good Energy Foods, Judy's Drug, Kroger, Mainline Books, MeeMee's Café and Cakes, Peebles, Pepsi Bottling Company, Performance Chevrolet-Parsons, Potomac Highlands CWPMA, Rite Aid-Parsons, Seneca Caverns, Sheetz-Parsons, Snowshoe Mountain, SouthSide Depot, Theatre West Virginia, The Celtic



**Students from Petersburg Elementary School pulled over 10,000 pounds of garlic mustard**

Dog Studio, The Greenbrier Resort, The Wellness Center-Parsons, Timberline Four Season Resort, Tractor Supply Co., Walmart-Elkins, and the YMCA-Elkins.

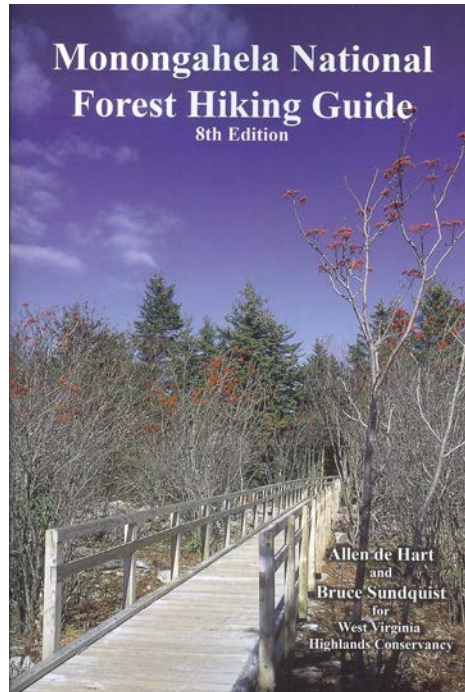
It was a great year and we are so happy to be working with so many new partners! Remember, we are in the battle against invasives for the long-run. So, be ready next April to grab your gloves, bags, and friends to head to the woods to compete in the "2013 Garlic Mustard Challenge!" We need to bring the MVP – Most Valuable Puller award back to West Virginia. Until then, we thank you for your time, dedication, and commitment. Congratulations!

### 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.

### 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.



## 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.

### 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 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.



### HATS FOR SALE

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

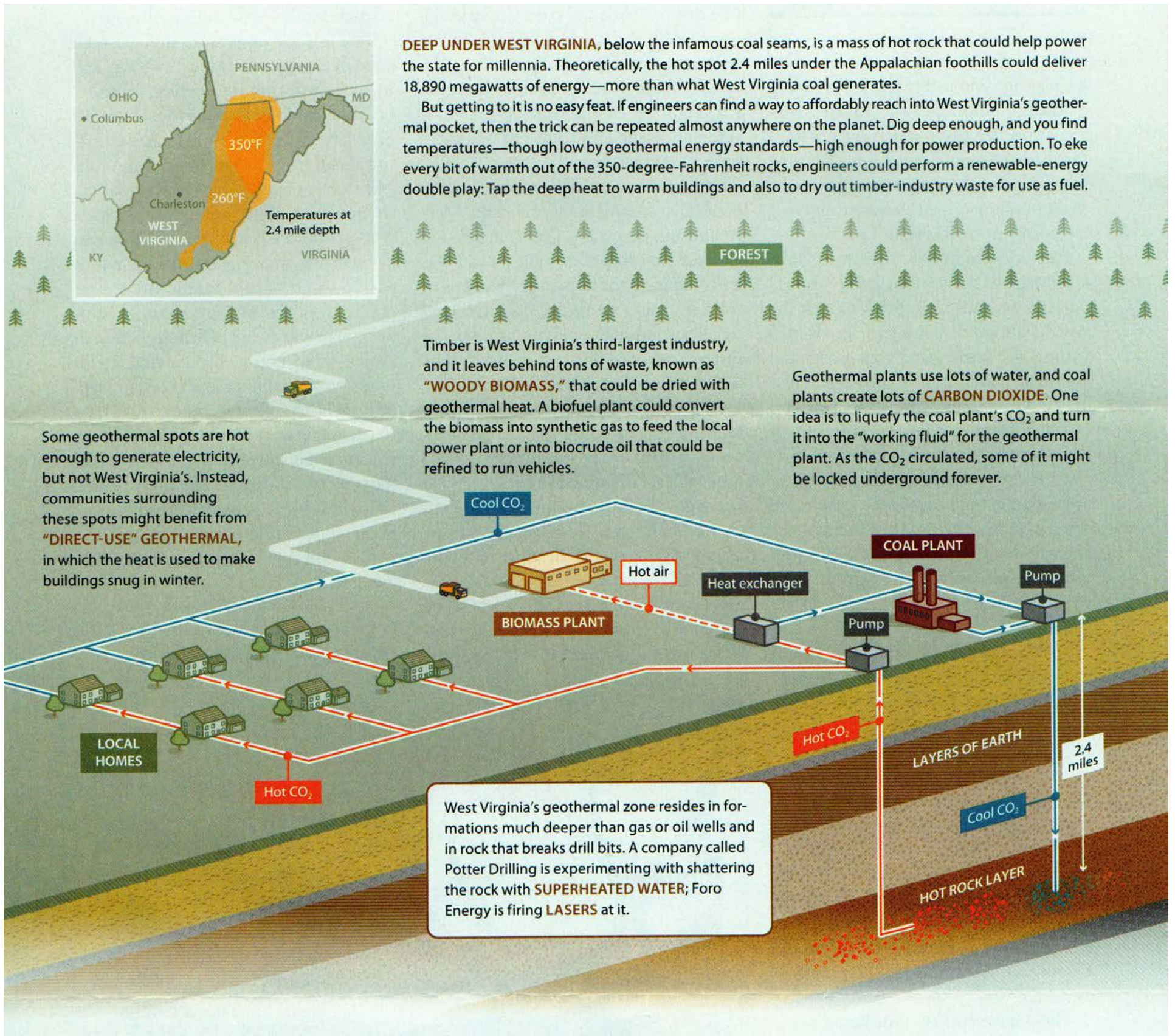
The WVHC cap is beige with green woven into the twill and the pre-curved visor is light green. The front of the cap has West Virginia Highlands Conservancy logo and the words West Virginia Highlands Conservancy on the front and I (heart) Mountains on the back. It is soft twill, unstructured, low profile,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

In 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



# ANOTHER GAME IN TOWN?

With all the talk about wind power in the *Voice* lately and the ongoing stories about coal and gas, now might be a time to consider that there may be yet another potential source of energy in West Virginia. This was submitted by Rupert Cutler, who spotted it in the *Sieran*.



# RECOLLECTIONS OF BOB BURRELL

By Ron Hardway

I first encountered Bob Burrell through our mutual respect and admiration for wild, free-flowing, clean West Virginia rivers. I was increasingly distressed by what appeared to me to be wanton destruction of the hardwood forests along the banks of Williams and Cranberry rivers, both of which were prime trout fisheries in the Monongahela National Forest. The logging jobs that were taking place along those rivers were on a scale and in a method unfamiliar to me. The method, of course, was clear-cutting, and the scale put me in mind of some of the grainy black and white photos taken in Webster County in the 1920s and 1930s which showed, unbelievably, not a tree standing on the mountains from which the county is made.

Clear cutting on the Monongahela was not as bad as it had been in an earlier age, but the effects on the mountain streams were much the same. While the U.S. Forest Service gave lip service to the need to practice stream conservation and erosion prevention, the fact remained that the local logging crews who worked at the USFS's bidding cared not a whit for keeping water clean and pure and could care less if any trees were left in place to anchor the soil and hold it where it was supposed to be.

It seemed to me that someone somewhere should be doing something about the fact that Williams River, on a brilliantly clear afternoon in mid-October with brilliant red, yellow and orange leaves silhouetted against a deep blue cloudless sky, was rushing water downstream that looked like it came from the Mississippi around Memphis.

It did not take a PhD in hydrology to figure out the source of the problem. My bachelor of arts in history was enough to tell me that bulldozers plowing roads through the middle of small creeks followed by huge log trucks wobbling along the narrow, rutted tracks behind the dozers were not only creating the mud, but were killing the small tributary of all living things in the creek. Only the mud and slime were left in their wake.

I came across a mention of the West Virginia Highlands Conservancy in some news article in the Charleston Gazette and the article included the name and address of the editor of the group's newsletter, *The Highlands Voice*. And so I wrote to Bob Mr. Burrell and threw a literary tantrum over several pages about the USFS and their evil machinations in the Cranberry Back Country. A few days later I received an invitation from Mr. Burrell to write about my observations and, space permitting, perhaps something could be inserted in *The Voice*. Within hours I had several pages of personal observations and impressions in the mail back to Burrell.

A much edited version of that first rant did appear in the *Voice*, and a spirited exchange of letters began between us. Letters in the mail between us continued for several months. At Bob's suggestion I also began writing frequently to W.Va.'s members of Congress, especially to senators Byrd and Randolph, and Rep. Harley O. Staggers who "represented" the vast district which included all of the Monongahela National Forest.

Nearly all of my letters focused on inclusion of the Cranberry Backcountry within the US Agriculture Department's national wilderness system. Bob, of course, was also a frequent correspondent with our representatives in Washington, mostly about preservation and protection of wild rivers. We tried comparing our replies from Byrd, Randolph and Staggers in an attempt to catch them up in contradictions. We finally realized that we were receiving pre-signed, form letters rather than personal replies from our elected

representatives. We were unsure whether to be angry or amused with our men in Washington. We finally agreed that whatever their failings, they were head and shoulders above our men in Charleston.

At some point Bob became president of the Highlands Conservancy. For a brief time I held the position of Highlands Regional Vice-President, a job that held as much power and influence as any designated vice-president, from V-P of the United States to V-P of Exxon. That is to say, "not much." When he assumed the reins of power in the WVHC, Bob was obliged to relinquish his editorship of *The Highlands Voice*. He thought I had matured enough over the couple of years that he had known me that I could be trusted to edit the leading environmental publication in West Virginia. He recommended me for the job.

With Bob's input, direction, guidance and benevolent supervision, *The Voice* transitioned from a mimeographed, stapled newsletter into a full-blown monthly newsprint tabloid. I solicited manuscripts from everyone I knew along the East Coast who had an environmental angle to trumpet, and we probably could have published weekly and had material left over. Fortunately, publishing costs required us to be more selective and publish only the best of the available material. Being editor of *The Highlands Voice* was without question the best job I ever had.

That job also placed me in close contact with the movers and shakers of the Highlands Conservancy in those early years. People like Sayre and Jean Rodman, Bruce Sundquist, Helen McGinnis, George Langford, Joe and Mary Rieffenberger, Linda Cooper, Nick Zvegintzov, Bill McNeel, and Dave Elkinton, among many others, became good friends. But at the center of this small group of activists, the unquestioned leader was Bob Burrell. Bob brought dignity, intelligence and a quiet confidence that earned for the Highlands Conservancy the respect and credibility it needed in the late 70s to establish itself as the representative and spokesperson for the environment in West Virginia.

Under Bob Burrell's leadership, in a few short years, he and I progressed from the point where we received rubber stamped form letters from Congressmen to being asked personally by Jay Rockefeller to sit down and share with him a meal of cheeseburgers and fries at a little mountainside diner near Marlinton. The fact that I got stuck with the bill for lunch that afternoon proved that we had arrived, according to Bob who was highly amused by the entire episode.

Early in the 1980s, the torch was passed to more eager, less-jaundiced hands within the Conservancy, and Bob and I moved on to other interests. Bob eventually relocated to North Carolina, and I migrated to South Carolina.

One day, out of blue cyberspace I received an email from Bob making fun of some state politicians who had offended him. I immediately answered with a list of state politicians that had offended me. We enjoyed making fun of these people, none of whom ever knew that they were the butt of extensive jokes by two masters of the political put-down. That was unfortunate. We should have gone public with our observations. I'll bet if we had it to do over again, we would do so.

The world in general, and West Virginia in particular, are much better places for having Bob Burrell turn his attention to their environmental challenges. I am a much better person for having known him and worked with him. I will be forever grateful.



# SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977: BREAKTHROUGH OR FALSE HOPE

## Introduction

August 3, 2012, was the 35<sup>th</sup> anniversary of the federal Surface Mining Control and Reclamation Act of 1977. The passage of this act was the result of many years of work by many, many people, including some West Virginia Highlands Conservancy members. Some were even invited to the ceremony during which President Carter signed the bill into law.

As part of the commemoration of the anniversary, the Office of Surface Mining awarded several ECHO awards, "an acronym of the principles underlying OSM's mission; Environment, Community, Humanity, and Ownership". According to the Office of Surface Mining's web site, this was "an inaugural award honoring an individual for their actions to promote the goals of SMCRA."

For one of the Office of Surface Mining's awards it had selected the Kentucky Resources Council, a citizens' group in Kentucky seeking to reduce the adverse impacts of mining on land, water, and people.

The Kentucky Resources Council turned it down. Here is the letter to the Office of Surface Mining refusing the award. It speaks sentiments shared by many of us who are concerned about mining.

## The letter

Dear Director:

I'm writing to respectfully decline acceptance of the first ECHO Award. While I appreciate the recognition of the coal-related work of the Kentucky Resources Council, the 35th Anniversary of the enactment of the Surface Mining Control and Reclamation Act is not a time of celebration of achievement, but rather, a somber reminder that after 35 years of implementation, and fifty-five years after grassroots efforts to see enacted a national program for controlling surface coal mining operations, the promises made to the people of the coalfields remain largely unkept.

The enactment of SMCRA represented the culmination of heroic efforts by coalfield citizens, grassroots organizations and national environmental groups to bring to

heel the abusive mining practices of the coal industry, and the bipartisan efforts of moderate legislators. The law promised to curb abusive mining practices with the goal of protecting landowners, the public, and the environment from the adverse effects of surface coal mining operations.

In substantial measure, these promises have been betrayed, and across

been weakened by regulatory interpretations in order to accommodate this shift.

The tools needed to restore this agency to its potential, to minimize the heavy footprint of coal on the land, water, people and communities of the coal-producing regions, and to fulfill Congress' promise to the citizens of the coalfields, awaited an Administration that it was hoped would help a troubled agency recover a potential that existed for a brief period of time between 1978 and 1981. It appears that the waiting has been in vain, since the current Administration has had fully three years and more to undo the damage done to this law and regulatory program by 30 years of management that ranged from hostile to indifferent to Congressional intent, yet has done precious little of substance.

OSMRE remains compromised by inadequate funding to support its mandate, and a DOI proposed merger of functions that will further weaken the capacity and dilute the mission of an agency intended by Congress to be independent.

Despite the earnest efforts by line workers for the agency over these decades, (and I am second to none in my respect for many of the field office workers and inspectors) OSMRE has failed to take effective action to address some of the most glaring deficiencies in the state implementation of the Act's requirements. Where Congress intended that reclamation occur contemporaneously with surface disturbance and coal extraction, open-ended grants of "temporary cessation" or "inactive status" have left areas disturbed and unreclaimed for years, and in some cases, decades. Where Congress intended variances from the general restoration of original contour requirement to allow alternative post mining land uses be strictly controlled, "mountaintop removal" operations in steep sloped areas have been allowed to be misclassified by regulators as "area mines"; and by ignoring the requirement that mined land be restored to the original elevation and landform, coal operators have been allowed to dump mine waste into valleys rather than using the spoil to restore the premining elevation and landform.

(Continued on p. 19)



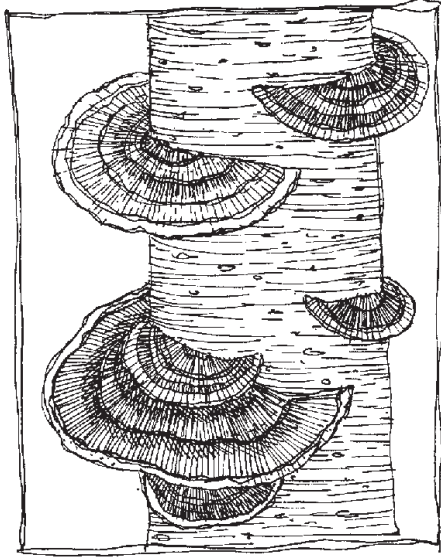
**"the brushed stainless steel award in the shape of an octagon, which represents each attribute as well as the shape of the Office of the OSM Director at OSM headquarters" (OSM's description of the award. To see it in all its glory, go to <http://www.osmre.gov/topic/awards/ECHO.shtm>)**

the nation's coalfields, communities have borne the burden of the breach of these commitments. The citizens of the coalfields of the eastern and western United States have waited through successive administrations since 1981 to see the promises that Congress made in 1977 fulfilled. In a number of key areas, the failure of the Office of Surface Mining Reclamation and Enforcement to assure full and fair implementation of the law has betrayed the promise Congress made to those who live in coalfield communities—that they would be protected from harm, that mining would be a temporary use of land, that reclamation would contemporaneously follow excavation of coal, and that the amount of time between disturbance of the earth and completion of reclamation would be minimized. Though Congress intended that the choice of technology would follow, rather than dictate, environmental protection, the coal industry has over the decades systematically replaced the workforce with larger machines more indiscriminate to the terrain, and key concepts in the law have

## THE VITAL FUNGUS

Decomposers are endlessly interesting organisms. Some are beautiful, mysterious, tasty, sometimes hallucinogenic, and sometimes lethal. In the story book *Elephant King*, died from eating a bad mushroom. Hence, the co-existing presence of respect and of wonder.

Ponder the miraculous mycelium. Mycelia forms an underground, interwoven fabric of cells creating and sustaining a food web that makes life flourish. They gather a nutritious flow of soil water to plant root hairs. They provide nutrients as well as information. The largest living thing in the U.S. may be the interconnected fungus complex under parts of California, Oregon, and Washington. The network is highly resilient and adaptive. Mycelia respond to, protect, and enhance the health of the entire forest community. It protects the forest by breaking down both woody and animal debris, even hydro-carbon molecules, into their nontoxic elemental compounds. It nourishes soil life and that of the forest floor, interacting with worms, mites, many insects and larger forms like shrews, flying squirrels, etc.



The West Virginia Highlands Conservancy is found in the national and state parks and forests of West Virginia., protecting wild lands from the trampling footprint of man. We question and challenge the stewardship of supposedly responsible agencies. We are monitoring and preventing unnecessary disturbance on fragile recovering watersheds and protect stream structure and water quality.

Like Mycelia, the Highlands Conservancy is much more than you can see. It is a network that exchanges information and focuses the energies of many people to protect our mountains, our forests, our streams, and our communities from destruction and desecration. We do this by organizing, networking, by mediating, by facilitating, and by litigating when necessary - by informing and inspiring citizens. The West Virginia Highlands Conservancy understands the mechanisms of man and nature. Join and experience that common energy that rises up out of the fertile earth whenever necessary, like mushrooms after a spring rain.

**Note: The idea, the metaphor, and the original writing were by Ernie Reed of Heartwood. Don Gasper adapted it so that the comparison applies to the West Virginia Highlands Conservancy as well.**

## DON AND THE DRAGONFLIES

By Don Gasper

### What happened?

One day from about 1 pm to 2 pm in Oct. 2011 watched a strange gathering of perhaps two hundred Dragon Flies zipping around continually in my side yard. They might have all been one size, with about a 4" wing span, and perhaps bluish-cast. They all seemed to fly at half speed, yet a little faster as they neared the 50'x50' center of the group. This did not shift for the 2+ hours they zipped around my yard. Many came within 4' of me as I stood 30' from the 50' area. I stood about 7' from my house. All this took place in my yard that was sunny and about 50°F from 2 to 4 PM. This side yard is about 400' long and 100' wide. They continued this fast flight, using a great, great amount of energy. None stopped. None even hovered.

There was no coupling. It was amazing to me there were no collisions. Even sudden avoidances were not needed, though in the 50' area often 50 were zipping within 1' of one another. They would fly about 200' out into the street in front and in a minute return. Similarly they would fly 200' to the back yard and turn around.

My yard is 4 city blocks from the 100' wide Buckhannon River. There are no lakes or ponds. I don't know where they came from or where they went.

### Why?

Dragonflies are predators of insects such as gnats and mosquitoes although not (fortunately) of Gasper or other humans. They don't sting and eat annoying stuff so they are good to have around.

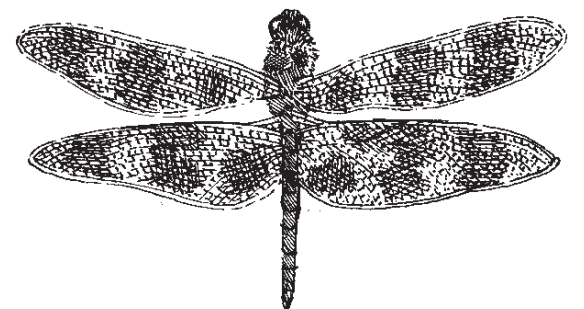
There are possible reasons for their swarming. Some species of dragonflies do migrate. Some swarms may be groups of migrating dragonflies.

It could also be no more than a dragonfly buffet. There may be swarms of mosquitoes, gnats, or midges which draw swarms of dragonflies to prey upon them. The prey is small enough to be invisible to humans but the swarming dragonflies are readily apparent.

A 1998 paper in "American Midland Naturalist" offers "summaries what is known about this evolving topic. They reviewed particularly 3 observations-over one million dragonflies were noted in the Chicago area in 1992; one at Cape May with 400,000 in 1992, fewer; and 200,000 estimated in Florida in 1993. All sighted in September.

They appeared after cold front. Most were Green Darners, (Somewhat like locust migration). A million in a river of dragon flies would blacken the sky. Nothing like this has been observed. This appears to be restricted to the East United States. They travel along coast lines, presumably for orientation. Not all dragonfly species migrate-much-much is unknown—The Chicago swarm contained a few of 6 other species. There are 18 species in the U.S.

It is supposed that migratory dragonflies fly to Central America, mate, and their offspring return north in the spring but this has not been conspicuous or noted.



## MORE ABOUT THE SQUIRREL (Continued from p. 1)

the squirrel until it had determined that the existence of the high elevation forests on which the squirrels depend is not itself threatened by introduced pests, such as the balsam wooly adelgid or by environmental pollutants, such as acid precipitation or toxic substance contamination.

In 2008 the Fish and Wildlife Service took the squirrel off the endangered species list. (In the jargon of the agency, it “de-listed” the squirrel.). At the time, it said that the recovery plan has been sufficiently successful that the squirrel could be removed from the list. The delisting meant that the squirrel would have to continue to survive as best it can without the special protections available to species which are on the endangered species list.

In kicking the squirrel off the list, the Fish and Wildlife Service did not contend that it had followed the recovery plan. The plan had specific goals and requirements for distribution of the squirrel, requirements that had not been met. Instead, it said that it had followed the general intent of the recovery plan and that the squirrel appeared to be holding its own.

In March, 2011, the United States District Court reversed the Fish and Wildlife Service. The Court held that following the intent of the original recovery plan was not enough. It is not sufficient to generally follow plan. The Endangered Species Act specifically calls for a plan setting out what the agency intends to do and how it will measure results. If it wants to change the plan or otherwise not follow the plan, the agency must announce that it is changing the plan and then follow a revised plan.

Neither is it sufficient, the Court ruled, for the species to hold its own. The goal of the Endangered Species Act is that species thrive, not just slow down on its road to extinction.

### What just happened

In August, 2012, the Court of Appeals reversed the District Court, effectively reinstating the Fish and Wildlife Service’s decision to kick the squirrel off the list.

The decision turned largely on the question of what a recovery plan really is. The District Court had held that a recovery plan had to be followed before a species could be delisted. If the Fish and Wildlife Service changed its mind and thought that a different recovery plan would work better, it could change the plan but so long as it was in place the Fish and Wildlife Service could not kick a species off the list without following it.

The Fish and Wildlife Service, on the other hand, said that the plan was not binding. Even if it never followed the plan, it could still delist a species if it thought it had made a recovery.

The Court of Appeals agreed with the Fish and Wildlife Service. In federal courts it is the practice (backed up by legal precedent) to defer to the interpretations of statutes and regulations by the agency. If an agency has always taken the position that a regulation means one thing, a court will adopt that interpretation unless there is some language in the statute or regulation to the contrary.

Under this approach, if the Fish and Wildlife Service thinks that recovery plans are guides, not mandates, then the Court will assume that this is the correct interpretation of the law.

There was a dissenting opinion. One of the three judges thought that the Fish and Wildlife Service was required by law to follow the recovery plan before delisting the squirrel. She also noted that the Fish and Wildlife Service relied upon data that showed that the squirrel was “persisting”, meaning that it was still here, not yet extinct. She thought that the law required that it not just persist but recover.

### Vocabulary lesson of the day

Even if they are called flying squirrels, they don’t actually fly. They stretch out the folds of skin that stretch from front legs to hind legs and glide. These folds are called the patagia, from the Latin *patigium*, meaning the border of a tunic. The singular form was adopted directly from the Latin as the singular patagium; patagia is the plural form.

## THE REST OF THE LETTER (Continued from p. 17)

Rather than preventing the dumping of coal combustion wastes into disturbed mining areas, where metals and other pollutants of concern can readily migrate through fractured strata into area groundwater, OSMRE has allowed the practice of dumping of coal combustion wastes at minesites, and proposes to encourage such practices through new regulations. States have been allowed to issue permits without proper consideration and mitigation of impacts on the hydrologic balance, and the quality of headwater streams has suffered. Downstream communities have been plagued by flash flooding exacerbated by failures to manage and promptly reclaim disturbed areas.

The SMCRA would not have become law without the courageous, outspoken, and unflinching advocacy of thousands of valiant coalfield citizens and landowners who dared to speak “truth to power” during the two decades-long struggle leading to enactment of the law. The passage of SMCRA held out the hope that coalfield citizens would no longer have to sacrifice the fundamental right to a safe and healthy environment in order to feed a nation’s desire for “cheap” energy. If the current Administration wishes, on this 35th anniversary, to recognize and honor individuals, then let us honor the sacrifices of people like Joe Begley, Ollie Combs, Jane Johnson, Dan Gibson, Harry Caudill, Everett Akers, Eula Hall, and those others who risked all to protect their families and neighbors, their homeplaces and their children’s futures, by adequately funding and demanding compliance with the requirements of the 1977 law in each state and each tribal nation.

Cordially,

/s/

Tom FitzGerald

Director

Kentucky Resources Council

# WIND ENERGY AND THE SUMMER DOLDRUMS

By Brad Stephens

Massive wind turbines now stand upon numerous ridgetops in central Appalachia, and despite the sluggish economy and uncertainty as to whether certain federal tax incentives for renewables will continue, proposals for new wind projects in the region continue to emerge. Setting aside the various detrimental impacts to wildlife, viewsheds and nearby residents of “industrial” or “grid-scale” wind facilities, one is pressed to ask what we have gotten in return in terms of capability to generate electricity or to offset emissions from conventional power plants using fossil fuels. The latter consideration is beyond the scope of this article, but a brief look at generation statistics from this summer reveals industrial wind’s scant contribution to the grid during peak demand for electricity in the region.

Following the passage of the federal Energy Policy Act of 1992 and the issuance of several orders afterward by the Federal Energy Regulatory Commission, PJM Interconnection, a “power pool” for various electric utilities since 1927, was christened a regional transmission organization (“RTO”). As an RTO, PJM coordinates the transmission of electricity and manages a wholesale power market across all or parts of 13 states and the District of Columbia. Over 60 million people reside within the PJM region, which encompasses all of Pennsylvania, West Virginia and Maryland, as well as most of the state of Virginia.

The major electric utilities serving end-use customers in the region all have membership in PJM, and many of these entities or their corporate parents also participate in PJM as “transmission owners” which retain ownership of their high-voltage power lines, yet which have transferred “functional control” of those lines to PJM. PJM plays many roles as an RTO, but key in this context is its function in balancing the output of electricity from generating units connected to its grid with the demand for electricity of customers within its territory (the latter often referred to as “load”). Once on the transmission grid, power generated in West Virginia, for example, becomes indistinguishable from electricity generated elsewhere, so PJM’s balancing act is generally performed without regard to state lines.

During the summer, peak load for PJM tends to occur in mid to late afternoon, when high temperatures prompt a surge in the use of air conditioning. Saturday, July 7 of this year is an excellent example of this phenomenon, as temperatures that day hit 100°F across most of the PJM footprint, including in Morgantown, West Virginia. For the hour ending at 5:00 p.m. Eastern time on July 7, PJM recorded an official all-time Saturday peak load of 147,905 megawatts (MW). Based on actual observations available on PJM’s online eData system that day, a comparison of customer load and aggregate wind generation (including every wind energy facility in service at the time in PJM) appears below:

Time	PJM Load	Wind Generation
4:00 p.m.	147,984 MW	299 MW
4:45 p.m.	148,369 MW	767 MW
8:00 p.m.	134,605 MW	408 MW

During this span of four hours of record heat, the contribution of wind energy facilities in PJM to customer demand never exceeded 0.57% of that figure. Peak aggregate wind generation for July 7 reached only 1,712 MW, and not until 11:53 p.m. Eastern time, well after load had receded substantially from its late afternoon apex. Adam Keech, Director of Dispatch for PJM, reported that, although some baseload generators, such as large coal-fired and nuclear units, had to scale back somewhat on output due to operational and environmental temperature constraints during the afternoon of July 7, PJM ran 16,000 MW of combustion turbines (most running on natural gas) to handle the peak. As on many summer days in PJM, on July 7 wind energy made no meaningful contribution to mitigating dependence on fossil fuels to generate electricity.

Wind energy performance in PJM on the afternoon of July 7 is particularly significant when compared to the total generating capacity of wind energy units in PJM. As of January 31, 2012, 5,230 MW of wind energy capacity was in service in PJM. Even taking into account that some turbines could have been out of service for maintenance on July 7, the facts remain that actual wind generation in PJM remained between only 5% and 14% of total wind capacity during the hours of greatest customer demand, and never exceeded 33% of total wind capacity that day. At 11:00 am EDT on July 9, total wind generation in PJM actually went *negative* (to -8 MW), while the customer load in PJM at that time was 127,654 MW. One can only assume that at this point in time the aggregate “parasitic load” of wind units in PJM (the power needed to run the pitch and yaw mechanisms inside the turbine’s nacelle and other equipment on-site) exceeded any actual output by that amount.

Yet, sharp drops in aggregate wind generation in PJM are not limited to the summer. Although total wind output in PJM hit 4,403 MW on March 9 of this year (comprising 84% of total wind capacity in the RTO), the consistency with which aggregate wind output converged on zero this year, as shown in the table below, is remarkable. In addition, different days during the same month can produce widely disparate results, even at the same time of day, as seen in statistics for the month of February.

(Continued on the next page)

## MORE TIME IN THE DOLDROMS (Continued from previous page)

Month	Date/time (ET)	Peak wind generation	PJM load	Date/time (ET)	Low wind generation	PJM load
Feb	2/24/12 15:00	4095	97157	2/5/12 15:00	64	88319
Mar	3/9/12 4:00	4403	74777	3/23/12 16:00	149	87874
Apr	4/10/12 11:00	4217	85065	4/12/12 22:00	206	73984
May	5/28/12 2:00	3129	60952	5/25/12 16:00	102	85385
Jun	6/18/12 17:00	2811	78989	6/23/12 10:00	15	85403

Advances in demand response and time-of-use pricing of electricity promise to reduce peak load in PJM in the coming years, but even quantum leaps forward in energy storage technologies can only do so much to even out the intermittent output from wind energy facilities in the region. Moreover, the evolving “smart grid” cannot compensate for wind energy’s abysmal performance during the dog days of summer. If we are committed to moving away from fossil fuels for the generation of electricity, we will simply have to find an alternative to onshore wind energy in central Appalachia to beat the heat.

*Sources (last accessed August 31, 2012):*

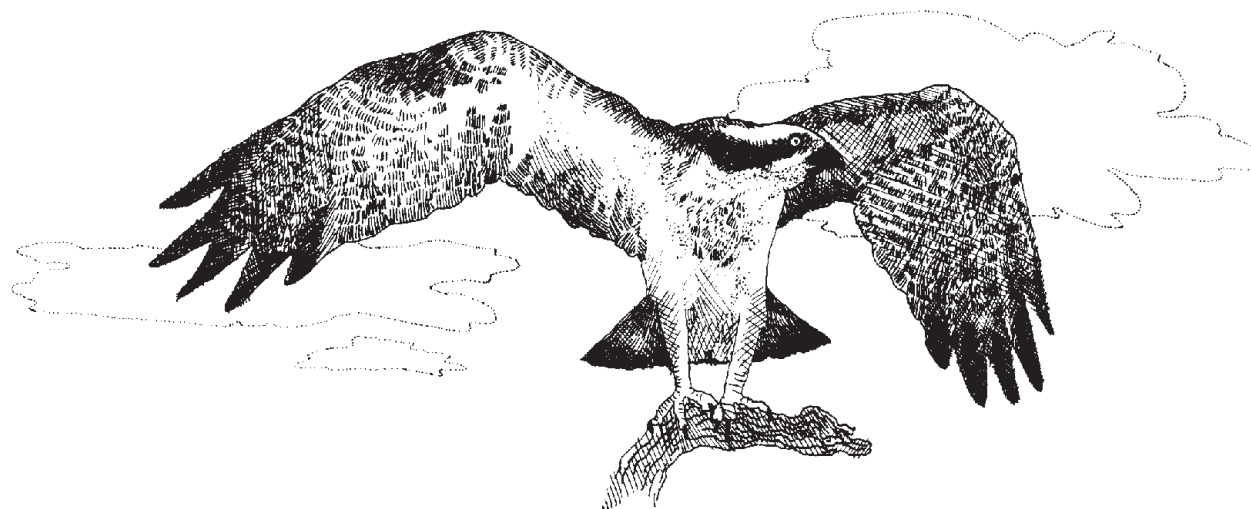
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<https://edata.pjm.com/eData/index.html>*

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**Note: Mr. Stephens is the acting Executive Director of the Allegheny Highlands Alliance. This article reflects his views, but not necessarily those of the organization.**



## ELK HUNTING

By tradition, hunters from my neck of the woods –  
Virginia, Pennsylvania, Ohio and maybe elsewhere  
every few years decide that Eastern white-tail deer  
are no longer worth hunting  
so they buddy up - three middle-aged, overweight guys  
in a late model Jeep Grand Cherokee -  
dress in camo-khaki down to their underwear, load up  
high powered scopes, rifles,  
enough junk food and ammo to wipe out the Taliban,  
and take off hell-bent for Colorado –  
twenty-two hours, stopping only to refuel with gas and coffee,  
empty full bladders and change up drivers.

Their plan – to get an elk – or at least some mule deer –  
drink all the Coors and Beartooth brewed in Colorado,  
and return home five days later – unwashed, unshaven,  
Jeep littered with candy wrappers, paper cups,  
empty cans, and caked with mud from when a stampeding herd  
of bison – spooked by a mountain lion  
the men had been stalking – drove them clear across a roiling  
muddy river.

They would have shot the lion too – they swore –  
if only Tobin hadn't tripped on his shoelace,  
untied because his feet were sweating  
and he was convinced he would get jungle rot  
if he didn't air them out.

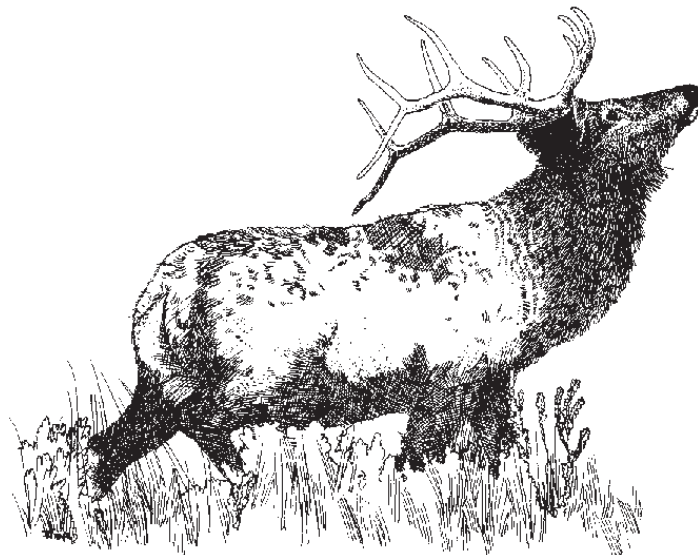
So when John, recovering from his second heart attack in two  
years,  
said he wanted to go elk hunting in Colorado,  
his girlfriend, Sally, said *no way in hell was he going without her*  
to make sure he didn't overdo it.  
They argued back and forth for the better part of two weeks  
but it was clear – if he wanted a place to come back to –  
he'd have to give in, even though he was mortified and felt like a  
total wuss  
and didn't know what he would tell the guys at work.

Well all of this and the slower rate of travel necessitated  
by Sally's insistence that they stop at restaurants for meals  
and before dark at a decent motel, then have a healthy breakfast  
meant three days to Colorado – nearly the end of hunting  
season,  
by which time most of the deer and elk were wise to the behemoths  
in camo carrying fire sticks  
and had taken off for Long's Peak where all they had to contend  
with  
were camera happy tourists.

After a day of roaming in what seemed to be a deserted forest –  
trees as sparse as game –  
John, a cross-bow hunter, spotted an elk munching its way  
through some bracken at a distance.  
He began a slow duck-walk to get within shooting range,  
then just as he got in position  
the elk lifted its head – huge rack of antlers – and lumbered behind  
a tree –  
head and shoulders on one side, patchy brown rump on the  
other.  
John took careful aim – dead center - hit the tree –  
and Sally swears she heard the elk snicker.

But I personally am not convinced. Sally is deaf in her left ear  
– and notorious for misinterpreting sounds.  
She almost shot her neighbor's yowling cat –  
thought it was a coyote attack on her sheep.  
And lately she's been reading Saki: a cat spills family secrets, a  
woman  
in an otter's body wrecks havoc –  
which only serves to strengthen her imagination  
and belief in animal intent.

Linda J. Himot



## MORE ABOUT COAL MINES AND LINE DRAWING (Continued from p. 3)

The Guidance in this case tells the states how they have to make these adjustments in effluent limits. The Court ruled that deciding if there is a “reasonable potential” to cause violation of water quality standards is a state function. In telling states how to do it, EPA had stepped over the line.

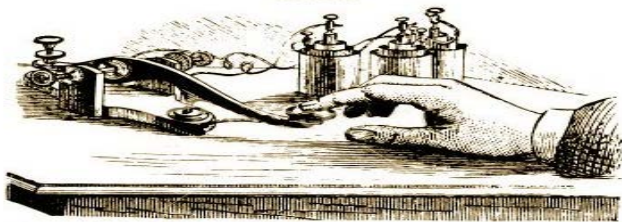
In deciding whether or not the EPA had stepped over the line, the Court expressed no opinion on where the line should be, whether coal mining was over regulated or under regulated, or anything other than where the line is. It specifically said:

The Court is not unappreciative of the viable interests asserted by all parties to this litigation. How to best strike a balance between, on the one hand, the need to preserve the verdant landscapes and natural resources of Appalachia and, on the other hand, the economic role that coal mining plays in the region is not, however, a question for the Court to decide. In this litigation, the sole inquiry for the Court is the legality of the Final Guidance, and, for the reasons set forth above, that inquiry yields the conclusion that the EPA has overstepped its statutory authority under the CWA and the SMCRA, and infringed on the authority afforded state regulators by those statutes.

So the battle continues. The coal industry seeks to keep EPA at a distance, remaining regulated by the state officials who are more understanding of the needs of the industry. Citizens seek vigorous enforcement; given the political power of the coal industry in West Virginia, such enforcement will not come without a diligent EPA. Because of the dual authorities in the federal Surface Mining Control and Reclamation Act and the federal Clean Water Act, there will be more skirmishes over where the line is.

### 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



## CYNTHIA D. FINISHES UP (Continued from p. 2)

who check it often are continually finding out its new and useful features.

Do these activities affect “The Voice”? No. The Voice remains a cornerstone for presenting our views. We see all these efforts as complementary.

Also, we are getting new clothes! We have ordered polo – style shirts with our logo...as an alternate to the classic tee shirts. And, Oh Baby! Baby creeper suits and toddler shirts, are here! Now our youngest members can proudly proclaim, “I ♥ Mountains---Save One For Me!” The Baby Committee was able to select Organic Cotton too...so the little ones can make two conservation statements in one. Be thinking about sending in photos of your favorite kiddo in new West Virginia Highlands Conservancy gear. Coming soon to the online store.

We will be thinking of the health of babies and more as we co-sponsor a “Water & Wellness” Conference in Morgantown on September 8. And, the Fall Review, “Where the Wind Blows,” is

shaping up to be a weekend event for October 19 -21 at C a n a n V a l l e y State Park. Scheduled speakers include Dr. Trish Miller of WVU’s telemetry study of migrating Golden

Eagles and Kelly Fuller of the American Bird Conservancy; details are elsewhere in this issue of The Voice. We look **forward** to seeing you there!



## West Virginia Highlands Conservancy 2012 FALL REVIEW

October 19-21, 2012  
Canaan Valley State Park (CVSP)

### *Where the Wind Blows*

#### Preliminary Schedule

##### Friday, October 19<sup>th</sup>

- 7 p.m. Evening gathering, Canaan Valley State Park Lodge
- light snacks, presentation: "Telemetric Surveys of Golden Eagles" with Dr. Trish Miller, wildlife biologist, WVU ---

##### Saturday, October 20<sup>th</sup>

- 8:00 a.m. – Birdwalk
- Early morning – Breakfast, walks, committee meetings, etc on your own
- 11a.m. – 2:30 p.m.
  - Meet at Canaan Valley Institute (CVI) -- in nearby Davis, WV
  - Tour and introduction to CVI facilities and property --- trails, research, etc....
  - Lunch at the Conference Center
- 4:00 p.m. – 9:00 p.m. – reconvene at Canaan Valley State Park Lodge for panel discussion, dinner, and second presentation: "Birds and Wind Energy: Federal Laws" with Kelly Fuller, Wind Campaign Coordinator, American Bird Conservancy
- 9:00 - til whenever ..... Socializing as desired....

##### Sunday, October 21<sup>st</sup>

- 8:00 a.m. – Birdwalk
- 9 a.m. – Annual membership meeting CVSP Lodge
  - review of committee work, election of officers and at-large Board members
- 10 a.m. – Annual Board Meeting
- Noon – Lunch and ongoing Board discussions
- 2 p.m. – Adjourn



#### **NOTICE: WVHC ANNUAL MEETING**

Sunday, October 21, 2012

9:00 a.m. – 10 a.m.

Canaan Valley State Park Lodge

#### **ELECTION OF OFFICERS AND AT-LARGE MEMBERS**

**YOU** are invited and encouraged to attend and Participate. Hear brief updates from Committee Chairs about ongoing activities and vote for renewing and new members and officers of your Board of Directors. Better yet, join us for Friday and Saturday as well. [see preliminary schedule on this page]

#### **LODGING FOR THE FALL REVIEW**

CANAAN VALLEY STATE PARK LODGE  
Friday October 19 and Saturday October 20

A block of rooms has been reserved for the Fall Review. To take advantage of the reduced rate for two nights you must call before Wednesday, September 19<sup>th</sup>. So hurry.

To make your reservation, call **1-800-622-4121** (press 1) and mention West Virginia Highlands Conservancy.