

West Virginia Highlands Conservancy  
PO. Box 306  
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# The Highlands Voice

Since 1967, The Monthly Publication of the West Virginia Highlands Conservancy

Volume 50      No. 4      April, 2017

## Threats to Public Land Looming

By John McFerrin

Our public lands are in peril. There are moves afoot to transfer those lands to the states or sell off public lands.

The idea that the federal government should not own large tracts of land is, of course, not new. The public career of Cliven Bundy and standoff with the federal Bureau of Land Management in Nevada were based upon his belief that the United States government did not legitimately own the land he was using. The same idea animated those who occupied the Malheur National Wildlife Refuge in Oregon.

There had also been sporadic efforts in Congress. In a large and diverse body such as Congress, there will always be a variety of views, including the view that states or private entities should own and manage public lands. These views might occasionally find their way into a proposed resolution or an introduced bill but they were always considered fringe ideas, not something that might actually become law.

Now those ideas are becoming more mainstream, in Congress at least if not in the population as a whole. The possibility

of the federal government divesting itself of public lands is becoming a topic of serious conversation.

There are several threats to public lands, one of which has already happened.

The one that has already happened is the rules change that makes it easier for the federal government to transfer public land to the states. Until now, lawmakers trying to transfer federal land to the states have had to offset the value of that land by making cuts or generating revenue elsewhere. This made transferring land to the states difficult and had helped thwart such attempts in the past. The new rule change allows for land transfers cost-free. Typically laws are scored to see how they would affect the federal budget and their cost to taxpayers. This new rule will automatically score all land transfer measures as budget neutral. That means Congress could be able to give state governments land that today belongs to all Americans—without reimbursement.



Frank Young stands up for public lands

(More on p. 3)

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## Ramblin' the Ridges

By Cynthia D. Ellis

### Get a Good Lawyer

A look back at our 50 years of actions for the mountains shows that the Highlands Conservancy has had plenty of help. Groups and individuals joined with us in efforts to conserve and protect. We worked with others to communicate, educate, lobby, and affect legislation. But sometimes, when there was no other recourse, we have needed a good lawyer. And we've found them...or they've found us. As a group of volunteers, with no office and a reliance upon donations, we've been grateful for our good fortune with our legal aid. What follows is an attempt to acknowledge some of that assistance.

Our history book for our first 40 years says, regarding legal efforts for Otter Creek, "Some of the details behind the Otter Creek injunction illustrate the dynamics of joining local West Virginia resource people with expertise from nearby states, a characteristic that has distinguished the Conservancy from its origin to the present day." Our lawyers for that 1970 campaign were volunteers Fred Anderson and Jim Moorman from Washington, D.C., and Willis O. Shay from Clarksburg. Anderson's later career included serving as Dean of the American University Law School, while Moorman also continued a distinguished path and was president of Taxpayers Against Fraud.

We acted on behalf of Shavers Fork in the early 1980's. Charleston lawyer David Wooley served on the Highlands board and worked on the "522 petition" which argued for prohibition of strip mining on the Mower Tract. WVU law professor Pat McGinley also tackled the "unsuitability" aspect of strip mining there and pursued an injunction; he was given a lifetime membership with WVHC for his cumulative efforts.

"Once again, the Conservancy finds itself being reluctantly forced to the courts," was how our second president Bob Burrell described one of our legal struggles.

And that could sentiment could apply to that notorious highway---Corridor H. Our book recounts, "...Hugh Rogers, a lawyer, would shepherd the Conservancy and Corridor H Alternatives into a lengthy court battle, then a protracted mediation, a first for the Conservancy...". Long-time followers of that issue know that that mediation meant a

great deal, despite the creeping progression of the road. The original lawsuit was filed by Tom Michael of Clarksburg and Andrea Ferster of Washington, D.C.

Tom Rodd, of Morgantown, was helpful in the Laurita Case which involved West Virginia issuing mining permits for companies despite a history of violations in other states. He also helped with our Living Streams water monitoring program and worked in the office of WV Attorney General Darrell McGraw.

John McFerrin, a lawyer and our current editor of "The Highlands Voice" has a pen that can be quite sword-like. He demonstrated that in his "Minority Report" of his service on Governor Cecil Underwood's Mountaintop Mining Task Force. John came to us after earlier years with the Appalachian Research and Defense Fund [APPALRED] of Kentucky.

Our first 25 years focused on the northern part of the state. But strip mining and particularly Mountaintop Removal mining drew our attention in southern counties. In 1995, Tom Galloway and Walt Morris filed complaints of citizens regarding bonding, forfeited sites, and more with the Office of Surface Mining. In response, their legal qualifications were questioned. They persisted, we persisted and, in 1989, after a period of more intense negotiations, our then-president Cindy Rank thanked Galloway, Jim Lyon, and Josh Barrett, citing their huge investments of time over many months.

One notable case challenging Mountaintop Removal Mining was "Bragg v. Robertson". Our

historian said, "Joe Lovett, a Charleston attorney with the nonprofit firm Mountain State Justice Inc., Patrick C. McGinley, a West Virginia law professor and veteran litigant for the Conservancy, Suzanne M. Weise, a Morgantown attorney, and James Hecker, of the Washington group Trial Lawyers for Public Justice, comprised the legal team."

Finally, alas, that book did it again. Dave Elkinton's "Fighting the Save the Highlands: The First Forty Years of the West Virginia Highlands Conservancy" was once again too engrossing.

The intention, here in our 50<sup>th</sup> year, was to skim that volume again and focus on some WVHC champions. However, that is very hard to do without re-reading whole portions. It is just too interesting. A searcher can get entirely sidetracked and re-visit battle after battle, issue after issue, special place after special place. I did, you might do so too.

Apologies are extended to any helpful lawyers left off this quick recounting. Sincere thanks to those who worked with us in the last 50 years and those who are doing so, right now, as the battles remain.



## Public Lands in Peril (Continued from p. 1)

One that has begun—but is not making much progress so far—is the State National Forest Management Act of 2017. Its purpose, as introduced, is “[t]o authorize States to select and acquire certain National Forest System lands to be managed and operated by the State for timber production and for other purposes under the laws of the State, and for other purposes.” It was introduced in early January, has only one sponsor, and has not been taken up by any committee. It is the same as an Act that was introduced in the last Congress and went nowhere so it may suffer the same fate this time.

A more plausible threat to public lands—or at least one tool to protect them—is the bill to amend the Antiquities Act. The Antiquities Act gives the President the authority to protect “objects of historic or scientific interest” on federal lands as “national monuments.” It has been used by almost every president since Teddy Roosevelt to protect hundreds of millions of acres. Five of the nation’s 10 most-

visited national parks — Grand Canyon, Zion, Olympic, Teton and Acadia, each attracting millions of people a year — were first protected by presidents using the Antiquities Act.

Now the Act is under attack. The 2016 Republican platform called for amending it so as to give states the right to block the president from designating monuments. If this happens, it will effectively repeal the Act.

Now a bill has been introduced in the United States Senate which would do just that. It would require that any national monument must be approved by Congress and the legislature of the state where it would be located. Although the Senate has taken no action, the bill has 28 sponsors (including Senator Capito) and, thus, must be considered more than a fringe idea.

This would have an immediate impact in West Virginia because of the current proposal for a Birthplace of Rivers Monument. A coalition of businesses, groups (including the West Virginia Highlands

Conservancy), and individuals have proposed that an area within the Monongahela National Forest be considered for Monument status. Any amendment to the Antiquities Act would have a dramatic impact upon that proposal.

## Sale of Public Lands—Where Stands Mr. Trump?

Divestiture of public lands is not a Donald Trump initiative. In a pre-election interview he was asked about the possibility of the federal government transferring lands to states and divesting those lands. He said,

I don’t like the idea because I want to keep the lands great, and you don’t know what the state is going to do. I mean, are they going to sell if they get into a little bit of trouble? And I don’t think it’s something that should be sold. We have to be great stewards of this land. This is magnificent land. And we have to be great stewards of this land.

Since the election he has not tweeted on the subject or supported any effort to privatize public lands.

There is no indication of how firmly held his beliefs are. He did not campaign on this issue. When he said the words “big, beautiful” the next word was much more likely to be “wall” than it was to be “forest” or “canyon.” (An informal tally: “forest”—0; “canyon”—0; “wall”—one bazillion). So far, however, he stands with those who seek to protect public lands.



WVHC President Cindy Ellis (right) hides behind her sign but still stands up for public lands.

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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.

### Join Now !!!

Name \_\_\_\_\_

Address \_\_\_\_\_

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

Phone \_\_\_\_\_ Email \_\_\_\_\_

<b>Membership categories</b> (circle one)		Individual	Family	Org.
Senior		\$15		
Student		\$15		
Introductory		\$15		
Other		\$15		
Regular		\$25	\$35	\$50
Associate		\$50	\$75	\$100
Sustaining		\$100	\$150	\$200
Patron		\$250	\$500	\$500
Mountaineer		\$500	\$750	\$1000

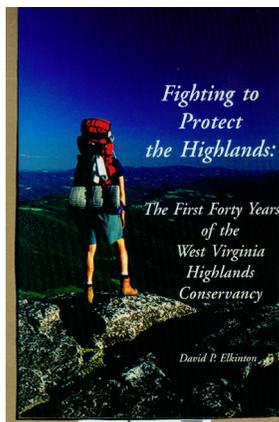
Mail to West Virginia Highlands Conservancy, P. O. Box 306, Charleston, WV 25321

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

You may also join on-line at [www.wvhighlands.org](http://www.wvhighlands.org)

### GET A GREAT HISTORY BOOK

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.



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 \$15.95, 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.

### Tell a Friend!

If you have a friend you would like to invite to join the West Virginia Highlands Conservancy just fill out this form and send it to West Virginia Highlands Conservancy, Box 306, Charleston, WV 25321.

Person you wish to refer: \_\_\_\_\_

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

Email \_\_\_\_\_

Your name: \_\_\_\_\_

Filling out the form, etc. is, of course, the old school way of doing things. If you prefer, just email the information to Beth Little at [blittle@citynet.net](mailto:blittle@citynet.net).

The way it works: Anyone you refer gets *The Highlands Voice* for six months. At the end of the six months, they get a letter asking if they want to join. If they join, we're happy. If not, then maybe next time.

### 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 \$15.95 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.

## Environmental Action-April 22



In honor of Earth Day (April 22), we offer a reproduction of one of the posters from the original Earth Day in 1970. This is one of the posters found by Marion Harless from the first Earth Day.

It is of note that, of the four posters from that time that Marion found, two rail against the evils of DDT. Since then, DDT has been banned in the United States and either banned or restricted in most of the world. The ban, along with the Endangered Species Act, resulted in a dramatic recovery of Bald Eagles and Peregrine Falcons. "So it goes like it goes, and the river flows, and time it rolls right on, and maybe what's good gets a little bit better, and maybe what's bad gets gone." ("It Goes Like It Goes" by David Shire and Norman Gimbel).

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

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

### 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.



NATIVE BALSAM FIR TREE GROWING IN CANAAN VALLEY, TUCKER COUNTY.

## From the Archives

Most issues of our monthly newsletter, The Highlands Voice, beginning with Volume 1, in 1969, are archived on our website at [www.wvhighlands.org](http://www.wvhighlands.org).

Enjoy the following highlights taken from

### 1975

#### Eastern Wilderness Act passes

After more than 5 years of frustrating postponement, compromise and revision, the Conservancy's efforts on behalf of Eastern Wilderness bore fruit on December 18 with Congressional passage of The Eastern Wilderness Act. The Act created 16 Wilderness Areas including Dolly Sods and Otter Creek. Cranberry Backcountry was included in the Bill as a Wilderness Study Area. Study Areas get managed as Wilderness until a final decision is made. The Act was important, too, because it removed the "pristine" concept of wilderness envisioned by the forest service. The language of the act unconditionally rejects this vision of what wilderness is. Instead it suggests that even though these areas were once altered, they have regained their natural character and deserve to be protected as Wilderness.

#### Mid-Winter Workshop Features New River

The New River was threatened by the Blue Ridge Project - a giant Power Project. At the same time, the Gauley River was threatened by another power project with a dam at Swiss, WV.

#### 1975 Officers

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Treasurer: Arthur Foley

Secretary: Stauffer Miller

Voice Editor :Ron Hardway

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#### Summer Board Meeting Keys on Corridor

##### H

The Conservancy opposes the fragments approach the DOH is taking in preparing the environmental impact statements. They are seeking a halt to further construction until environmental impacts are studied for the entire alignment. Jim Rawson, Joe Rieffenberger and Don Phares of the WV DNR spoke to the impacts of the Highway. Don Phares mentioned the damage to the Bowden Fish Hatchery already done. Joe Rieffenberger claimed that any of the proposed routes for the highway would annihilate bear habitats. On the more general impacts to wildlife he said, "Well, you have asphalt over a gopher hole, you have a dead gopher. The wildlife is in extreme danger." Jim Rawson said the proposed route poses considerable and various dangers to wildlife habitat, trout streams, mountain scenery, Wilderness Areas, State Parks, and a National Recreation Area.

#### Winter Workshop hosts Congressman Hechler

##### Highlands Scenic Highway

Senator Jennings Randolph has succeeded in getting another \$15 million for construction of the Highlands Scenic Highway.

##### The Strip Mine Bill

This year, as last, the US Congress passed a strip mine bill. This year, as last, President Ford vetoed it. The House failed by 3 votes to overturn the veto. The Conservancy thanked Congressman Staggers for supporting the Bill. Congressman Hechler, voted against over-riding the veto. He felt the Bill was too weak.



# Celebrating 50 Years!

The West Virginia Highlands Conservancy was officially founded in 1967 but the people and Groups that came together to form the organization actually began to meet in 1965 while the first issue of The Highlands Voice appeared in 1969. For many years we were THE environmental organization in the state and tackled issues as diverse in topics as in geography. Some of its major roles were defined early in its existence. Protecting Rivers, Coal Mining, the Monongahela National Forest and other public lands, Highways,

Wilderness and Canaan Valley all have deep roots that permeate our history. We will be highlighting some of these issues, the places, and the people involved, in upcoming issues of The Highlands Voice. We'll also be visiting some of these places throughout the year to see the successes, or sometimes failures, of our work. We'll get together to celebrate and reminisce with each other at the Canaan Valley Resort State Park, September 15-17, 2017.

## Help Us Celebrate!

We are seeking help and input from our members. Please participate in the outings and events we are planning, but also help us make the 50<sup>th</sup> Celebration extra special.

- Contact us with the names and contact information of people you know who have some connection with the Highlands Conservancy who may not still be engaged. We are creating a list of folks to reach out to, from Agencies, Organizations, and others we've worked with, to invite to join our celebrations.
- Using Google, or the Archives for The Highlands Voice, research an issue that you know about, were involved with, or the success from our efforts you enjoy, and write an article or just share personal memories or experiences.
- Offer to lead an outing to one of the places we've fought to protect over the last 50 years. Share your stories or experiences working with, or even against, us on some issue.
- Clean out your closets for memorabilia, or other items to bring to the Canaan Celebration in September and donate to a silent auction.
- Get out those old photo albums and bring them with you to Canaan for a photo-sharing display.
- Send us your photos of people, places, or events from our long and storied history to include in the Celebration's publications and Web pages.

Contact us at; [wvhc50@gmail.com](mailto:wvhc50@gmail.com)



*"Celebrating 50 Years"*

Mark your calendar!

## Canaan Valley State Park

September 15-17, 2017

- Outings
- Workshops
- Round-table discussions
- Expert panels
- Partner displays
- Music
- Food
- Good company
- Reminiscing
- Old Friends
- Good times
- Beautiful Places

## Celebrating 50 Years T-Shirts!

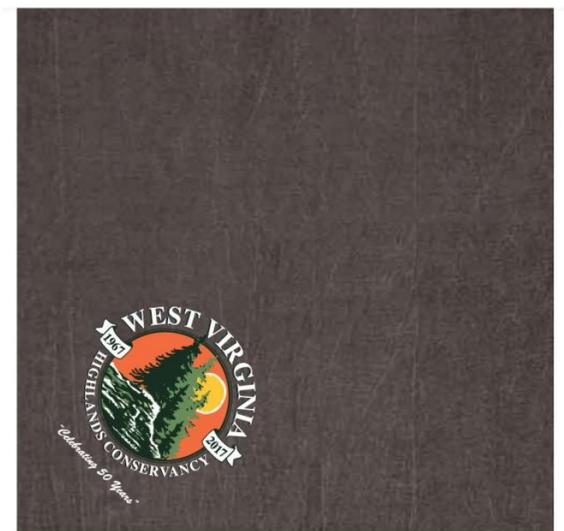
Heavy weight Black t-shirts with our new color "Celebrating 50 Years" logo

S, M, L, XL & XXL. \$20 each, postage included



21" square black bandana with color "Celebrating 50 Years" logo.

\$5.00 postage included.



**A quick snapshot as the Legislature flies by****Legislative Update, More or Less**

There are a couple of bills that may be of interest to *Voice* readers. With the usual disclaimer that, this late in the session, things change every few minutes, here are some updates, guaranteed to be true as of press time but not beyond that.

**Local Energy Efficiency Partnership (LEEP) Act**

This Act has gained momentum and has a chance of passing.

The LEEP Act (SB 480) could empower local commercial building owners to form a special kind of contract with a financing company to create energy efficiency upgrades to their building. The contracts permitted have two unique aspects: First, the debt will be repaid ahead of the existing mortgage (with permission of the mortgage holder).

Second, the debt will stay with the building, not the building owner. This is important because it means that a building owner will not get stuck with a debt that it has to keep paying on even if it no longer owns the building. Commercial building owners can use this sort of contract if their local government enacts an ordinance allowing it.

The key benefits to LEEP-style financing are: 1. the energy saving is repaid equal to taxes in the case of a default, and 2. the payments are made along with property taxes, so whoever owns the building makes the payments. Thirty-two states have permitted LEEP-style financing.

The details of all this are mind numbing; the idea is simple. If this passes, West Virginia will be one step closer to a way of financing energy efficient building upgrades, resulting in more efficient use of energy.

The bill passed the Senate 34-0 and was sent to House Government Organizations Committee. It would still have to get on the agenda, pass the Committee, go the floor, and pass before the session is over.

**Tax increase for industrial wind farms**

In order to encourage the development of wind energy, West Virginia has set the property tax rate on the equipment for wind farms much lower than the rate for most other businesses. Industrial wind farms have been controversial, both around West Virginia and within the West Virginia Highlands Conservancy. How one feels about this tax break depends largely upon how one feels about wind farms, whether they should be subsidized, etc. Historically, West Virginia has chosen to subsidize them with this tax break.

The Legislature has before it a bill that would take away the subsidy and tax the equipment at wind farms just as other property is taxed.

The proposal passed the Senate. It is pending in the House and has been referred to the House Energy Committee and then to the House Finance Committee. It would still have to get on the agenda, pass the Committee, get on the agenda in the second Committee, go the floor, and pass before the session is over.

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 SENIOR VICE PRESIDENT: Larry Thomas, P.O. Box 194, Circleville, WV 26804, (304) 567-2602, larrythomas@aol.com  
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 VICE PRESIDENT FOR STATE AFFAIRS: Frank Young, 33 Carnian Ford Road, Ripley, WV 25271, (304)372-3945, fyoung@mountain.net  
 SECRETARY: John McFerrin, 202 Van Tassel Court, Morgantown, WV 26508, (304) 291-8305, johnmcferrin@aol.com  
 TREASURER: Bob Marshall, 2108 Emma Road, Kenna, WV 25248, (304)545-6817, woodhavenwva@aim.com  
 PAST PRESIDENT: Hugh Rogers, 531 Moon Run Road, Kerens, WV 26276, (304)636-2662, hugh.rogers@gmail.com

DIRECTORS-AT-LARGE (Terms expire October 2018)  
 George E. Beetham Jr., 2819 Mt. Carmel Avenue, Glenside, PA 19038, (267) 252-3748, geobeet@hotmail.com  
 Jackie Burns jackie.burns@frontier.com.  
 Bill McNeel, 1234 Jericho Road, Marlinton, WV 24954, (304) 799-4369, wpmcneel@gmail.com  
 John Terry, 907 Grasslick Run, Montrose, WV 26283; farmerstwo@msn.com; (304) 637-3020  
 Randy Kesling, 116 Farm Meadow Drive, Bridgeport, WV 26330; (304) 622-5982; rkesling@MA.RR.com

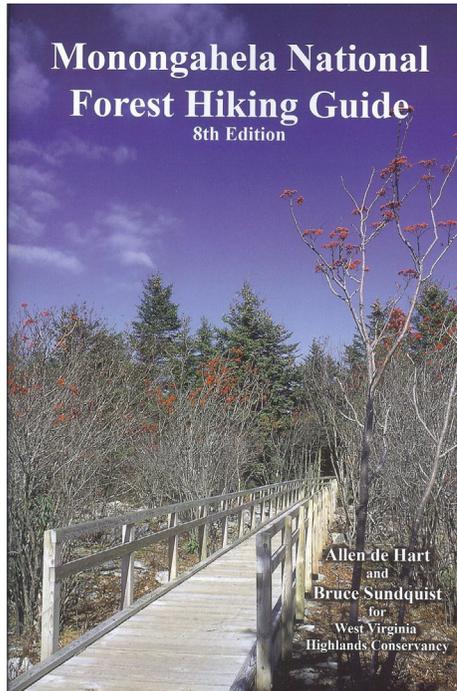
DIRECTORS-AT-LARGE (Terms expire October 2017)  
 Adam Casseday, 212 Davis and Elkins St, Elkins, WV 26241, 304-636-4944, dr\_casseday@yahoo.com  
 George Hack; 510 HANNA RD; Bel Air, MD 21014; 443 742-0463 george.hack@db.com  
 LeJay Graffious, P.O. Box 69, Bruceton Mills, WV 26525, lejay@oldhemlock.org  
 Rick Webb, 481 Ravens Run Road, Monterey, VA 24465, (540) 468-2881, rwebb@virginia.edu  
 Mike Withers, Rt 2, Box 328, Grafton WV 26354, 304-265-3750, 1nastynash@comcast.net

ORGANIZATIONAL DIRECTORS  
 NATIONAL SPELEOLOGICAL SOCIETY: Vacant  
 PITTSBURGH CLIMBERS: Buff Rodman, 32 Crystal Drive, Oakmont, PA 15139, (412) 828-8983, buffrodman@hotmail.com  
 BROOKS BIRD CLUB: Cynthia D. Ellis, 3114 Steel Ridge Road, Red House, WV 25168, (304) 586-4135, cdellis@wildblue.net  
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 FRIENDS OF THE LITTLE KANAWHA: Cindy Rank, 4401 Eden Road, Rock Cave, WV 26234, (304) 924-5802, clrank2@gmail.com  
 TEAM (Taylor Environmental Advocacy Membership): Beth Baldwin, 222 Westwood Ave Bridgeport, WV 26330; elbrn6e21@msn.com  
 ALLEGHENY HIGHLANDS ALLIANCE: Dr. Wayne C. Spiggle, 3987 Knobley Road, Keyser, WV 26762, 304-726-4868, wspiggle@mac.com  
 SHAVERS FORK COALITION: Jim Van Gundy, 210 Buffalo Street, Elkins, WV 26241, (304) 636-4736, jvvg01@gmail.com

COMMITTEE CHAIRS  
 EXTRACTIVE INDUSTRIES COMMITTEE: Cindy Rank, 4401 Eden Road, Rock Cave, WV 26234, (304) 924-5802, clrank2@gmail.com  
 PUBLIC LANDS MANAGEMENT COMMITTEE: Marilyn Shoenfeld, 167 Balsam Way, Davis, WV 26260, (304) 866-3484, marilyn.shoenfeld@gmail.com  
 WIND ENERGY COMMITTEE: Peter Shoenfeld, 167 Balsam Way, Davis WV 26260, (304)866-3484, pshoenfeld@gmail.com  
 LEGISLATIVE COMMITTEE: Frank Young, 33 Carnian Ford Road, Ripley, WV 25271, (304) 372-3945, fyoung@mountain.net  
 ENDOWMENT FUND COMMITTEE: Larry Thomas, P.O. Box 194, Circleville, WV 26804, (304) 567-2602, larrythomas@aol.com  
 RIVERS COMMITTEE: Vacant  
 HIGHWAYS COMMITTEE: Hugh Rogers, 531 Moon Run Road, Kerens, WV 26276, (304) 636-2662, hugh.rogers@gmail.com

MISCELLANEOUS OFFICES  
 WEB PAGE – DIGITAL PUBLISHING: Dan Radmacher, (540) 798-6683, dan.radmacher@writingleft.com

ADMINISTRATIVE OFFICES  
 MEMBERSHIP SECRETARY: Beth Little, 214 Black Gum Lane, Hillsboro, WV 24946, (304) 653-4277, blittle@citynet.net  
 HIGHLANDS VOICE EDITOR: John McFerrin, 202 Van Tassel Court, Morgantown, WV 26508, (304) 291-8305, johnmcferrin@aol.com



## 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 \$15.95 plus \$3.00 shipping to:  
**West Virginia Highlands Conservancy**  
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 Charleston, WV 25321  
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 Order from our website at  
[www.wvhighlands.org](http://www.wvhighlands.org)

### 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.

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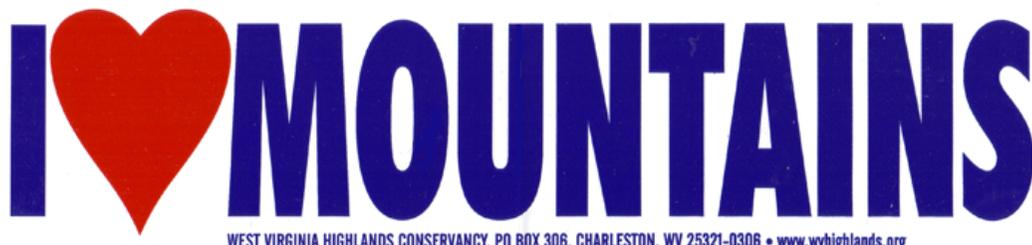
### VOICE AVAILABLE ELECTRONICALLY

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). With electronic delivery, you will receive a link to a pdf of the Voice several days before the paper copy would have arrived. The electronic Voice is in color rather than in black and white as the paper version is.

### BUMPER STICKERS

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



## Trail Truthing, Part 3: Allen's Trail

By Hugh Rogers

The most vivid trail name on the Monongahela National Forest must be Flame Azalea. Does it have any rivals? Of the 200 trails on the Forest's inventory (still including Flame Azalea, though it is said to have been dropped), nearly all are named for a general location.

Typical examples up here in the Cheat Ranger District: Mountainside Trail; Green Mountain Trail; Middle Point Trail . . . Bo-r-r-ring. Dinky Jumpoff is the lone exception. There's an explanation, not worth repeating—it's too simple. I'd rather imagine my own. That's probably why most hikers aren't bored by trail names: each one will call up a personal experience, or expectation.

You're looking for the names in a hiking guide, not a poetry chapbook.

But I'm editing the whole list: words, words, words. One craves a little amusement. Dinky Jumpoff is a start. Tumbling Rock offers some action. Swallow Rock suggests a cautionary tale. Beulah Siding calls to mind a woman one hoped to see when the train pulled in. In a class by itself is Two Lick Bottom . . .

OK, enough of that. Back to Flame Azalea, which I think of as Allen's Trail.

### Flame Azalea Trail (TR414)

The *Hiking Guide* provides a tantalizing history: "After a timber harvest in the early 1980's, it [the concentration of wild azaleas] was discovered, developed, and formerly maintained for 20 years by a group of professors and students from Louisburg College in North Carolina."

We know that Allen de Hart, the late author of *Hiking Guide* editions #5 through #8, was a long-time (five decades) professor at Louisburg College who took groups of students to West Virginia on their spring break. Presumably, they would go out on trails with mileage tracking wheels—this was before GPS apps and software that would do it for you—to check descriptions for the Guide. We also know that he was a botanist who established a 91-acre garden near his home and donated it to the college. It has 620 azaleas. So we can imagine his joy discovering this patch of "orange, yellow, and red hues of the wild *Rhododendron calendulaceum*."

But how did he get there? That chunk of National Forest in Pocahontas

County between WV 92 and the Virginia border is practically trailless for forty-five miles.

It wasn't always so. In his introduction to the Bird Run area (p. 254 in the 8<sup>th</sup> ed.), he mentioned two former trails: Bird Run Trail (TR486) climbed four miles from the Bird Run Campground to Paddy Knob (el. 4477ft.), site of a former fire lookout tower; and Sugar Camp Trail (TR406) once made a parallel climb toward the Virginia line. Those trails had been dropped from the Forest Service system by the time Allen co-authored the Guide's fifth edition, in 1988. But he had been coming to West Virginia for some time. The Appalachian Mountain Club had already published his *Hiking the Mountain State: The Trails of West Virginia*.

Allen and his students might have camped at Bird Run, which was on WV 84 east of Frost. Before it was a Forest Service campground, it was the Civilian Conservation Corps' Camp Copperhead. Now it's just a gated clearing in the woods, and the Flame Azalea Trail, like the other two, has been dropped from the Forest Service network.

However, the azaleas are still there, and relatively easy to find. From Frost, at the junction of WV 84 and WV 92, take 92 north 1.6 miles to Forest Road 1012. It's on the east side, just past Twin Hill Farm on the west. There is a gate (with a well-worn ATV bypass) and space to park. You must walk up this grassy road—a "linear wildlife opening"—for a mile to reach the trail.

When I was there, the wooden trail signs were down and rotting. For the time being they're propped against trees. In any event, you should be able to recognize the opening on the left to a tangle of old logging roads. Entering the woods, take the blue-blazed right-hand fork, and after a short descent you'll see the azaleas. It's as if all the rhodies on the mountain had been drawn into one big clump. I look forward to seeing them in bloom.

The trail loop is only three-tenths of a mile; the mile each way on the forest road provides the exercise.

Hikers, botanists, and others come looking for it, as I know from talking to local residents. The visitors bring maps and numbers; the residents straighten us out. According to the 7<sup>th</sup> and 8<sup>th</sup> editions

of the *Guide*, the Flame Azalea Trail (misnumbered as TR410) was off a forest road (misnumbered as FR441) which was part of the former Sugar Camp Trail (last shown on the 1970 Monongahela National Forest map). The most recent map, from 2007, shows two forest roads north of Frost, 1012 and 1013. 1013 is shown just south of Sugar Camp Run; even closer to the run, along the south bank, is a dotted line. Visitors assume it represents the former Sugar Camp Trail. That's how we happen to meet the owner of the property, who assures us there is no forest road or trail here, it's just her driveway. One of her guests, who says "I've lived here all my life," then directs us to the forest road well north of Sugar Camp Run; he also informs us that the trail signs are down. I wonder if he takes advantage of the ATV bypass around the gate.

Some think that trails dropped from the Forest Service system should be dropped from the Guide. This editor may cut some of Allen's many references to former trails, when they don't lead to anything a hiker would otherwise miss. As I understand him, though, Allen encouraged us to roam as freely as we dared. We aren't restricted to numbered paths. History, botany, and zoology not only inform us, they can lure us to go further.

Drudging over maps and numbers and directions and lists, I come upon sentences like this, describing the Flame Azalea Trail: "The loop trail follows old logging roads in a cove favored by afternoon sunshine." That's Allen.

## Cancer Creek Flows On

By Cindy Rank

Yes, the “Cancer Creek” bill, vestige of the past, has resurfaced ---- this time it has blurred the vision of enough West Virginia legislators to float them blithely along in murky waters to the final approval of the bill.

When the “Cancer Creek” Bill appeared some 25 years ago during the time I walked the halls of the legislature as one of the Environmental Council lobbyists, the Apple Grove Pulp and Paper Mill proposed for Mason Count loomed large and dioxin pollution was uppermost in the minds of many and a hot news item.

Industry, through the voice of the Manufacturers Association, the Chamber of Commerce, the coal and gas associations, had proposed a new way of measuring the capacity of a stream to bear the brunt of increased levels of carcinogens discharged from various industrial facilities and activities. The particular discharge from the Pulp Mill was the obvious impetus for the bill and the fear of increased amounts of carcinogens such as dioxin threatened people up and down the Ohio River Valley.

Opposition to the bill ranged from intensely serious scientific discussions to hilarious street theater parades of persons in larger than life costumes of deformed fish. Caution ruled the day and the final outcome was the defeat of the bill.

Since then, industry has routinely pushed WVDEP (West Virginia Department of Environmental Protection) to adopt harmonic mean as agency policy.

I’m not alone in my belief that there is little substance to support the claim that using the more lenient average measurement will attract more industry. Asked on many occasions to name any business that has NOT come to the state because regulators use the lowest flow of streams measurement of 7Q10 instead of an average harmonic mean to calculate the pollutant limits for discharge permits, industry has failed to provide a single example these past 25 or so years.

However, persistence and politics have finally paid off for industry .... This year the Manufacturers’ Association and other industry groups convinced the legislature to bypass West Virginia Department of Environmental Protection rulemaking and advance their own version of the Cancer Creek Bill. Despite yeoman efforts by E-Council and in particular WV Rivers Coalition and Downstream Strategies, the legislature approved “Harmonic Mean” as the measurement our state regulatory agency (WV DEP) is to rely on for determining the limits for pollutants allowed to be discharged.

This bill will not change the numeric water quality criteria values for carcinogenic pollutants, but it does change how effluent limits are calculated and will allow for an increase in the total mass of pollutants that can be discharged. These changes can potentially worsen overall water quality. Furthermore, because the less conservative “harmonic mean” model assumes more

water available for dilution, the discharger runs a greater risk of exceeding instream water quality criteria far downstream from discharge locations.

But wait --- It wasn’t enough to lessen regulation of the discharge of carcinogens that can have a long term, cumulative impact on ones health.

No, no .... at the behest of industry the legislature went one step further and has included this less restrictive average stream flow measurement for determining the regulated discharge of non-carcinogens as well (e.g. iron, manganese, aluminum, etc.)

The irony here—especially for anyone who has been involved in negotiations with industry about changes in any type of regulation – is that comparison with policies of surrounding states was ignored as far as non-carcinogens was concerned.

Normally the bleating of industry cries out for a summation of what our neighboring states do so WV doesn’t over regulate, doesn’t end up being too restrictive and risk too much competition from folks across state lines.

In this instance while neighboring states use some variation of the harmonic mean average calculation for carcinogens, most relegated non-carcinogens to a 7Q10 or some variation of that low flow measurement. So now West Virginia has outdone our neighbors in the race to the bottom!

--- Go figure.

## Brief Update on the Mountain Valley Pipeline (MVP) Gas Pipeline

### 1) Ongoing FERC review

Appalmad (Appalachian Mountain Advocates) continues to challenge the plethora of gas transmission pipelines currently proposed to criss-cross West Virginia and neighboring states.

Most recently Appalmad submitted comments to FERC (Federal Energy Regulatory Agency) opposing the Mountain Valley Pipeline (MVP) citing problems with the Affiliate Agreements and lack of market demand for the many pipelines proposed in an attempt to prevent the overbuild of these multiple pipelines.

Appalachian Mountain Advocates submits comments on behalf of Allegheny-Blue Ridge Alliance, Allegheny Defense Project, Appalachian Voices, Augusta County Alliance, Center for Biological Diversity, Chesapeake Climate Action Network, Eight Rivers Council, Friends of the Lower Greenbrier, Highlanders for Responsible Development, Indian Creek Watershed Association, Natural Resources Defense Council, Ohio Valley Environmental Coalition, Preserve Bent Mountain, Preserve Montgomery County Virginia, Protect Our water, heritage, Rights (POWHR), Shenandoah Valley Network, Sierra Club, Summers County Residents Against the Pipeline, Virginia Chapter of the Sierra Club, West Virginia Highlands Conservancy, and Wild Virginia.

### 2) West Virginia Department of Environmental Protection (WVDEP)

WVDEP 401 Clean Water Act Certification of US Army Corps 404 permit to fill/impact streams was granted March 28th.

Unfortunately, although some of the restrictions and requirements imposed by WVDEP 401 Section certification are praiseworthy, the agency’s authority for oversight of on the ground activity is nearly non-existent and the enforcement authority merely after the fact.

## So-Called “Coal Bill”

By Cindy Rank

Spring has sprung, the grass is riz, I wonder where the sanity is ...

Here we are, every month or so expounding on successful federal court challenges of the coal industry at one or another mine sites where water discharges from those mines are causing damage to the health of the receiving stream, damage to the bugs and the ecological diversity of those streams, and to current and future users of those streams. (For a recent example, see Court of Appeals Enforces Conductivity Rules in the February, 2017, issue of *The Highlands Voice*).

We rely on the federal Clean Water Act and the companion state law and regulations that implement that federal law in the state of West Virginia.

Upon our appeals, the court, after thousands of reams of paper and days of expert testimony, has found that this or that company is guilty of violations of federal and state law. The court then orders those companies to control and treat their water discharges so that water flowing from their mine sites doesn't compromise and pollute the receiving streams.

Simple, no ?

Well, I guess not if you're the company out of compliance.

Sometimes – most often - those clean up measures are expensive. But that is necessarily part and parcel of operating expenses, the cost of doing business, and should be absorbed as such. [Of course we don't delude ourselves and know full well that those costs are passed on to the consumer of the coal or electricity or whatever is the final by-product of that mining, etc.]

Bottom line is that paying what by the industry is assumed to be “extra” cost is not acceptable to them ... So coal companies

appeal to whatever authoritative body that might be responsive to its so-called ‘needs’.

In many instances that turns out to be the state legislature – or the Congress on the national level.

Here in the spring of 2017 the coal industry is appealing [once again] to the WV state legislature to save it from what it assumes to be unacceptable requirements to protect the health of streams, to preserve the aquatic life and ecosystems of the streams we all rely on for drinking, recreation, industrial development, etc.....

*“Surely there are less restrictive standards to protect streams than those that are currently required by WV [and federal] law” we hear them cry. .... “Please, please, release us from these over-protective requirements that make us pay attention to small bugs.”*

Get real.

SB 687 has passed out of the Senate and gone to the House as we publish the April issue of *The Highlands Voice*. We can only hope that the Legislature pushes this aside as they consider other pieces of legislation more worthy of their time and consideration. May it have died somewhere in the last day of the legislature by the time you read this.

Companies can meet these requirements without crying to the legislature to reduce the responsibility of preserving clean water for all of the state's citizens and visitors.

Grow up.

**Note: For more details on SB 687 see the fact sheet on the facing page.**

### Handicapping the Legislature

As *The Highlands Voice* goes to press, the Legislature is still in session. Anything could happen. HB 2506 (Cancer Creek) has passed both the House and the Senate and awaits the Governor's signature to become law. There is a last ditch effort to persuade the Governor to veto it but that is unlikely. The odds of drawing to an inside straight are much better than the odds of a veto.

SB 687 (Coal) has passed the Senate 32-2, with Senators Beach and Romano voting in the negative. It has gone to the House where it will be considered by the House Energy Committee. A public hearing was scheduled for April 3.

It is said that somebody, somewhere will make book on absolutely anything. With SB 687, however, the legislative process is too uncertain and too unpredictable for anyone to establish a betting line. We will just have to wait and see. While no one ever went broke betting on the coal industry, things are always unpredictable.

The fate of the LEEP bill is equally unpredictable. It made early progress last year and is still in the legislative sausage grinder at this late stage so it still may make it over the finish line.

The bill to take away the wind industry tax break has a tougher time ahead. It would have to make it through two committees and a floor vote. That is a lot to go through this late in the session. If someone powerful really wanted it to pass it might but the smart money is against it.



## Protect Stream Life, Strike Water Changes in the Coal Bill (SB 687)

***SB 687 as-is would make our narrative water quality standards one of the weakest in the nation.***

### **What is a narrative water quality standard?**

Narrative standards are based on the numbers and types of animals living in streams (as opposed to numeric limits on particular chemical pollutants). They are not violated until pollution actually kills the animals which would otherwise naturally inhabit waterways in the state. They serve as an ultimate backstop to protect streams from dying.

### **What does the coal bill change for stream protections?**

It removes what nearly every other state uses – the assessment of macroinvertebrates (aka “bugs”) as the most scientifically sound way to measure a stream’s biological health. The note intended to be included on the original bill made this clear: *“The purpose of this bill to clarify that any rules promulgated to measure compliance with the aquatic life component of West Virginia’s narrative water quality standards do not necessarily have to be consistent with the West Virginia Stream Condition Index or other indices that focus on the presence or absence of certain benthic invertebrates.”*

### **Why must we maintain stream health assessments based on invertebrates?**

Insects, crustaceans, and invertebrates are the foundation of a healthy ecosystem. Without them, the entire food chain breaks down. Loss of invertebrate populations is an early signal that pollution is damaging life in a stream. If the state moves to assessing stream life based on fish or the ability to support fish, not only will West Virginia be at the bottom for the weakest narrative quality standards in the country, but it will be severely limited in accurately measuring the health of its waterways.

### **What is the cost?**

We would no longer have the most accurate method for determining if a stream is “impaired” due to water quality standards violations stemming from coal mining or other diverse forms of pollution. Under the Clean Water Act, an improvement plan known as a TMDL (Total Maximum Daily Load) must be developed for impaired streams. This change aims to avoid impairment determinations and TMDLs. It would turn a blind eye to problems in our waters until it’s too late, and the state will be further burdened with more restoration costs. Additionally, since fish are much harder and more expensive to sample, this bill would make it more costly for WVDEP to comply with the federal requirement to measure the biological health of waterways in West Virginia.

## Book News

### The Industrialist and the Mountaineer: The Eastham-Thompson Feud and the Struggle for West Virginia's Timber Frontier, by Ronald L. Lewis (Morgantown: West Virginia University Press, 2017, paperback, 301 pages).

Reviewed by Paul Salstrom

Not all feuds are cut from the same board. But this Tucker County feud, like the Hatfield-McCoy feud around the same time on the other side of West Virginia, was about timber---control over timber and over ways in which to move it. Both feuds ignited because railroad tracks arrived that could haul lumber to distant markets. (Or, actually, in the Hatfield-McCoy case, that feud re-ignited and expanded when a railroad arrived and timber could suddenly make you rich.)

Most West Virginia feuds seem to have started with a fight or a shooting, but Tucker County's Eastham-Thompson feud *ended* with its one and only shooting, a two-man gunfight. This book's author Ronald L. Lewis explains why the shoot-out ended the feud--because, he says, both the shooters were 'outsiders,' neither one of them was born and bred in Tucker County. Bob Eastham was a full-fledged southerner from Rappahannock County, Virginia and Frank Thompson was a northerner from Maine via Philadelphia. So there were no feud-minded kin to keep things going. Author Lewis's recounts the feud's details but his overarching theme is that Bob Eastham personified traditional southern backcountry customs like sharing access to resources among all local residents, whereas Frank Thompson and his family's far-flung timber empire personified privatization and competition aimed at monopolizing control over all an area's timber, and control over all the ways it could reach the outside world.

First, of course, timber was transported by floating it down streams and rivers, which often had to be dammed up for the winter (--with a 'splash dam') to insure enough springtime water-release to float the size of the logs 'just waiting to be cut' in West Virginia's virgin forests. Ex-U.S. Senator Henry Gassaway Davis built a railway system to haul lumber and coal out of northeastern West Virginia. To get lumber, that railroad first went simply to or through downriver towns like Davis, a railroad boom town on the Blackwater River that Bob Eastham helped to lay out in 1884 on behalf of Mr. Davis, whose railroad arrived later that same year. Some small lumber mills soon started, and then in 1887 Albert Thompson, Frank's father, arrived from Philadelphia with large amounts of capital to invest. He bought tens of thousands of acres and built a huge lumber mill at Davis.

Some of Tucker County's choicest timber was a short ways south up the Blackwater River in Canaan Valley, where Bob Eastham and his wife Mary had moved in 1876 when that large valley was still a wilderness. There Bob Eastham farmed, guided hunters, surveyed some, bought and sold land, and tried to float out a few logs every year---a venture that proved harder and harder by the mid-1890s due to the Thompsons' extra-legal control over the Blackwater River, which they justified by its efficiency, not just in providing a profit to their investors but providing the livelihoods of all their employees. For Bob Eastham it was *not* about efficiency but about everyone's equal right to float logs down the river, as spelled out in the 1872 West Virginia Constitution. Admittedly Eastham's youthful Civil War career with Mosby's Rangers, the legendary Confederate irregulars, had left him a bit belligerent. Lewis's book delves back into that, including some of Eastham's personal exploits, but the Civil War had nothing to do with Eastham's grievance against

the efficiency-minded Thompsons---who had contracted to mill logs for him and then kept Blackwater River so choked up with their *own* logs all spring and summer that Eastham couldn't get his logs to the Thompson sawmill, costing him a tidy penalty when he couldn't fulfill his contract to supply lumber to a third party by a specified date. Eastham and a lot of other Tucker Countians thought the Thompsons were trying to force all the small-scale operators out of business.

When Eastham and the Thompsons then lined up on opposite sides of an unrelated legal issue in which Eastham was found guilty of contempt of court and fined five dollars for signing a petition and arguing in court that the U.S. Constitution protected the right of petition, that became the last straw for Eastham. Boarding the train that evening after all day in court at the county seat of Parsons, he noticed Frank Thompson sitting next to the aisle and called him an s.o.b. and slapped him for good measure.

Eastham perhaps had an old-fashioned southern duel in mind as he continued down the aisle, but Thompson pulled out a pistol and headed for him. As Eastham turned around he received three shots pointblank, two glancing off his forehead and the other grazing his lower ribs. But Thompson's gun was so weak that Eastham merely bled a lot. (Local lore in Tucker County is that Thompson carried an 'owl-head' pistol with low compression and a short, un-rifled barrel.)

Meanwhile Eastham's own pistol got snagged on the lining of his left coat pocket so he fired from inside his pocket and hit Thompson in the arm, leg, and abdomen. The third shot proved fatal despite two doctors taking Thompson on the next train to the closest hospital with an operating room---about a hundred miles away in Cumberland, Maryland. By then Frank Thompson's internal bleeding couldn't be fully stopped and he died early the second morning at 35 years of age.

Author Lewis next starkly shows us West Virginia's politicized legal system on display. Bob Eastham was soon arrested for murder and the presiding judge, a supporter of the business elite, tossed out the 'involuntary manslaughter' preference of two grand juries---and then illegally appointed his *own* grand jury---in order to get Eastham charged with murder. A top-notch array of eight pro-business lawyers joined the prosecution team against Eastham, while an equally prestigious array of eleven tradition-minded lawyers handled Eastham's defense. Colonel John Singleton Mosby (CSA) sent Eastham a warm letter of support from a reunion of Mosby's Rangers that Eastham couldn't attend being in jail. The pro-business judge hammered home to the trial jury that their only choice was a murder conviction or total innocence. But what basically then went to trial was how Tucker County's citizens felt about the Thompson lumber empire's engrossment of local resources, and almost no one in the county's entire jury pool of over a hundred adult males seemed to like that engrossment, or like the Thompsons' influence in local politics and legal matters.

Within about a dozen years of the 1897 gunfight, career evolutions took all but one member of the Thompson family away

**(More on the next page)**

## More about the Feud (Continued from previous page)

from Tucker County---although some kept summer homes in Canaan Valley. The exception to this family departure was George B. Thompson, one of Frank Thompson's cousins. George was in his mid-20's when Frank died by gunshot. Since he alone of his Thompson generation stayed in Tucker County, he became head of the family lumber business there and incidentally a prominent resident of Canaan Valley. Another of the Thompsons, Benjamin, acquired Bob Eastham's old Canaan farm and made it part of his estate "The Willows." Even more ironically, Frank Thompson's sister, Sarah Maude Thompson Kaemmerling, donated several thousand acres to create a state park on condition that the state donate several thousand more acres. That's how Canaan Valley Resort State Park finally came to be in 1971. Thanks to its great

popularity and economic success, Canaan Valley can no longer afford to allow much timber cutting.

Oh yes, how did the murder trial turn out? The trial jury ignored the judge's insistence that they choose between murder and innocence. They returned a verdict of involuntary manslaughter---the dominant local opinion all along. The judge took a little revenge by sentencing Bob Eastham to two years in jail even though West Virginia law contained no penalty at all for involuntary manslaughter. Eastham then escaped from jail and returned to his family farm in Rappahannock County, Virginia, where no one ever went to bring him back. He died in 1924 at age 82 after a stroke knocked him off his horse into an icy stream.

## Study of Health Effects of Mining Gets Going

For years, groups, researchers, and individuals have been saying that mining, and particularly large scale surface mining, has an adverse impact upon public health. For a little history of some of the times that the West Virginia Highlands Conservancy and others have been saying it, see the September, 2016, issue of *The Highlands Voice*. To see it, go to <http://wvhighlands.org/highlands-voice-mag/> and click on Archives.

That same issue of *The Voice* reported that the National Academy of Sciences intended to do a study of this problem.

Now the study has begun. Here is the way the National Academy of Sciences describes its task:

### Statement of Task

An ad hoc committee of the National Academies of Sciences, Engineering, and Medicine will conduct a study to examine the potential relationship between increased health risks and living in proximity to sites that have been or are being mined or reclaimed for surface coal deposits. The study will focus on four states in Central Appalachia. In particular, the study will:

1. Identify and briefly describe the main types of coal deposits in Central Appalachia that are extracted using surface mining techniques. Descriptions will include geologic and geochemical characteristics, mining and reclamation operations, and waste management approaches.
2. Summarize the state and federal regulatory frameworks for surface coal mining operations, including coal preparation plants and the associated coarse coal refuse facilities and slurry impoundments.
3. Systematically search and screen literature to identify relevant scientific publications on the potential human health effects related to surface coal mining operations. The committee will use the selected literature to accomplish the following:

- a. Identify effects from surface coal mining operations on air, surface water, ground-water, and drinking water quality and on ecologic communities and soil that could potentially lead to human health concerns.
- b. Evaluate the potential for short-term and long-term human health effects, which will include consideration of potential exposure pathways and relevant environmental contaminants and other stressors.
- c. Assess the scientific and methodologic quality, rigor, and sufficiency of the scientific research.

4. Identify baseline data and approaches necessary to monitor environmental and human health indicators that may be affected by surface coal mining operations.
5. Identify gaps in research and needs for additional research that may assist in the development of new approaches to safeguard the health of residents living near these types of coal mining operations.

As this study is focused on human health effects for those living in close proximity to surface coal mine operations, the committee will not consider the occupational health aspects of workers at these mines.

The study committee had its first public meeting on March 7, 2017. That meeting was mostly about getting organized, defining the problem, etc. If you want to sign up for email updates go to <http://dels.nas.edu/Study-In-Progress/Potential-Human-Health-Effects-Surface/DELS-BESR-16-03?bname=besr>.

For additional information, go to <https://www8.nationalacademies.org/cp/projectview.aspx?key=49846>

The project is supposed to take 24 months.

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- ▶ The baby shirts are certified organic cotton and are offered in one infant and several toddler sizes and an infant onesie. Slogan is "I ♥ Mountains Save One for Me!" Onesie [18 mo.]---\$25, Infant tee [18 mo.]---\$20, Toddler tee, 2T,3T,4T, 5/6---\$20
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To order by mail [WV residents add 6 % sales tax] make check payable to West Virginia Highlands Conservancy and send to West Virginia Highlands Conservancy, Online Store, PO Box 306, Charleston, WV 25321-0306

**The same items are also available at our on-line store: [www.wvhighlands.org](http://www.wvhighlands.org)**

## 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 \$18 by mail; **long sleeve** is \$22. West Virginia residents add 6% sales tax. Send sizes wanted and check payable to West Virginia Highlands Conservancy ATTEN: Online Store, WVHC, P.O. Box 306, Charleston, WV 25321-0306.



## HATS FOR SALE

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

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

The I ♥ Mountains The colors are stone, black and red.. The front of the cap has ♥ 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 \$20 by mail. West Virginia residents add 6% tax. Make check payable to West Virginia Highlands Conservancy and send to West Virginia Highlands Conservancy, Atten: Online Store, P.O. Box 306, Charleston, WV 25321-0306