



The Highlands Voice

The Monthly Publication of the West Virginia Highlands Conservancy

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GROUPS THREATEN SUIT UNLESS MASSEY CLEANS UP

By John McFerrin

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

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

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

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

Massey has not learned its lesson. Its violations have grown more frequent after the settlement with EPA than they were before EPA brought its enforcement action. The quarterly reports that Massey provides to EPA under the terms of the consent decree show that the Consent Decree had little or no effect on Massey's

compliance with its effluent limitations. Between April 1, 2008, and March 31, 2009, Massey violated its effluent limits at its various operations at least 971 times, and accrued 12,977 days of violation during that 12-month period.

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

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

The relevant mines are located in Boone, Clay, Fayette, Greenbrier, Kanawha, Logan, Marion, McDowell, Mingo, Nicholas, Raleigh, Wayne, and Wyoming Counties of West Virginia.

In press reports following the notice of intent to sue, Massey Energy has said that it is in compliance 99% of the time.



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Unlikely to Ever Be the Same

On the twelfth of January, at the Charleston Civic Center, mining regulators from the Environmental Protection Agency, the Army Corps of Engineers, and West Virginia's Department of Environmental Protection addressed a crowd of more than a hundred coal industry executives. At the relentless urging of fellow Democrats from coal-producing states, the Obama administration was making another attempt to explain itself.

Industry's howls of disbelief had not died down since the EPA announced last year that it would take a closer look at permits for mountaintop removal mines. It appeared that the agency might be intending to enforce the law.

That morning, the EPA's Jeff Lapp recited the Clean Water Act's requirement that stream impacts be minimized and that waters not be "significantly degraded." He said permit reviewers would first inquire about alternative disposal areas. Could the coal operator avoid dumping overburden in streams? Then, reasonably assuming that companies would continue to plan for valley fills—after all, it's much cheaper to push the rock into a hollow than pile it back on top or truck it somewhere else—Lapp said EPA would "sequence" valley fill permits. Further fill authorizations would depend on the results of stream monitoring below any approved fills.

"That may not be a palatable situation from your perspective, but from the agency's perspective, I need to push back a little bit," said Lapp. "Some of the things we're looking for may not blend or mesh with what you originally received permits for." That was a swipe at the profligate permit approvals of the previous administration, but note the qualifier, "a little bit."

Perhaps the most telling remark that morning came from DEP's mining director, Tom Clarke: "Things are unlikely to ever be the same. We don't know quite where things are going to end up, but you can be assured in the future the surface mines that are permitted will be smaller."

The week before, an alarm bell had rung. If heeded—if, indeed, the Clean Water Act and the Surface Mining Control and Reclamation Act were to be enforced as written—the surface mines permitted would shrink to near invisibility.

The alarm came in the form of an authoritative, peer-reviewed paper, "Mountaintop Mining Consequences," published in the journal, *Science*. The collaborative effort of a dozen scientists—biologists, hydrologists, ecologists, and more—the paper concluded, "Mining permits are being issued despite the preponderance of scientific evidence that impacts are pervasive and irreversible and that mitigation cannot compensate for the losses." And just to be sure that the EPA, Office of Surface Mining, Corps of Engineers, and state agencies got the message, the authors added, "Regulators should no longer ignore rigorous science."

That was the promise of the Obama administration. When EPA's Jeff Lapp quoted the requirement that streams not be "degraded" by mining, he was purporting to rely on scientific standards. But the measurements have been done, the standards have been applied, the results are in for the hundreds of mountains and miles of streams that have already been destroyed, and there is absolutely no reason to believe that more mining can make it any better:

Mine-related contaminants persist in streams well below valley fills, forests are destroyed, headwater streams are lost, and biodiversity is reduced; all of these demonstrate that MTM/VF [i.e., mountaintop mining/valley fill] causes significant environmental damage despite regulatory requirements to minimize impacts. Current mitigation strategies are meant to compensate for lost stream habitat and functions but do not; water-quality degradation caused by mining activities is neither prevented nor corrected during reclamation or mitigation.

The connection between damage to the natural environment and impact on human health is being made in a series of studies by one of the *Science* paper's co-

(More on p. 7)

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THE KENNEDY-BLANKENSHIP DEBATE: THE REST OF THE STORY

By Cindy Ellis

The recent debate between Robert Kennedy, Jr. and Don Blankenship was a much anticipated event. Probably you've had a chance to see it online or read about it. When asked about attending as a ticketed guest, I dashed off these brief recollections:

1. One of the first things I saw was a large canopy tent...but it proved to hold state police and not a pro-coal crowd.
2. I hung around the university's main building lobby and saw people trickle in to pick up tickets from the table manned by Waterkeepers [Mr. Kennedy's environmental group]. Young people who appeared to be activists swept past talking excitedly and optimistically.
3. I went to the car to stash my purse after hearing that none would be allowed. I saw one miner in reflective-tape gear.
4. The university had large neat directional signs placed at frequent intervals.
5. People gathered near the tent and auditorium door; the door opened promptly at 5:00. There were a few buttons (Stop Mountaintop Removal!) and lapel pins (Friends of Coal), but most folks were plain in dress and manner.
6. Like everyone, I held car keys at length, both arms out while I passed through security and was "wanded" twice.
7. Security officers announced that no one would leave the auditorium after entering. If they did, they would not be permitted to re-enter.
8. University Security seemed edgy and serious as they shepherded people to their seats. Those who came a bit later had slightly more latitude, but earlier ones of us were escorted and told to fill in rows in order.
9. I happened to sit behind former WV Secretary of State Ken Hechler. Individuals kept coming over to greet him.
10. Bill Raney, President of the West Virginia Coal Association, came in on crutches and tried several rear seats before choosing one.

11. I saw persons I recognized from OVEC, the WV Environmental Council, Coal River Mountain Watch, Sierra Club, Kanawha Trail Club and Brooks Bird Club, and I believe I saw these WV or Charleston-area politicians: Betty Ireland, Todd Kaufmann, Kent Carper, and Truman Chafin.
12. Just before the speakers entered, State Police and others who appeared to be security officers took up stations flanking the stage.
13. Don Blankenship brought, and referred to a bottle of water that he said was clean runoff from a mine site. Some in the audience murmured, "Drink it," but he did not.
14. Blankenship remarked that he had spent most of the month of December in China.
15. Blankenship thanked those who had been praying for him in preparation for this event and Kennedy noted that Catholic officials in WV had declared mountaintop removal a sin.
16. Debate attendees with tickets were easily able to park and walk to and from the debate hall in safety.
17. Who won? One choice is The University of Charleston for its sponsorship of civil debate.



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

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

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

Permit Application Number S300609

MOUNTAIN TOP REMOVAL THREATENS KANAWHA STATE FOREST

By Julian Martin

Keystone Industries has applied for a mountain top removal mine permit for 600 acres just across the creek and a little over 300 feet from the border of Kanawha State Forest. The permit boundary starts across the road from the gate to Middle Ridge road and runs past the shooting range. If approved this mine will dump over two million cubic yards of mine waste into Middle Lick Branch and Kanawha Fork; both are tributaries of Davis Creek. Mining is expected to last five years. Tom Scholl of Ft. Myers, Florida owns Keystone Development.

Keystone is asking for seven variances of the strip mine laws. One variance request is to change the post mining land use from forestland to a combined use of industrial/commercial and forestland. Industrial and commercial land use three hundred feet from Kanawha State Forest! This led one critic to wonder if that means a Taco Bell or other big mall lights shining into Kanawha State Forest. Could it mean a factory across the creek from the Forest?

WHAT PEOPLE ARE SAYING

Nearly 200 comments were sent by Kanawha State Forest Foundation members and others to the West Virginia Department of Environmental Protection. Here are some excerpts from those comments:

"I am concerned about losing the quality of the outdoor experience. Already mining is visible from some of my favorite trails...from time to time a loud boom or explosion breaks into my meditative state.... Part of this outdoor experience for many people includes Davis Creek. Any degradation to this water course would be detrimental to the whole of Kanawha State Forest."

"Nearly 400,000 visits from WV taxpayers occur in KSF yearly."

"The Kanawha State Forest is one of our greatest assets in bringing people back to West Virginia to live and work. Allowing this permit revision to go through will impact the one last draw the city has for residents and tourists."

"If we continue to add to the ugly, black and polluting aftermath of mountain top removal, what tourists would want to come here with their families?"

"While the physical MTR site isn't within the KSF, the impacts of the cleared land and desolation that would be left by this site will impact the ecosystem within the KSF for generations to come."

"Imagine a small child playing in Davis Creek, as I saw several times this summer while hiking. What is he being exposed to as a result of contaminated water from mine run-off?"

"My father grew up on a farm beside your site. I'm sure he's raging in the grave to think of what you're doing to rape the countryside."

"In recent years, the residents of this area experienced devastating flooding. Depositing this waste into these creeks could increase the potential for flooding and endanger residents and their property."

"Kanawha State Forest has been described as a botanist paradise....To see the lovely Cerulean Warbler that finds a haven in that Forest is an especial delight... Kanawha State Forest provides fun, nature study and solace for me, my children, my grandchildren and now my great grandchild. It must not be despoiled."

"I love that within minutes of being in downtown Charleston I can enjoy the quiet solitude, beautiful scenery and be deep in the hills, mountains and trees of Kanawha State Forest."

"What a jewel we have and we just can't afford to let it slip away."

"... there has to be a line drawn at some point and Kanawha State Forest is it...this is a disgrace."

Over 100 commenters have requested a public hearing on this permit. Stay tuned for the date and time for that hearing.

WHAT YOU CAN DO

Please contact your Legislators, Governor and Congressional delegation and anyone else who may help protect Kanawha State Forest.

Legislators-- 304-347-4836 cglagola@mail.wvnet.edu (Put name of legislator in subject box).

Legislator's contact info also at <http://www.legis.state.wv.us/Contact/capmail.cfm>

Governor 1-888-438-2731 304-558-2000 Email on line at www.state.wv.us/governor/

Senator Byrd senator_byrd@byrd.senate.gov 304-342-5855 or 202-224-3954

Senator Rockefeller senator@rockefeller.senate.gov 304-347-5372 or 202-224-6472

Congresswoman Capito 304-925-5964 or 202-225-2711,



SOME NATURAL HISTORY OF DOLLY SODS

By Walt Lesser

I read with interest Bruce Sundquist's article "The End Game for The Sods and The Plains as We Know Them" in the December, 2009 issue of *The Highlands Voice*. Bruce did an excellent job of describing the natural succession of vegetation that has taken place in this area since the late 1960's. He also talked about the effects of vegetation changes on the experiences of hikers/backpackers, including the loss of spectacular views. Bruce expressed interest in hearing from others; hence the following.

My experience with this area began in the late 1950's as a Department of Natural Resources wildlife biologist and grouse hunter -- covering much of the area following English setter pointing dogs. While my sporting interest was the pursuit of ruffed grouse and woodcock, I planned my "hikes" to take in the spectacular sights this country offered. I also took note of vegetation in my travels because certain types would likely reveal the birds sought, and as a biologist, was generally interested in vegetation as a component of wildlife habitat. I recall the pleasure of finding balsam fir in the Big Stonecoal Run drainage and checking the bog edges, not only for grouse, but also for a tasty cranberry break.

In the early years, the entire area, including the National Forest portion, was open range for grazing sheep and cattle. This grazing contributed much to keeping the "Sods" in open condition. There is anecdotal evidence that the "Sods" area was burned over by Native Americans and then later by Civil War soldiers. These activities, along with the logging and subsequent fires of the early 1900's, created the ecological scene that made this area so unique.

When the "Sods" were initially proposed for Federal wilderness designation, I thought it would eventually mean the end of this area as we knew it -- including the loss of the very characteristics many of us so treasured. DNR biologists familiar with the "Sods" recognized the progression of natural succession that would take place, and expressed their thinking at various meetings.

Prior to efforts made to include this area in the National wilderness system, we worked on means of maintaining early successional habitat by use of prescribed fire. There was a cooperative meeting between the Forest Service and DNR that included a prescribed fire seminar. Dr. Gene Wood, of Penn State led the occasion and toured the "Sods" with us concerning the possible development of burning plans. The objective of these plans was to be maintenance of blueberry plains and habitat improvement for wildlife species that require early successional habitats.

A primary species of concern was the Snowshoe or Varying hare and its need of low dense evergreen winter cover for survival. This is especially important since this area is at the southern extreme

of its range of distribution, and snow cover is not always present when hares turn white. As an example, conifer plantations in the 1960's still afforded vegetative winter cover close to the ground and hare populations were thriving on the "Sods" during this decade. Today many of these stands of spruce and red pine are just as Bruce described, with open understories -- void of hares and Allegheny cottontails, -- another species requiring the same type of habitat. Natural succession has caused habitat for hares, rabbits, ruffed grouse, blueberries, and myriad of other animal and plant species to deteriorate over time.

We tend to think that this entire area was originally covered with spruce trees, destroyed by logging and subsequent fires. Yet according to historical accounts, parts of Dolly Sods have long been treeless. During the Fairfax Line survey of 1746, Thomas Lewis recorded the following in his journal after ascending the east slope of "Allegheny mountain": "...when we had gained the Summit there was a Level as far as we Could see to Right & left Clear of timber about a Quarter of a mile wide Covered with Large flat Rocks & marshey Tho on the tope of the highest mountain I ever Saw"

David Hunter Strother described and illustrated the area near Stack Rocks about 1854 in "The Mountains" (Harper's Monthly, May 1872) as appearing much like today.

Bruce mentioned the spectacular views that once existed along the Breathed Mountain Trail. I have followed my setters throughout Breathed Mountain prior to construction of the trail and can vouch for the stunning vistas previously afforded by this area.

The Breathed Mountain Trail was originally laid out and constructed by DNR Wildlife Manager Charles Brock and his crew. Charles was the one who saw the need for a marked travel way on this mountain and, after approval of the project, carried out the work. The project's original objective was hunter access. To create this trail, it was necessary for the crew to knap rock across the many rock bars and mark the route with rock cairns through vast open areas. The funding for this work was provided by West Virginia hunters and the Federal Aid in Wildlife Restoration act. Charles also constructed a double span log foot bridge across Red Creek at the mouth of Big Stonecoal Run. Both spans had a bearing point on a large boulder in the center of Red Creek. Forest Service engineers' predicted the bridge would not last a single year!

That bridge was very popular and served the needs of hunters, hikers and backpackers alike for decades. It had to be physically removed when the area was designated a National wilderness area.

No; it isn't the "Sods" we once knew nor will it ever be!



BUMPER STICKERS

To get free *I ♥ Mountains* bumper sticker(s), send a SASE to Julian Martin, 1525 Hampton Road, Charleston, WV 25314. Slip a dollar donation (or more) in with the SASE and get 2 bumper stickers. Businesses or organizations wishing to provide bumper stickers to their customers/members may have them free. (Of course if they can afford a donation that will be gratefully accepted.) Also available are the new green-on-white oval *Friends of the Mountains* stickers. Let Julian know which (or both) you want.



Join Now !!!

Name _____

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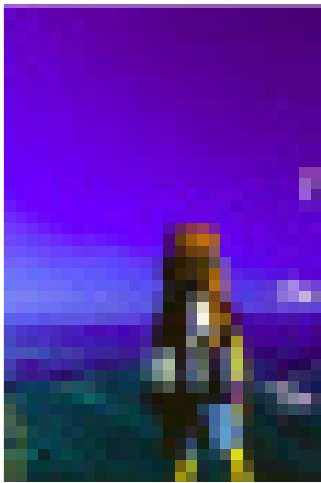
Phone _____ E-Mail _____

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 \$24.95, plus \$3.00 shipping, visit the Conservancy's website, wvhighlands.org, where payment is accepted by credit card and PayPal.
 Or write: WVHC, PO Box 306, Charleston, WV 25321. Proceeds support the Conservancy's ongoing environmental projects.

SUCH A DEAL!

Book Premium With Membership

Although *Fighting to Protect the Highlands, the First 40 Years of the West Virginia Highlands Conservancy* normally sells for \$24.95, we are offering it as a premium to our members. Anyone who adds \$10 to the membership dues listed on the How to Join membership form (right up there) will receive the history book for free. Just note on the membership form that you wish to take advantage of this offer.

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

Voice Available Electronically

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

RESERVE YOUR SPOT NOW
SPRING REVIEW
May 7-9, 2010

**-- celebrate Mothers Day near the home of
Anna Jarvis and the International Mothers Day
Shrine --
Tygart Lake State Park
-- just south of Grafton WV --
www.tygartlake.com**

A variety of **accommodations** are available:

-- 1, 2 and 3 bedroom cabins

-- Lodge rooms

(cost of lodge rooms and cabins range from \$70 - \$137 plus tax/
night so final cost to you may vary depending on number of beds
occupied)

-- Camp sites: tent and trailer, standard and electric (\$21- \$23/
night)

The cabins have fully equipped kitchens and porches overlooking
the lake. Bedrooms have queen or twin beds. Lodge rooms
have two double beds, TV and view of the lake. Free wireless is
available in the lodge lobby, restaurant, conference room and most
lodge rooms.

Food: -- final arrangements haven't yet been made, but --

Snacks will be available Friday night in largest cabin.

Probably: Saturday buffet dinner in the Lodge

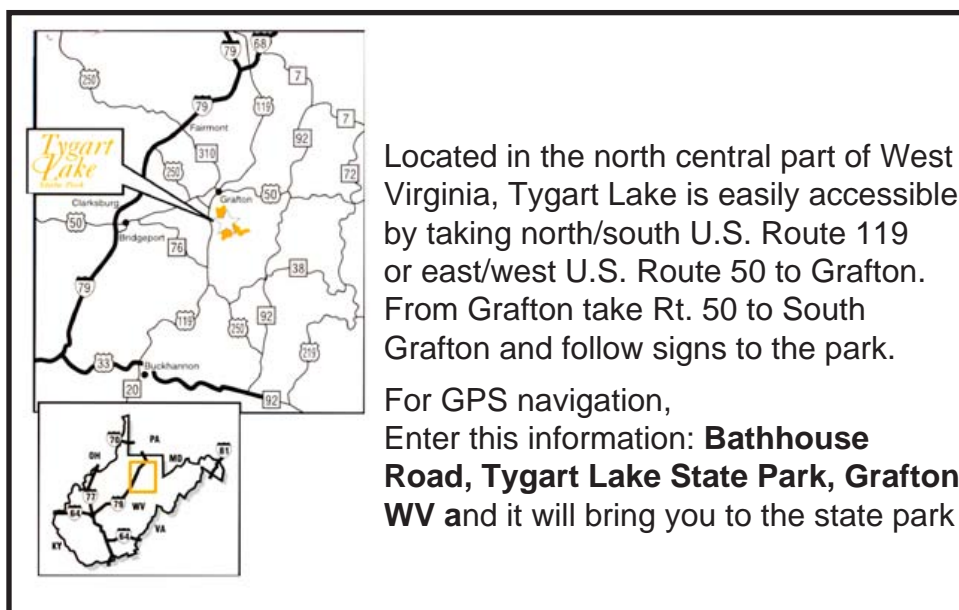
Saturday bag lunches available as needed for day trips

Otherwise, meals are on your own at the restaurant, or in cabins.

Be among the first to sign up

Check with friends about sharing a cabin or lodge room and let us
know your preference --- contact Cindy Rank at clrank@hughes.net
(304) 924-5802 or by snail mail to HC 78, Box 227, Rock Cave,
WV.

[Saturday **programs and trips** include hiking and biking, visit to
Mothers Day Shrine, tour of lake and proposed ICG 6,000 acre
longwall mine area, water quality issues in the Tygart, drilling and
hydrofracing, fishing, etc..... More detail next month.]



Located in the north central part of West Virginia, Tygart Lake is easily accessible by taking north/south U.S. Route 119 or east/west U.S. Route 50 to Grafton. From Grafton take Rt. 50 to South Grafton and follow signs to the park.

For GPS navigation,
Enter this information: **Bathhouse
Road, Tygart Lake State Park, Grafton
WV** and it will bring you to the state park

authors, Michael Hendryx, a researcher at West Virginia University. One determined that residents of coal-mining communities were more likely to suffer chronic health problems; another considered the cost of increased mortality in those communities. It concluded, "The human cost of the Appalachian coal mining economy outweighs its economic benefits."

Put another way, "Coal generates inexpensive electricity, but not as inexpensive as the price signals indicate because those prices do not include the costs to human health and productivity, and the costs of natural resource destruction."

Even as the evidence continued to accumulate; even as the regulatory agencies paused, dithered, and pinched a few mines to reduce their impacts; there came another report, a week after the Charleston meeting, laying out the numbers on what we might call "peak coal."

Rory McIlmoil and Evan Hansen of Morgantown-based Downstream Strategies, using statistics from the Department of Energy and other public sources, showed that Central Appalachian coal production had declined 20 percent since 1997—and was likely to drop another 50 percent by the end of this decade. And that projection did not take into account the potential effects of new climate change legislation, or the promised stricter enforcement of existing laws on mountaintop removal.

The factors driving this decline include competition from other coal-producing regions, rising interest in natural gas and renewable energy, and the depletion of Central Appalachia's best reserves. Co-author Rory McIlmoil explained in this January 19 post on Ken Ward's "Coal Tattoo" blog:

[Wyoming's] Powder River Basin is gaining a greater share of national coal production every year, and as a source of low-sulfur coal, has been serving as an alternative to the higher-priced Central Appalachian coal. If coal producers in Central Appalachia could have prevented that by mining the coal at pre-2000 prices, they probably would have done so. Instead, the price of Central App coal has doubled in only eight years. That is the problem described in the report. The remaining coal, from year to year, has been more costly to mine, and projections show that this will continue to have a negative impact on coal production in the region, so much that production may be halved within the next decade . . .

Diversify! diversify! diversify! was the strategists' point: counties (and states) dependent on coal must diversify their energy production and their broader economies NOW, and not because of any "war on coal" but because of coal's approaching demise.

Depending on your point of view, these events set the stage for or overshadowed the Kennedy-Blankenship debate on January 21st. The aforementioned reporter/blogger Ken Ward was unenthusiastic: he heard nothing new or enlightening from the speakers. Others would argue that the point was to reach a wider audience. We'll see about that.

By the way, I should say the real news about coal, day to day and year to year, appears, usually first and often exclusively, on "Coal Tattoo." For instance, that January 12 meeting: "The event was planned as a private meeting for industry," he wrote, "but after word of it was made public some other folks (myself included) showed up." Count on Ken to show up. And to put what he hears in perspective.

As I write this, a week after the debate, "Coal Tattoo" has news that EPA is considering whether to undo the Bush Administration's changes to the definition of "fill material" in Clean Water Act regulations. Another game-changer? Or just a trial balloon? It's hard not to hang on every word, every tip, because the story is so important. For those who live in the coalfields, it's a matter of life and death. This industry could pull everything down with it.

West Virginia Mountain Odyssey



Outings, Education and Beyond 🇺🇸

Sunday, February 7: Gateway to the Refuge –Animal Tracking, 10 am at White Grass. This very popular event, led by Refuge Wildlife Biologist Ken Sturm, will give you information needed to figure out what critters make all those impressions in the snow. Contact White Grass at (304) 866-4114 for more information.

Saturday, February 13: Winter Bird Walk, 8 am at the Wildlife Refuge Visitor Center, led by Volunteer Casey Rucker. This walk will take place during the Great Backyard Bird Count, a national volunteer effort to compile a snapshot of bird observations in one weekend. Our walk will include an introduction to the GBBC and encourage participants to take part in the effort. Contact the Refuge at (304) 866-3858 for more information.

Sunday, February 14: Carefree Snowshoe Tour, 1pm at White Grass. Your chance to appreciate the simple beauty of snowshoeing. Natural history and local lore are featured. Led by naturalist Dave Saville. Contact White Grass at (304) 866-4114 for more information.

Saturday, February 20: Valley Vibes - South Africa through the Eyes of a Wildlife Biologist, 7 pm at the Canaan Valley Resort State Park lodge. Presented by Refuge Biologist Ken Sturm. Contact the Refuge at (304) 866-3858 for more information.

Sunday February 21: Gateway To The Refuge - Geology of Canaan Valley and the West Virginia Highlands, 10 am at White Grass. Ski or Snowshoe trek led by Geologist Barnes Nugent of the West Virginia Geologic Survey. Barnes will discuss the unique geology of the area and how it affects the plants and animals that live there. Contact White Grass at (304) 866-4114 for more information.

Saturday, March 13: Winter Bird Walk, 8 am at the Wildlife Refuge Visitor Center. Led by Volunteer Casey Rucker. Contact the Refuge at (304) 866-3858 for more information.

Saturday, March 20: Valley Vibes - Woodcock and Constellations, 7 pm at the Wildlife Refuge Visitor Center. At dusk, check out the mating ritual of this inland shorebird with no neck. Then when darkness falls, learn the legends of, and find some of, our spring time constellations. Led by Refuge Naturalist Jackie Burns. Contact the Refuge at (304) 866-3858 for more information.

Saturday-Monday, April 24 to 26, 2010. Triple Crown of VA (modified). 24 mile strenuous shuttle backpack on the AT with great views from McAfee Knob, Tinker Cliffs and Hay Rock Overlook. Average daily mileage approximately 8.0 miles. contact Mike Juskelis at 410-439-4964 or mjuskelis@cablespeed.com.

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

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

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

Saturday-Monday, July 10 to 12, 2010. Cranberry Wilderness Backpack, MNF, WV. 18 miles total. Hike in 5 miles and set up camp at Big Beechy Falls. On the second day we'll climb steeply up to the plateau, hiking about 10 miles. Extra water will be required for that

day. The final day will be an easy 3 miles back to the cars. Pre-registration required. Contact Mike Juskelis at 410-439-4964 or mjuskelis@cablespeed.com.

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

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

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

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

TENMILE AND TENNESSEE — COAL ASH COMPANIONS

By Cindy Rank

Since the massive coal ash spill at Tennessee Valley Authority (TVA) power plant in Kingston TN on December 22, 2008 all eyes have been on the EPA to see what Lisa Jackson and the Obama administration will do about coal combustion waste (CCW).

In Tennessee cleanup continues on the Emory and Clinch Rivers, and the 300+ acres of homes and farmlands that were inundated with the toxic ash released when the Kingston impoundment broke. Trainloads of the ash are now being taken to Alabama where the waste is being placed in lined solid waste disposal site, but it has been reported that the moisture content of the ash has overwhelmed the leachate system and is causing additional problems. - But that's another story for another day.

What does this have to do with the 2,000 acre mine site in Upshur County perhaps best known to readers of *The Highlands Voice* as the Island Creek/Enoxy Tenmile Complex on the Buckhannon River?

Over twelve years ago (1995-6) we found ourselves engaged in conversation and debate with and finally challenging ANKER energy about the company's proposals for using coal ash at the Tenmile strip mine site in Upshur County.

Two thousand acres of mined and reclaimed lands sat constantly generating acid mine drainage when John Faltis took over the site. These new owners wanted to mine more of the acid producing coal seams, build a power plant on site to burn the coal together with the really toxic refuse from the impoundment, then to mix the highly alkaline coal ash waste from the power plant together with the rock that had been removed to expose the coal and use it as 'backfill' in reclaiming the new mining.

Fortunately, many factors conspired to limit the proposed activity to a small test site somewhat hydrologically separate from the previous mining. Additional mining has not taken place and further plans for power plants or other industrial facilities at the site have faded from view – at least for the time being.

Unfortunately, the practice of mixing coal ash (coal combustion waste – CCW) in the backfill at similar strip mines in Northern West Virginia (and elsewhere) has not faded.

Minefilling with Coal Ash

Since the early 1980's there have been numerous studies and reports (including one by the National Academy of Sciences in 2006) and congressional committee discussions about the nature and regulation of coal combustion waste, whether or not it should be designated as "hazardous" and regulated as such.

As these discussions waxed and waned with political changes in Washington, disposing of combustion waste (CCW or the coal ash, scrubber residues and boiler slag that result from the burning process) has always been a part of doing business for electric utilities that rely on coal as a fuel source and regulating that disposal was pretty much left to the individual states.

The major failure of the ash structure at Kingston, TN shed light on the dangers associated with the many huge ash impoundments that exist near coal burning power plants (many of course in WV), and has once again focused the attention of EPA and some members of Congress on the task of determining the appropriate designation and regulation of this waste product.

More difficult to see is the simmering danger to the environment posed by many of the "beneficial uses" of CCW. These lesser known disposal practices are often touted as 'recycling' the coal ash waste

by using it as a component in drywall, wallboard, road surfaces, bricks, minefilling (as was planned for Tenmile).

Earlier in 2009 both Earthjustice and the Environmental Integrity Project (EIP) issued reports suggesting minefilling with CCW was more harmful than the "beneficial" label might imply.

Minefilling in Pennsylvania was highlighted in one of those reports. [Curiously enough the newly appointed Director of the Office of Surface Mining Reclamation and Enforcement (OSMRE or OSM) came to the federal agency from the state mine regulatory program in Pennsylvania where citizens and environmental groups have been particularly critical of Mr. Pizarchik for his support of the use of coal ash/CCW in backfilling mine sites in PA.]

West Virginia

And now, a January 28, 2010 article in the State Journal indicates that "North-Central W.Va. is Ground Zero for Surface Mine Coal Ash".

In fact, though Pennsylvania has more minefill sites, they are spread out between both western and eastern PA. The WV sites are mostly concentrated in three counties (Monongalia, Marion and Preston).

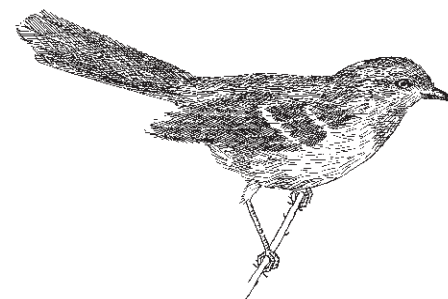
Rather than the highly alkaline ash neutralizing the pyritic, acid producing rock in the backfill as we were promised at Tenmile, Jeff Stant of EIP cited research showing that the chemical interactions between the two types of materials actually create conditions ideal for leaching heavy metals from the ash. (A 2005 report we referred to in a *Voice* article last January 2009 indicated high levels of several toxic metals downgradient in surface and groundwater at two sites in Preston County.)

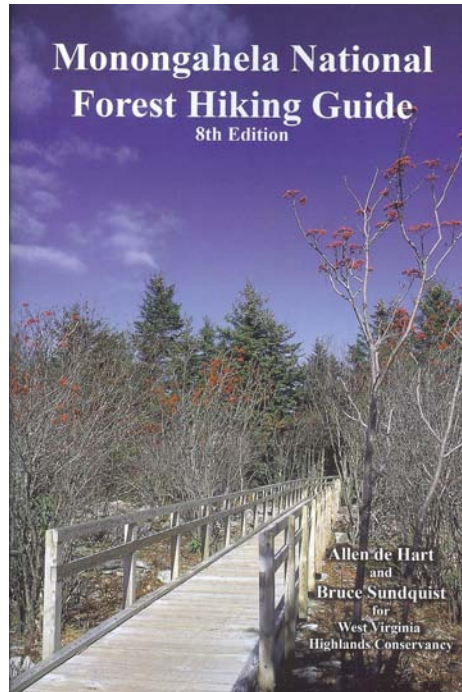
The State Journal article goes on to talk about citizen objections currently being made to two recent draft mine permits that will incorporate coal ash waste from the nearby Hatfield's Ferry, Fort Martin and the new Longview power plants.

Both mine permits are in the Monongahela River watershed and both have the potential to add more total dissolved solids (TDS) to the already tenuous condition of the Mon River – especially during periods of low flow similar to those in the fall of 2008 when TDS levels caused problems for industry along the river as well as for the hundreds of thousands of people who rely on the Mon for their drinking water.

Add to that scenario the conditions in Dunkard Creek not far downstream where existing TDS problems helped kill some 40 miles of aquatic life in that once thriving stream and we have the makings of another perfect storm.

A decision to designate coal ash/CCW as the "hazardous" waste that it is cannot come soon enough.





The Monongahela National Forest Hiking Guide

By Allen de Hart and Bruce Sundquist

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

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

New 8TH Edition Now Available on CD

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

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

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

Price: \$20.00 from the same address.

HATS FOR SALE

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

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

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

Pictures of both appear on our website www.wvhighlands.org. Both are soft twill, unstructured, low profile with sewn eyelets, cloth strap with tri-glide buckle closure. Cost is \$15 by mail. West Virginia residents add 6% tax. **Snowman not included.** Make check payable to West Virginia Highlands Conservancy and send to Jaames Solley, P.O. Box 306, Charleston, WV 25321-0306



Fashion photographer Cindy Ellis

T- SHIRTS

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

West Virginia Seed Source Red Spruce and Balsam Fir Seedlings for Sale

A Chance for You to Have Your Voice Heard

U.S. FOREST SERVICE REVISING LAND MANAGEMENT PLANNING RULE

By Marilyn Shoenfeld, Public Lands Committee Chair

The Forest Service is soliciting comments from the public and is giving notice of its intent to prepare an environmental impact statement (EIS) to analyze and disclose potential environmental consequences associated with a National Forest System land management planning rule. The Agency is required to revise land management plans every fifteen years. Most of the 127 land management plans in the USFS are out of date and in need of revision. So the Agency urgently needs to establish a planning rule that protects, reconnects and restores national forests and grasslands for the benefit of human communities and natural resources.

The Notice lists several substantive principles for a New Rule:

1. Land management plans could address the need for restoration and conservation to enhance the resilience of ecosystems to a variety of threats, such as climate change.
2. Plans could proactively address climate change through monitoring, mitigation and adaptation, and could allow flexibility to adapt to changing conditions and incorporate new information.
3. Land management plans could emphasize maintenance and restoration of watershed health and could protect and enhance America's water resources.
4. Plans could provide for the diversity of species and wildlife habitat.
5. Plans could foster sustainable NFS lands and their contribution to vibrant rural economies.

The Notice also lists process principles:

1. Land management planning could involve effective and pro-active collaboration with the public.
2. Plans could incorporate an "all-lands" approach by considering the relationship between NFS lands and neighboring lands.
3. Plans could be based on the latest planning science and principles to achieve the best decisions possible.

There are specific questions associated with each principle that can be answered in comments. In order to access the entire notice go to: <http://edocket.access.gpo.gov/2009/pdf/E9-30174.pdf>. This should take you to the appropriate page. An alternative is to google "Federal Register/Vol. 74, No. 242 67167. Comments may be sent via email to fspr@contentanalysisgroup.com or mailed to Forest Service Planning NOI, C/O Bear West Company, 172 E. 500 S, Bountiful, Utah 84010. Please take a few minutes and participate in this opportunity to comment. It may not come around again for at least fifteen years.

The West Virginia Highlands Conservancy continues its efforts to conserve and restore the High Elevation Red Spruce/Balsam Fir Ecosystem in the West Virginia Highlands. Our restoration program has resulted in over 100,000 trees planted in the highlands so far.

Once again in 2010 we are able to provide high quality seedlings grown from seed collected locally by Highlands Conservancy volunteers. All proceeds go to support red spruce ecosystem restoration efforts in West Virginia.

Seedlings for Spring 2010

Red Spruce

12-18 inches, these 2 year old seedlings are grown in a 2 inch plug 6 inches deep. Available no where else, these are the same trees we have been using in restoration projects very successfully for many years.

Spring 2010 Price for Red Spruce

100 - \$205

1,000 - \$1050

Canaan Valley Balsam Fir

12-18 inches, these husky trees, are a 1 year plug grown in a transplant bed for 2 additional years.

Spring 2010 Price for Balsam Fir

100 - \$205

Flexible delivery dates during April 2010. Availability is very limited - order early!
Minimum order 100.

For more information, or to place an order, visit our website at:

www.wvhighlands.org

or contact:

Dave Saville

PO Box 569

Morgantown, WV 26507

304-284-9548

304-692-8118 cell

daves@labyrinth.net

Speakers Available !!!!!

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

GAS WELLS: PROBLEMS ALL AROUND

By Beth Little

Beyond all the other environmental issues involved with horizontal gas wells on Marcellus Shale, such as water pollution from fracking and air pollution from heavy truck traffic, remain the serious air quality issues related to compressor stations and flaring.

This may help explain reports of gas odors from the area around New Milton, west of Clarksburg. Natural gas (methane) is odorless, but odor is added to serve as a warning in case of leaks. (Most of this information is from <http://www.marcellus-shale.us>)

Compressor Stations

Once gas wells are producing, next come the gas lines, and compressor stations to move the gas. Whether it's the adverse effects of one compressor station, or the cumulative effects of many, the town of Dish, Texas has become the poster child for these air quality issues.

One university expert, Al Armendariz, whose study was backed by Texas state officials, has indicated that air pollution created by Barnett Shale gas drilling and production in Texas is equivalent to all the air pollution created by vehicular traffic in Texas. Similar reports out of Colorado have shown a link between gas production activities and haze.

The air quality issue in Dish became severe enough that the town commissioned a thorough study of local air quality. You may listen to NPR story on air quality and noise issues in Dish, Texas:

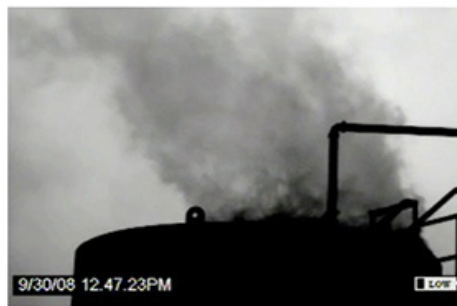
<http://www.npr.org/templates/player/mediaPlayer.html?action=1&t=1&islist=false&id=120043996&m=120043986>

Methane Leaks

There is also the possibility of methane leaks. Below is a photo showing such a link. To see a video of a compression station in Texas, to <http://www.youtube.com/watch?v=tDMeDhxqkbl> First you see what looks like clear blue sky taken with regular camera; then you see what was taken with FLIR camera:

Flaring a Gas Well

After a Marcellus gas well is drilled and hydraulically fractured, open flaring is often used to test production of the well. The EPA and WV DEP do not currently monitor or enforce any air quality regulations



Photographs by the U.S. Environmental Protection Agency

To the naked eye, no emissions from an oil storage tank are visible. But viewed with an infrared lens, escaping methane is evident.

around Marcellus Shale natural gas wells and facilities, since drillers are **exempt from the Clean Air Act**. Important environmental oversight was removed by Congress in the 2005 Federal Energy Appropriations Bill, which also includes additional exemptions from the **Clean Water Act, Safe Drinking Water Act and CERCLA**.

A large number of pollutants are released into the air during the flaring process, making it an undesirable practice. Included in these airborne pollutants are the chemicals used to frac the well, as well as any of 5-dozen other pollutants including the following: **acetaldehyde, acrolein, benzene, ethyl benzene, formaldehyde, hexane, naphthalene, propylene, toluene, and xylenes**.



THE BETTER WAY

Drilling companies could use "**green completions**" to improve air quality and provide themselves with extra revenue. These are mentioned in a January 2009 report by Dr. Armendariz of Southern Methodist University:

"Green Completions" or "The Green Flowback Process"
 "Some recent reports of the effectiveness of green completions in the U.S. are available, including one by the U.S. EPA which estimated 70% capture of formerly released gases with green completions. If green completion procedures can capture 61% to 98% of the gases formerly released during well completions, the process would be a more environmentally friendly alternative to flaring of the gases, since flaring destroys a valuable commodity and prevents its beneficial use. Green completions would also certainly be more beneficial than venting of the gases, since this can release very large quantities of methane and VOCs to the atmosphere. Another factor in favor of capturing instead of flaring is that flaring can produce carbon dioxide (a greenhouse gas), carbon monoxide, polycyclic aromatic hydrocarbons, and particulate matter (soot) emissions."

http://www.edf.org/documents/9235_Barnett_Shale_Report.pdf

BOARD HIGHLIGHTS

By John McFerrin

The Board of the West Virginia Highlands Conservancy met on January 24, 2010. We did the usual business things, welcomed a new member, and heard reports on issues we are working on.

Treasurer Bob Marshall reported how we are doing: pretty well, about as well as usual, paying our bills but not rolling in dough. We approved a budget for 2010, one which remains heavily weighted toward program expenses with not much going to administrative expenses.

We voted to give an organizational seat on the Board to the Allegheny Highlands Association. This vote produced some discussion since the group had to date focused its efforts on wind energy. Allowing it a seat on the Board could be interpreted as opposition to wind energy, an issue upon which the Board and the membership are of (at least) two minds. The group's purposes (see box) are not limited to wind energy and are consistent with the West Virginia Highlands Conservancy's purposes. Even on matters of wind, the report of the group's first meeting (*The Highlands Voice*, September, 2009) indicated a willingness to look at wind objectively and go wherever the facts lead it.

We talked about Environmental Day at the West Virginia Legislature. We are going to have a table.

We also talked about the Spring Review and how nicely it is shaping up. There is more information about that on page 8 of this issue of *The Highlands Voice*.

Frank Young and Don Garvin reported on matters legislative. The Environmental Council, of which we are one of several supporters, has four lobbyists. Don reports that we are "off to a good start." Much of the effort will oil and gas.



John McFerrin gave an update on our efforts to prevent gas drilling in Chief Logan State Park in Logan County. We have filed our appeal in the West Virginia Supreme Court. Now we are waiting for the Supreme Court to review it. Not all cases are accepted for full review but we are hopeful that this one will be because of the statewide implications of allowing drilling in state parks.

Frank Young reported on the state of the PATH project. The powerline is in a muddle all three states is plans to pass through. The applications for the necessary permits have been dismissed in Maryland and delayed in West Virginia. In Virginia the company has asked to dismiss it with hopes of filing again later.

Peter Shoenfeld reported on wind projects existing or proposed for West Virginia. There are nineteen, all in different stages of completion. He also reported on a settlement in the Beech Ridge litigation. This is described on page 16. Cindy Rank

reported on some of the mining related things we are involved in. There are approximately one bazillion; three are described on pages 1,9, and 14 of this issue.

Don Gasper reported on a new initiative in forest planning. The United States Forest Service is considering returning to some of the forest management principles it adopted in 2000 and wants to know what we think about that. Marilyn Shoenfeld wrote a story about this for this issue of *The Highlands Voice* (see p. 11).

In the midst of all this fun, Cindy Ellis provided us with a wonderful lunch.

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.

MEET OUR NEWEST BOARD MEMBER

The bylaws of the Allegheny Highlands Association list these as its purposes:

- (A) To advance public knowledge and understanding of the cultural, biological, environmental diversity, uniqueness, and sensitivity of the major ridge lines that comprise the Allegheny Highlands;
- (B) To preserve and protect areas of particular scenic, geologic, biologic, historic, wilderness, and/or recreational importance in the Allegheny Highlands;
- (C) To aid in the establishment of responsible policies to protect scientific, educational or aesthetic values;
- (D) To conduct regional and resource studies as a basis for the wise use of the various resources of the Allegheny Highlands; to develop programs in energy conservation and wise production; and to serve local communities, the region, the people of the Allegheny Highlands as an agency for popular enlightenment, for cultural improvement, and for scientific advancement;
- (E) To advocate governmental policies for the conservation and wise management of energy and natural resources of the Allegheny Highlands.

CONSERVANCY AND OTHERS COMMENT ON STREAM BUFFER ZONE RULES

By John McFerrin

The West Virginia Highlands Conservancy, along with several other groups, has filed comments on the proposal by the federal Office of Surface Mining to change what has become known as the stream buffer zone rule.

Generally, the stream buffer zone rule prohibited mining within 100 feet of streams. Coal operators could obtain waivers, but to do so they had to show that their operations will not cause water quality violations or "adversely affect the water quantity and quality, or other environmental resources of the stream." The Office of Surface Mining wrote the buffer zone rule in 1983 to implement a congressional mandate in the 1977 strip mine law that the agency "minimize the disturbances to the prevailing hydrologic balance at the mine site and in associated offsite areas and to the quality and quantity of water in surface and groundwater systems both during and after surface mining operations and during reclamation."

The Bush administration proposed a revision of the rule. There were public hearings, public comments, etc. but in December, 2008, the Office of Surface Mining finally adopted a new rule. The 2008 rule allows a surface coal mine operator to place excess material excavated by the operation into streams if the operator can show it is not reasonably possible to avoid doing so. The new rule effectively eliminated the buffer zone rule which had been in effect (if never fully enforced) since 1983.

Now this administration is reconsidering the new rule. The comments that the groups made are part of the process of reconsidering it.

In their comments, the groups pointed out that the purpose of the Surface Mining Control and Reclamation Act was environmental protection, including protection of waterways. The comments referred to research showing that Valley fills are causing serious, persistent, and unmitigated environmental harm and that, because of this, a prohibition on filling and disturbing all streams is required. They insisted that the buffer zone rule must protect all stream areas that are disturbed by mining activities, including areas that are mined through, impounded, or buried by valley fills

The Office of Surface Mining's notice asking for comments on the buffer zone rule also asked that the public "identify other provisions of our regulations that should be revised to better protect the environment and the public from the impacts of Appalachian surface coal mining." They should be careful what they ask for, especially when asking how they could improve the regulation of surface mining. These groups had some ideas.

They suggested that the Office of Surface Mining could improve in the way it addresses the cumulative impact of multiple mines on the water of an area.

They suggested that OSM should clarify and strengthen requirements that mined land be returned to the approximate original contour that it had before mining began. They suggested that OSM assure that strip mines comply with post-mining land use requirements. They suggest that OSM could improve its procedures for renewal and issuance of permits where the applicant is violating federal and state laws protecting water quality.

For at least three decades the Conservancy has been saying that the program of requiring performance bonds to assure that sites would be reclaimed was not working. It never misses an opportunity to point this out. The comments contain several suggestions on how the Office of Surface Mining could improve that system.

CONSERVANCY AND RIVERS COALITION THREATEN SUIT OVER CONTINUING CLEAN WATER ACT VIOLATIONS

By John McFerrin

The West Virginia Highlands Conservancy and the West Virginia Rivers Coalition have given the West Virginia Department of Environmental Protection notice that they intend to file suit if the agency does not prevent water pollution from abandoned mines that it now controls. There are well over one hundred such mines.

First, some history. Since 1977 mine operators have been required to post a performance bond to assure that they do the required reclamation. In the majority of the cases the land is reclaimed to the satisfaction of the Department of Environmental Protection and the bond is released. In some cases, however, the operator goes broke or walks away. The bond is forfeited and, in many cases, the Department of Environmental Protection ends up with control of the site.

Many of the sites at issue are acid mine drainage sites. Because the pollution from such sites will probably continue for at least decades, operators have an added incentive to walk (or run) away from such sites.

The Conservancy and the Rivers Coalition had long argued that, when the state had control, it had to meet the requirements of the federal Clean Water Act. These included having a Clean Water Act permit and meeting effluent limits (requirements on how clean water had to be when leaving the site).

In January, 2009, a federal judge for the Northern District of West Virginia, Irene Keeley, ruled that the West Virginia Department of Environmental Protection (DEP) for should issue permits at 18 abandoned mine sites where the state has taken over reclamation after companies forfeited their bonds. As a result of its failure to do so, Judge Keeley said, the state violated the Clean Water Act and allowed high levels of iron, manganese and aluminum to flow into state waterways. She ordered DEP to acquire NPDES water discharge permits and meet legal effluent limits at those sites. See the story in the February, 2009, issue of *The Highlands Voice*.

Later in 2009, another federal judge, John Copenhaver, Jr., made a similar ruling concerning three mines in the Southern District of West Virginia. See the September, 2009, issue of *The Highlands Voice*.

The Conservancy and the Rivers Coalition believe that there are at least 131 other sites where the Department of Environmental Protection has control of the site, does not have permits, and the site is causing pollution of nearby streams. This places them in violation of the Clean Water Act, both as it is set forth in the Act itself and as interpreted by two federal judges.

In spite of the rulings that it has to have a permit and meet pollution limits, the DEP has not done it.

The federal Clean Water gives citizens the right to sue to enforce the law. Before they may do so, they must inform the lawbreaker of the violations and wait sixty days to allow time to correct it.

In January, the Conservancy and the Rivers Coalition gave the DEP the required notice. If the agency does not correct its violations, the groups could then go to court to require the DEP to do its duty.

OUR READERS WRITE

We Are How We Treat Animals

Editor,

According to Mahatma Gandhi, "The greatness of a nation and its moral progress can be judged by the way its animals are treated." In light of this quote, in the Dec. 2009 "Market Bulletin," WV Commissioner of Agriculture, Gus Douglas, claimed, "Some good news.. .that Ohio recently approved a statewide Livestock Care Board [issue 2]. *The Associated Press*, Nov. 3, 2009, noted this measure was designed to thwart efforts of groups such as the Humane Society of the U.S. outlawing the close confinement of laying hens, breeding sows and veal calves."

The 13 member Livestock Care Board is to be appointed by the governor of Ohio and will basically have the right to decide all matters concerning livestock. In fact, it will reign supreme over the state legislature and State Dept. of Agriculture. There is no appeal. In addition, the issue was opposed by leading organizations of Ohio that include the Farmers Union, Environmental Stewardship Alliance, Progress Ohio, Sierra Club, Ecological Food and Farming Association, League of Women Voters, and the Center for Food Safety.

The Humane Society of the U.S. reports that the issue "favors large factory farms, not Ohio family farms." Furthermore, *Acres USA* reported the following on the Dec. 12, 2009: "Unchecked power has been cemented in place by industrial ag interests while sold to a generally confused or frightened public under the guise of food safety, local food production and local governance." Large factory farms with their lobbyists and deep pockets would like to establish more governmental controls to give themselves further advantage over small family farmers. For those unfamiliar with the goals of industrial agriculture, they are simply a means to make the most money with the least cost. For instance, chickens are provided floor space no larger than a piece of notebook paper to live out their lives, sows are kept on concrete in crates, designed so they cannot even turn around, and veal calves are chained in small crates until slaughtered. None of these animals have access to fresh air or even sunlight.

In Commissioner Douglas' article, he stated the following: "Yes, animals must be treated humanely— but there must be a balance and reasonable standard applied or we will become unable to feed the world's exploding population." One wonders whose standard is used to determine the level of cruelty our fellow creatures must endure in order to "feed the world." We do not need an agency to supervise agriculture in WV. We have an abundance of small family farmers who are producing food in a humane and environmentally friendly way. Consumers can ensure that their food is produced in such a manner by seeking out local producers who are committed to the well being of their animals, as well as feeding the world.

John Fichtner

Elizabeth, WV 26143

Mr. Fichtner teaches forestry at Roane-Jackson technical center

A Challenge

Editor,

Although I can appreciate efforts to keep wind energy as ecologically responsible as possible, I defy you to reveal to me ANY aspect of the exploitation of wind energy which is actually worse for the earthly ecosystem than the exploitation of coal. Given a cradle-to-grave perspective and all the arguments that have appeared in the Voice over the past few years, it remains obvious to me that coal is 1 to 4-5 orders of magnitude worse [i.e. 10 to 100,000 times worse] than coal.

Please send your revelations to me at bhanomalous7@gmail.com with the Subject as Wind. As a nod to my three-decade-long sojourn in WV, I'd be willing to collate responses and prepare a final report for the Voice. As a check on my efforts, I would like to "forward" and "cc" Peter Shoenfeld [Chair of the WVHC wind energy committee] and a couple other anti-wind folk all relevant communications concerning this endeavor.

I would ask that folks responding to this challenge reveal how the energy that made it possible for them to respond was generated and whether they are still on the coal-fired grid?

Sincerely,

Bob Hamburg

Editor's note: Mr. Hamburg sent this challenge under the title "A Challenge To Wind Energy Opponents And Their Experts."

Your comments and opinions are important to us.

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

BROCHURES

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

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

COMPROMISE REACHED IN BEECH RIDGE ENDANGERED BAT LITIGATION

By Peter Shoenfeld

Industrial wind developer Invenergy, Inc., through their subsidiary Beech Ridge Energy, LLC has long sought approval for their originally planned 124 turbine Beech Ridge facility in northern Greenbrier and Nicholas counties. They applied for a Public Service Commission siting certificate in November 2005; this was granted the following August.

Contention and legal actions continued, however, and construction did not begin until last spring. At that time, concrete foundations were poured for 67 turbines (Phase I), which were brought on site. Forty of them were actually erected.

Two “bat problems” are known to exist at industrial wind facilities atop Allegheny ridges. The first involves mainly commonplace species, and results from encounters between the bats and the high-momentum turbine blades. The estimated mortality has been observed to reach into the thousands in several weeks, during studies at the Mountaineer facility in Tucker County. A more legally treacherous problem would occur if one of the unlucky bats belonged to a federally endangered species, and thereby fell under the purview of the Endangered Species Act (ESA). There are two such species in our area—the Indiana bat and the Virginia big-eared bat.

Indiana bat presence has not been directly observed at Beech Ridge or other Industrial Wind sites. But there is evidence that Indiana bats are at least occasionally present in the rotor sweep zones of the Beech Ridge turbines nearest their cave hibernacula. If this circumstance is presumed to persist indefinitely, then an Indiana bat will

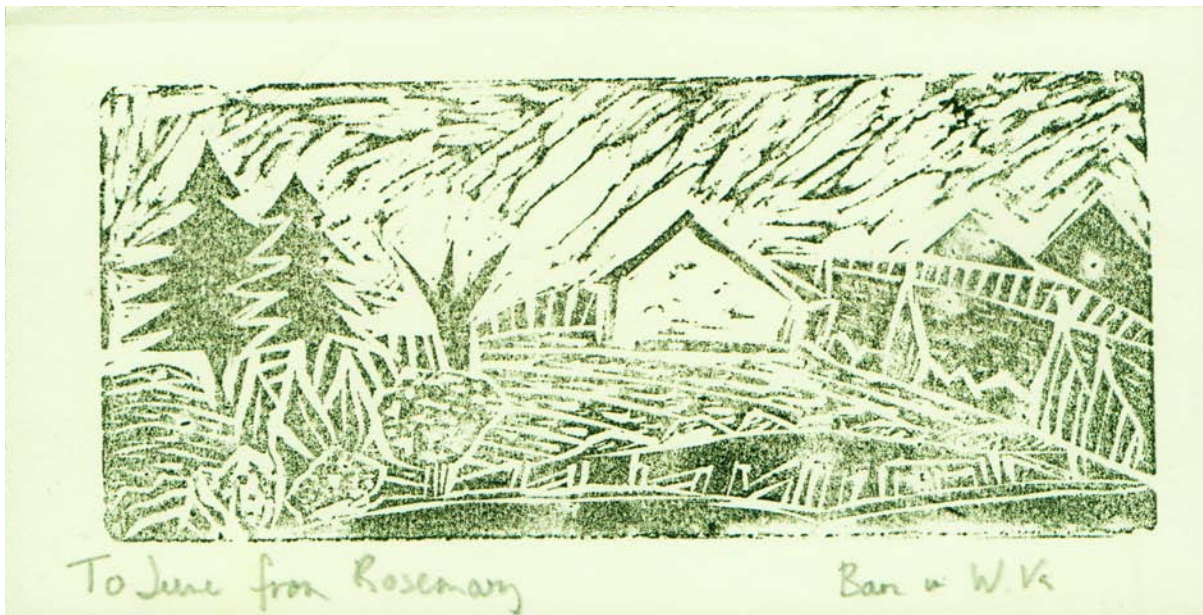
eventually be killed. With this expectation, attorney Eric Glitzenstein, filed an ESA lawsuit against Beech Ridge in the US District Court, Eastern District of Maryland, on June 10, seeking declarative and injunctive relief. The plaintiffs were the Animal Welfare Institute, Mountain Communities for Renewal Energy (MCRE), and David G. Cowan. The case was heard by Judge Roger W. Titus.

Judge Titus heard extensive bat expert testimony in October, including characterization of Anabat (acoustic) detections during discovery phase. Classification of those detections (as Indiana bat) appears to be scientifically immature and the subject of some disagreement among the experts. In his opinion, Judge Titus assesses the qualifications and performance of the six participating bat experts, three from each side, with conclusions that were quite favorable to the plaintiffs. Their acceptance of the acoustic detections, together with the suitability of habitat and marginal proximity of Indiana bat caves were enough to tip the scales and led to a finding granting injunctive relief in favor of the plaintiffs.

On December 8, 2009, the court enjoined the Beech Ridge project from construction of turbines beyond the forty already completed unless and until an Incidental Take Permit (ITP) is obtained. Completed turbines may only be operated during the hibernation period of November 16-March 31, except by further approval of the United States Fish and Wildlife Service. The court also invited the parties to confer on terms for further going forward while Beech Ridge pursued its Incidental Take Permit.

The parties conferred as asked and reached a compromise stipulation on January 19 which became a court order on the 26th. Summarized provisions include:

1. Plans for turbines A1-10, B-8 and the entire B and C lines, will be abandoned. These are believed to total 31 turbines.
2. Pending receipt of an ITP, the 40 already completed turbines, 17 others of the Phase I group, and 10 of the Phase 2 group may be operated from November 16-March 31 and during daylight hours at other times. Additional land-clearing required shall occur during the hibernation period. Subject to USFWS authorization in the ITP, up to 33 additional turbines may be constructed and operated, but not within the areas of A,B,C, or D lines.
3. Foundations will be “decommissioned” for sites A1-10, within 90 days of ITP finalization or abandonment. (The decommissioning process consists of breaking up the upper 4 feet of concrete by jackhammer, rubble removal, and replacement of the rubble with earth).
4. Plaintiffs, including individual MCRE voting members, agree not to play other than a constructive, cooperative role in development of the Habitat Conservation Plan and HCP, and to abstain from further efforts to challenge or block the project (this statement replaces 5 pages of text in the Stipulation).



This is a copy of a lino print by Rosemary Ballster. The barn shown is in Pocahontas County near the Greenbank Observatory.