



Winds of Change

Supporting Organized Voices and Empowered Communities Since 1987

Huntington, WV

OVEC

www.ohvec.org

Perseverance Pays Off

Victory: Supreme Court Pilot Program Now Permanent

by Dianne Bady and Dan Taylor

Campaign Time So Far: 16 Years



At the State Capitol and beyond, persistent people power pays off.

In 2012, Allen Loughry became the first and only candidate for state Supreme Court to take advantage of public financing of his campaign, using a pilot program established thanks to our WV Citizens for Clean Elections coalition. Remarkably, Loughry won the election, defeating the politically powerful Tish Chafin.

Throughout the 2013 WV Legislative Session, the Clean Elections coalition worked to pass legislation that would make this pilot program permanent. The legislation, HB 2805, passed through House Judiciary and Finance committees thanks to champion Delegate Tim Manchin (D-Marion) and other bi-partisan supporters. The bill made it over for the Senate to consider just in the nick of time. The bill survived attempts to weaken it into merely an extension of the initial pilot project, making it

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Victory: EPA's Veto Power Stands*

Overall Spruce No. 1 Lawsuit Time So Far: 16 Years

In April, the U.S. Court of Appeals for the D.C. Circuit upheld the U.S. Environmental Protection Agency's legal authority to veto a mining permit that the U.S. Army Corps of Engineers had issued. The decision reverses the lower court's contrary ruling and is a major blow to the coal industry's attempt to prevent the EPA from protecting

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Victory: Appeals Court Invalidates Nationwide Permit 21

For years, the U.S. Army Corps of Engineers used the streamlined Nationwide Permit 21 process to approve new valley fills.

Related Lawsuits
Time So Far: 10 Years

The Clean Water Act authorizes Nationwide Permit 21 *only* for stream-filling activities that have minimal environmental effects, both individually and cumulatively. Mountaintop-removal coal mining produces enormous quantities of waste that is commonly dumped in adjacent valleys and streams. Anyone with functioning eyes can see that the environmental impact of valley fills is far from minimal.

In case common sense isn't good enough, scientific studies have shown that the waters downstream from valley fills are degraded, and there is no scientific evidence that buried headwater streams can be re-created successfully elsewhere (what the Corps imagines "mitigation" might be).

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**It's happened before: We win, they try to change the law. See page 23.*

A Visit from the Buffalo Creek Miracle Baby

by Maria Gunnoe

On March 23, OVEC hosted Kerry Albright, the Buffalo Creek Miracle Baby, at the WV Culture Center in Charleston. Albright was only 9 months old in 1972, when the Buffalo Creek Dam failed. Albright's mother threw him up the hill as the wall of sludge swept her and his older brother away.

As the tidal wave of sludge subsided, Albright, his leg sticking out of the muck, was found by a preacher who tugged at what he thought could have been a doll's leg. It was Albright, just barely clinging to life. Albright and his father, Robert Albright, who was working in the Pittston mines as the dam failed, were the only survivors in the family.

Before our evening with Albright began, we viewed the Appalshop film by Mimi Pickering, *Buffalo Creek: An Act of Man*. Then, I was honored to introduce Albright, who wove a spell-binding tale that had the audience first crying, then laughing. On OVEC's *Hoots and Hollers* blog, Albright tells his story from his dad's view, much as he told it on March 23, and it's an awesome read. Please read it here: bit.ly/ZXDcyA.

After Albright spoke, Jack Spadaro joined us in talking about the Buffalo Creek flood. Jack was a mine safety inspector assigned to the Buffalo Creek Flood, and what he endured during this investigation was terrible for him. Spadaro had heard about Albright as the Buffalo Creek Miracle Baby, but he never had a chance to meet him until our event on March 23. Spadaro has done so much to stop another disaster like Buffalo Creek, so much for the people of West Virginia. But that's another story for another issue of *Winds of Change*.

Rob Goodwin, with Coal River Mountain Watch, also addressed the crowd about the current dangers of the Brushy Fork coal sludge dam. Read more about that on page 8.

I am so glad we were able to bring Albright here to speak. The timing was good: *Reader's Digest*, with a circulation of five million, published Albright's

story in their January 2013 issue. On February 26, the West Virginia Legislature marked the 41st anniversary of the Buffalo Creek disaster by presenting Albright with a Legislative Citation.

Albright and I met a few years ago in Brooklyn, NY, when we interviewed for the same documentary. We sat down across from each other, not knowing anything about one another. By the time we were finished with our interviews, we were bonded by our stories of catastrophes caused by coal companies' blatant disregard for the laws that are supposed to

protect our lives. The terrible disrespect for human life that the coal companies had in 1972 has not changed much in the past 41 years.

Albright's story helped me to understand how lucky my family and I were to make it away with our lives when the ponds above our home failed, flooding our property. I was so overwhelmingly outraged and angry about what the

coal company had done to my home place that it was hard for me to think about how lucky we were to have survived the flood of 2003. Until I met Albright, the idea of what could have happened that day, when the ponds in the headwaters of Big Branch Creek failed, hadn't really jelled. As at Buffalo Creek, there were two ponds. One emptied into another. When the top one failed, it washed away part of the lower one and sent a small tsunami downstream that washed away nearly five acres of my land.

I want to thank Kerry Albright for helping me think more clearly about what we really need here in West Virginia. In his words, "We should all do all we can to see to it that this never, ever happens to anyone ever again."

Albright currently lives in New York City, where he is an opera singer, story-teller, actor and dancer. He has appeared in Broadway shows and often uses his Appalachian upbringing in the characters he plays. We are so proud to have him on our side. 🍌



Kerry Albright on Buffalo Creek. Photo courtesy Albright.

Pilot Program Permanent

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through two Senate committees in time to be voted on by the full Senate on the *last day of the session*. More attempts to delay and amend the bill transpired, but these were defeated. Senate President Jeff Kessler (D-Marshall), our Clean Elections champion, shepherded the bill to passage, 30–4.

It was a nail-biter, but we have a victory! We could not have done this without the support of OVEC members who made calls, sent e-mails and visited legislators. Thanks to everyone in the WV Citizens for Clean Elections coalition. This bill can help get outside, special-interest industry money out of our elections and ensure a more fair and impartial judiciary. We give special thanks to super-lobbyist Julie Archer from CAG, whose hard work and expertise was essential to this victory.

But, don't rest on those laurels for too long. We will need your help in the future as we work to obtain a permanent funding source for this program and as we move to spread public financing to other political races across the state. Clean elections now, and clean elections from now on, as we work to remove the extractive industry's money from our statehouse. 🍌

With a WV grade of D+ for "corruption risk" given recently in a state integrity investigation, what's a West Virginian to do? Volunteer for Clean Elections! I was so happy to volunteer with OVEC's Dan Taylor and CAG's Julie Archer as they shepherded the bill for public financing for Supreme Court campaigns through the House and Senate during the 2013 WV Legislative Session.

With all the negative news we have to ingest here in West Virginia, this legislative success is one step in the right direction, an encouraging success on a laundry list of important Clean Election items. Now... anyone up for hand-counted paper ballots?

— Rebecca Park, secretary for the Mountain Party

Why Did We Start Work on Clean Elections ?

by Dianne Bady



Back in the 1980s and 1990s, when OVEC was working to force cleanups of unhealthy and illegal air pollution at the then-Ashland Oil refinery in adjacent Kentucky, we wondered why Kentucky politicians refused to crack down on Ashland's recurring serious violations. When, during the 1990s, OVEC took the lead in fighting a New York paper corporation's plan to further pollute the Ohio River with deadly dioxins, we wondered why West Virginia's governor and key politicians were willing to offer the company \$1.1 billion in various tax giveaways and outright subsidies to construct a tree-devouring pulp mill in the face of strong citizen opposition.

We ultimately prevailed on both of those issues, but the answers to our questions became painfully clear. At the time, Ashland Oil was the biggest contributor to Kentucky politicians' political campaigns. Parsons and Whittemore, which wanted to build the pulp mill, was most generous in donating to key West Virginia politicians' campaigns, especially the governor's. So in the late 1990s, when approached by Pete MacDowell, a long-time activist and organizer in North Carolina, we joined a southern coalition, Democracy South, to work for campaign finance reform — specifically public financing of elections. We saw it was time to work at one of the major underlying issues to all environmental problems. It was clear that building a statewide coalition would be needed in order to effect the systemic change we sought.

We partnered with WV Citizen Action Group and *continued on page 24*

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OVEC is a member of the WV Environmental Council, the Alliance for Appalachia and The CLEAN, and is a 501(c)(3) non-profit organization registered with the IRS and the West Virginia Secretary of State.

When you're finished with this newsletter - PASS IT ON!

Coal's Influence at the Legislature: Lies in a New Law

Over the past several years, our citizen lawsuits have forced surface mines owned by Arch Coal and Alpha Energy to address the illegal levels of selenium those mines release into downstream waterways.

Selenium pollution treatment is so expensive that, earlier this year, Patriot Coal agreed to phase out large-scale strip mining in exchange for being allowed an extra year to complete selenium treatment facilities at their mountaintop-removal mines involved in selenium litigation brought by OVEC, the WV Sierra Club, the WV Highlands Conservancy and Coal River Mountain Watch, represented by attorneys from Appalachian Mountain Advocates, Public Justice and Earthjustice.

In response, the coal industry successfully launched a major legislative campaign this year to theoretically make it possible for selenium water standards to be weakened in West Virginia. This new law is similar to one recently passed in Kentucky.

But, before weakened selenium standards could be implemented in either state, the U.S. Environmental Protection Agency would have to formally approve these changes. The current EPA standard for selenium is supported by strong science, and we hope that scientific integrity — and citizen pressure — will ultimately prevent the new state selenium laws from being fully implemented.

West Virginia's new selenium law states "... the alleged environmental impacts that were documented in applicable federal research have not been observed in West Virginia."

That is not true. It's appalling that the political power of Big Coal makes it possible for such dishonesty to be incorporated into our laws. The EPA's 2005 federal programmatic Environmental Impact Statement on mountaintop-removal mining clearly showed unacceptably high selenium levels in streams immediately downstream of mountaintop removal and valley fills. This research was done here, in West Virginia, as early as 2002.

In 2004, a report from the U.S. Fish and Wildlife Service found troubling levels of selenium in fish

downstream from large strip mines in the state.

An April 28, 2006 Power Point Presentation by the WV Department of Environmental Protection Division of Water and Waste Management presented an overview of an ongoing DEP selenium study that showed evidence of the bioaccumulation of selenium in several West Virginia lakes and streams downstream from mining operations, including the Upper Mud River Reservoir.

In 2010, the DEP released a report called Selenium Induced Developmental Effects in Fish in Select West Virginia Waters, which documented deformities in fish downstream of mountaintop removal. The deformities were of the types known to be caused by excessive selenium.

In 2011, the National Academy of Sciences accepted for publication a major research paper, submitted by seven scientists, which reported on results of additional studies of excessive selenium found downstream of mountaintop removal.

The scientists found that selenium levels were normal in West Virginia streams upstream of mountaintop-removal mining, but downstream of mountaintop removal, the concentrations of selenium and other pollutants increased at a rate directly proportional to the extent of mining

upstream.

The researchers stated, "Our results provide evidence that ... mines reclaimed nearly two decades ago continue to contribute significantly to water quality degradation in this watershed." ("Cumulative impacts of mountaintop mining on an Appalachian watershed", by T. Ty Lindberg, Emily Bernhardt, *et al.*)

House Bill 2579, which became the new law, states, "Considerable research is required to determine if selenium is having an impact on West Virginia streams."

This is a ludicrously dishonest statement. A great deal of scientific research already shows serious selenium impacts on state streams — streams that are located downstream of mountaintop removal mines



Above: MTR in the Mud River watershed. Below: Photo taken by a researcher of a selenium-deformed fish in the Mud River reservoir. One legislator said fish with deformed spines fit better in the frying pan.



If the Legislature is saying that environmental impacts from selenium pollution have not already been observed in West Virginia then they must consider Mud River and other forgotten areas that have been impacted by mining pollution not to be a part of the state! I believe the research and monitoring that has already been done by scientists from Duke University was done properly and that the findings are accurate.

- Ronda Harper, whose family has Mud River roots

where selenium is discharged into the water.

In 2008, Dr. Dennis Lemley, a nationally known expert on selenium water pollution's impact on fish, testified on the selenium toxicity found in the Mud River and Mud

River Reservoir. These water bodies are immediately downstream of a massive mountaintop-removal complex in Lincoln County.

Lemley said, "Maximums (maximum selenium levels) still exceed the threshold for major toxic impacts by a factor of 3 or 4 ... the hazard of selenium is high ... waterborne selenium concentration measured in the Mud River and Mud River Reservoir are from 1.5 to 4.5 times the current EPA freshwater criterion for the protection of aquatic life."

Lemley stated that in June 2007 biologists from the WV DEP examined recently hatched fish from the Upper Mud River Reservoir and found deformities in as high as 35% of the samples. The deformities are consistent with selenium poisoning, and include scoliosis of the spine, edema and yolk sac deformity.

According to Lemley, "These findings confirm that selenium poisoning is taking place in the fish community of Upper Mud River Reservoir. The Mud River ecosystem is on the brink of a major toxic event. If waterborne selenium concentrations are not reduced, reproductive toxicity will spiral out of control and fish populations will collapse.

"The warning signs are evident. If a catastrophic event is to be avoided, now is the time to take action." 🍌

Vultures circle the golden dome of the WV State Capitol. Maybe they smell the rot wafting off democracy. Help resuscitate democracy: Volunteer with OVEC.



Settlement Forces Selenium Limits in Permit Reissue

by Dianne Bady

For years now, OVEC and allied groups have been filing lawsuits when strip-mining companies violate selenium limits in their discharges to streams. Wouldn't you expect that the DEP would be making sure that new and reissued water-pollution permits would include limits for the amount of selenium discharges allowed?

But DEP *still* routinely issues and reissues surface-mine permits with no selenium limits. In response, our organizations routinely file legal appeals with the WV Environmental Quality Board, pointing out the DEP's legal responsibility to include selenium limits.

In one recent example, the DEP issued a National Pollutant Discharge Elimination System (NPDES) water-pollution permit to Dynamic Energy's Coal Mountain No. 1 Surface Mine in western Wyoming County. Even though *Dynamic has reported high selenium concentrations from this mine in its application to amend its mining permit in 2010, the DEP neglected to include selenium limits or reporting requirements in their newly reissued permit.*

In April, OVEC and the Sierra Club reached a legal settlement requiring the DEP to actually do their should-be-routine job of imposing selenium limits and reporting requirements at this mine, which has 137 outfalls where potentially contaminated mine wastewater flows into a number of streams in the area and eventually into R.D. Bailey Lake. Thanks to Amy Dawson of Appalachian Mountain Advocates for representing our groups.

After watching DEP Director Randy Hoffman testify before a state legislative committee, asking that legislators grant the coal industry's request to be able to dump more selenium into our streams, it seems like the real purpose of WV's Division of *Environmental Protection* surface mining program is to make it *easier* for coal companies to pollute. 🍌



Blast a Central Appalachian mountain and turn it inside out. You'll release toxins into the waters of the United States, in violation of the Clean Water Act, not to mention common sense (that is, don't pollute that which sustains life). The DEP will let you get away with that, but the citizens won't.

Update: Cemetery Preservation

Over the past few years, we have done much to raise awareness about the plight of family cemeteries in West Virginia, yet instances of desecration, violated boundaries/buffer zones and blocked access routes still abound.

Some families involved in these cases have gone to court, some are considering next steps and some came out during the 2013 Legislative Session to help efforts to pass HB 2893, a bill introduced to save other cemeteries from desecration similar to that perpetrated in Crystal Block Cemetery in Logan County.

OVEC members helped support efforts to move this bill, which made it through the House Judiciary Committee, and then landed in House Finance, where it was never brought up for consideration.

If passed, this bill would have required gas-industry operations to obey laws similar to those the coal industry is supposed to obey when operating near burial grounds. Also, in its original form, the bill would have established a precedent for better access route maintenance; this part of the bill was deleted in House Judiciary. Currently, there are few regulations related to gas operations and cemeteries — not even an established buffer zone of any kind.

Soon after the Legislative Session ended, a group of citizens and legal observers were hassled and delayed when going to visit three family cemeteries in southern Boone County. The citizens, family members of people buried in the three cemeteries, had legally arranged an appointment to visit the cemeteries, located within a huge mountaintop removal site, but they were met with a variety of hours-long delay tactics from mining company employees during their visit.

When they were finally visiting one cemetery, a coal company set off a blast, apparently less than a half-mile from where they were standing, with no warning signal. To reach the last of the three cemeteries, they had to drive up a road that was extremely treacherous.

They also discovered that the legally required 100-foot buffer zone between the cemetery and the mountaintop removal operation had been violated in at least two of the family cemeteries. Relatives of the



"We didn't put our cemeteries in the middle of their mine sites; they put their mine sites in the midst of our cemeteries," says OVEC organizer Dustin White, who has family buried in Jarrell Cemetery, the forested hilltop at left, in the midst of Alpha Natural Resources Twilight mine complex. Thanks to SouthWings for the flyover.

people buried in these cemeteries are seeking legal advice on how to proceed with court action.

No one should have to undergo such complicated and dangerous situations in order to visit their relatives' graves!

If you have a family cemetery, please get it recorded with the State Historic Preservation Office, and monitor it closely. Know your rights. Ask your OVEC organizer for a copy of our cemetery preservation brochure. Visit ohvec.org/issues/cemetery/.

If you notice problems with cemeteries, let us know; we may be able to refer you to a legal advisor, and we want to keep noting examples of problems related to family cemeteries in order to make our case for better legislation in next year's legislative cycle. Yes, we are already gearing up for the 2014 legislative session — and we need your help.

For more information, or to get involved in our cemetery preservation work, contact Danny Cook at 304-247-6943 or Maria Gunnoe at 304-989-9581 or maria@ohvec.org.

We are in the midst of re-working our website. Check out our new front page at www.ohvec.org. We hope you will stop by often, to find any urgent updates and notice of special events. We've made it easier for you to join our action alert list and to follow us on social media, too.

Appalachia's MTR-Polluted Water Delivered to EPA

In early May, OVEC took part in The Alliance for Appalachia's 8th annual Stop Mountaintop Removal Week in Washington.

After lobby training, participants from West Virginia, Kentucky, Virginia and Tennessee, along with allies from beyond Appalachia, took part in meetings with assorted agencies in the Obama administration. Their message? End mountaintop removal! They also visited Congressional offices, where citizens encouraged lawmakers to support the Clean Water Protection Act (**H.R. 1837**), a bill introduced on May 6 that would enact some basic protections for Appalachian streams.

Before heading to D.C., many of the participants had collected gallon-jugs of polluted water from wells and streams in their communities. On May 8, in an action organized by Appalachia Rising and attended by about 100 people, they brought that water to the U.S. Environmental Protection Agency's headquarters.

Risking arrest, about 15 people sat down — with more than 100 gallons of brown, black and red water collected from water sources in Virginia, West Virginia and Kentucky — at an entrance to the EPA building. They weren't moving until the EPA accepted the water and acknowledged their demand for stronger water quality rules.

"We want to show them exactly what the water situation is in the Appalachian region. This is what people deal with coming out of their faucets.

We are being asked to use toxic water for drinking, washing and cooking," said Laura Miller, with the Southern Appalachian Mountain Stewards in southwestern Virginia.

Everyone there hoped the dirty water would alert EPA officials to the urgency of the toxic water situation. More than 20 peer-reviewed studies have shown devastating health impacts; citizens near mountaintop removal are 50% more likely to die of cancer and 42% more likely to be born with birth

defects compared with other people in Appalachia.

"There is no longer the luxury of time — we need the EPA to act now because people are sick and dying now," OVEC organizer Dustin White said during the sit-in. "We are here today to stand up for Appalachia, but the struggle for a safe environment crosses all boundaries. Our fight is one and the same as the Navajo Diné resisting coal mining on Black Mesa and communities of color fighting coal-fired power plants. Everyone deserves clean air and water."

"Sometimes the water runs orange, and you wouldn't want to touch it, much less drink it. But what's more dangerous is when toxic water from your tap looks and smells totally fine. People sometimes drink it for years without knowing that they're drinking toxic water and that's what's making them sick. We are bringing this water to the EPA as a way of holding them accountable. We're having them sign for it so that they can formally acknowledge the problems that we're living with every day in the mountains," said Josh May of Magoffin County, KY, a member of the Stay Together Appalachian Youth

(STAY) Project.

On *Grist*, guest blogger Ted Glick wrote:

For two hours the sit-in went on, supported by the other demonstrators, most of whom stayed. People sang and chanted and several spoke as the time went by. They chanted, "EPA, Do Your Job," and "Clean water is what we need, and EPA has got the key."

One of the speakers, Kathryn Hilton, from the Mountain Watershed Association in western

Pennsylvania, spoke about the connections between mountaintop removal and fracking for shale gas.

Finally, Nancy Stoner, head of the Water Division at EPA, did come down, was read a short declaration of why we were there by Kentuckian Teri Blanton, briefly acknowledged receiving hundreds of pages of documentation of this issue earlier in the week (Ed. note: see "Groups Petition EPA for Water Quality Standard" on page 10) and said she would be looking into it. 🍌



At right, Nick Mullens, a former coal miner from Virginia, and his family; left of them, Teri Blanton, a Kentuckians For The Commonwealth member, with others at the EPA sit-in.

Photo by Megan Kelley, courtesy of Appalachia Rising.

SSP Press Conference: Give Us The Data, OSM!

On April 25, the Sludge Safety Project (SSP) and concerned citizens held a press conference outside the Charleston Field Office of the Office of Surface Mining (OSM) to demand the data from a critical OSM study on the compaction of coal waste dams. More than a dozen community leaders and activists came out to voice their deep concerns about dam safety and demand agency transparency and an immediate moratorium on impoundment expansions.

Speakers included retired UMWA preparation plant worker and longtime worker and community safety advocate Joe Stanley, Coal River Mountain Watch Co-Director Debbie Jarrell, lifelong resident of the Coal River Valley Freda Williams and SSP's Rob Goodwin.

Stanley said, "This is the cheapest, easiest, sorriest way to get rid of this material. An average mine that, say, runs a 35-year lifetime here in West Virginia will accumulate 200 million tons of this refuse over time. What are they doing with it? They're putting it up in a hollow. These things could liquefy."

In response to relentless citizen pressure, the OSM began a study of dam compaction in 2010, testing seven dams across the state. The report on this testing was due in the fall of 2011, but the DEP and the Federal Mine Safety and Health Administration (MSHA) objected to the report. The OSM agreed to delay the report's release and allow the DEP to conduct additional testing. Both citizens and journalists made repeated attempts to get the OSM's data via the Freedom of Information Act, but were denied every time. SSP obtained a copy of the draft Executive Summary. Although none of the data were included, the summary conclusions are damning.

According to the draft summary, "Results of the testing tend to indicate that the coarse refuse is not

consistently being compacted in accordance with approved specifications. Failing field density tests occurred at all seven of the sites investigated.

Of 73 field density tests performed at the seven sites, only 16 yielded passing results. These results indicate the quality-control methods used during embankment construction may not be achieving the desired results."



Reporters surround Freda Williams as she talks about the dangers of the Brushy Fork coal sludge dam, pictured on the opposite page.

Over 75% of the tests failed! That is a completely unacceptable number. What's even more unacceptable is keeping the public in the dark about these critical issues of safety, instead of conducting an open investigation.

During our press conference, Charleston OSM Director Roger Calhoun came out, telling us that he absolutely will not release the data without the completed study and that they need more time. With

all due respect to Calhoun, two years is already too long to wait for this critical information. We applaud the OSM for listening to citizens and conducting their own investigation and data collection on impoundment safety instead of relying on suspect industry consultants like Geo/Environmental Associates. However, with suspect agencies like the DEP involved, the only way to ensure that an accurate analysis happens is to make the data public so independent experts can form their own opinions.

We also need more than just studies; we need action. One of the seven dams with failing tests is the massive Brushy Fork sludge impoundment. Despite this evidence, MSHA regulators approved a 50-foot and 2-billion-gallon expansion to the 750-foot-tall, 6.6-billion-gallon dam. However, the DEP must still approve that expansion. That's why we are calling on the OSM to issue an immediate moratorium on dam expansions until this study can be completed.

Of the Brushy Fork dam, Williams said, "There's no emergency evacuation plan. If there were a breakthrough, there's nowhere for the people to go. ...

Sludge Safety Project is co-led by OVEC, Coal River Mountain Watch and concerned citizens. We work for clean water and for community safety near toxic coal waste injection sites and coal slurry dams.



Coal slurry dams put WV on brink of disaster

The following excerpt is from an April 30 Exponent Telegram editorial. Read the entire piece here: bit.ly/11Wot8U

Are we on the verge of another coal slurry disaster in West Virginia?

We don't mean to be alarmist, but it is hard not to be disturbed by a draft report from the U.S. Office of Surface Mining and Reclamation that raises questions about seven coal slurry dams in West Virginia.

The only reason we know this much is that a citizens' group — Sludge Safety Project — was able to obtain a one-page summary of the report. The feds say there is more study that needs to be done before the report can be released.

Jack Spadaro, a former director of the National Mine Health and Safety Academy, told the *Washington Post* that regulations are in place to safeguard these ponds, but “the problem is the agencies in charge of enforcing them are not enforcing them.”

Rob Goodwin, who monitors the dams for environmental groups, told The Associated Press that the regulatory agencies have, for too long, relied on companies to provide “honest and accurate data.”

Goodwin says it's time for federal regulators to conduct their own inspections.

It would behoove the federal agencies with jurisdiction over this matter to expedite the inspections and require any corrections that need to be made. 🍌

Everyone would be on their own.”

The Associated Press reported, “Public records show a failure at Brushy Fork (above) could create a 100-foot wave that would hit Sherman High School in 17 minutes... Neighbors worry about Brushy Fork because the engineer long responsible for the impoundment was also involved in illegal ventilation plans at Massey's Upper Big Branch mine, where an April 2010 explosion killed 29 men.”

Tragically, we were reminded again why impoundment safety issues are so important to coalfield communities last November. A worker was killed when the embankment he was building collapsed at CONSOL Energy's Nolan's Run Impoundment in Harrison County, WV. The investigation into his death is not complete, but incidences like these continue to confirm our fears about the lax regulation of slurry impoundments. We will continue to pressure OSM to take the strongest possible actions to ensure community and worker safety.

To get involved in SSP's efforts, contact the OVEC (304-522-0246) or Coal River Mountain Watch (304-854-2182) offices. 🍌

Barbour Slurry Dam Subject of Gov Lawsuit

The Associated Press (AP) reported that the U.S. Mine Safety and Health Administration (MSHA) won a judgment against the operators of a Barbour County, WV coal sludge dam.

Earlier this year, DEP revoked the impoundment's permit because the safety of the dam hasn't been certified by a professional engineer in more than two years.

“MSHA simply does not know with the required degree of professional certainty whether the impoundment is safe,” the agency said in court documents.

A federal judge ordered the company to pay pending fines and have the dam certified. 🍌

Dangerous situation? Polluted water pours out of a rock outcropping just downstream of a coal sludge dam in Mingo County. The rock is said to stretch back under the impoundment.



Groups Petition EPA for Water Quality Standard

In early May, a coalition of Appalachian and national groups pressed the U.S. Environmental Protection Agency for stronger protection for their waters from the most extreme form of coal mining, mountaintop removal.

In a formal petition for rulemaking, 17 local, regional and national groups, including OVEC, asked the EPA to set a numeric water quality standard under the Clean Water Act to protect streams in West Virginia, Kentucky, Virginia, Tennessee, Ohio and Pennsylvania from pollution caused by mountaintop removal. This petition is backed by robust scientific studies that demonstrate that the dumping of mountaintop removal mining waste leads to harmful levels of conductivity — the ability of a waterway to conduct an electric current, due to dissolved pollutants in the water. Elevated conductivity is toxic to aquatic life, and studies show it is having an extreme ecological effect on Appalachian waters and streams.

This formal petition to the EPA coincided with the eighth annual End Mountaintop Removal Week in Washington, D.C., as OVEC and other groups and citizens from all over Appalachia gathered in the nation's capital to demand protections for our communities and an end to mountaintop removal. 🍌



BioScience Study Examines Additional Effects of MTR

Clear scientific evidence of human health problems related to mountaintop removal coal mining (MTR), as well of the polluted downstream water caused by this practice, already exists. Ten scientists raise additional concerns in the April issue of peer-reviewed *BioScience*, the journal of the American Institute of Biological Scientists.

“Topographical changes and land-cover changes associated with mountaintop-removal mining have the potential to produce changes in climate at local to regional scales,” the study reports.



The removal of carbon-storing mature forests and other atmospheric carbon increases caused by the lifecycle of MTR could make the impacts of global warming worse, according to scientists from the U.S. EPA, the U.S. Geological Survey, Rider University and West Virginia University.

The researchers reported that there are now 654 distinct mountaintop removal areas and 285 distinct valley-fill areas that are also having a negative impact on our region's birds and other biological communities.

The study calls for more research on the increased carbon load that results from MTR and recommends a new Environmental Impact Statement to further examine impacts not studied in the U.S. EPA's 2005 Environmental Impact Statement and to provide updates on previously reported consequences of MTR. 🍌

Photo above: In April 2009, Berry Branch Road was still open, though all the homes were gone. This Ruffed Grouse was already losing habitat — just above the stream where this shot was snapped, the Hobet MTR operation loomed.

Left: A “No Trespassing” sign at the mouth of the road is pointless: No road, no homes remain and access from the road to the Berry Branch Cemetery is cut off. Berry Branch now runs red as it heads towards the Mud River.

EPA, give us a water quality standard.

Scientists Call for MTR Moratorium

ACHE Act Can Answer the Call

During an April 23 morning press conference held on Capitol Hill, the National Commission on the Health Impacts of Mountaintop Removal Mining, a group of independent physicians and scientists, released recommendations for actions necessary to ensure the health and safety of the residents of Appalachia who are impacted by mountaintop removal mining.

The Center for Health, Environment & Justice (CHEJ) commissioned the scientists to review a report prepared by CHEJ that analyzed the existing body of peer-reviewed scientific studies on the effects of mountaintop removal coal mining on human health. The review and the commission's statement are available online at www.chej.org/mtopreport.

Kentucky resident Mickey McCoy and Fayette County, WV, resident Ginger Danz joined CHEJ's scientist Stephen Lester in speaking at the press conference, which was moderated by Raleigh County, WV, resident Bo Webb. Earthjustice's Liz Judge and OVECs Vivian Stockman coordinated the media outreach.

"The evidence shows that mountaintop removal threatens public health and the environment. It's time to act to protect rural communities," said commission member Dr. Steven B. Wing. Wing is Associate Professor of Epidemiology in the School of Public Health at the University of North Carolina.

"Corporate leaders and local, state and national policy makers need to pay attention to the information in this report," said Dr. Jerome A. Paulson, a commission member and professor of pediatrics and public health at George Washington University. "The protection of human health needs to be a higher priority than it has been in the past. A moratorium is an appropriate step, until such time as those doing mountaintop removal can document that they can do it without significant harm to human health."

The commission's recommendations include placing an immediate moratorium on mountaintop-removal (MTR) mining until such time as health studies have been conducted that provide a clearer understanding of the associations between adverse health impacts, notably adverse reproductive outcomes, and MTR mining. In addition, during the



moratorium period, appropriate safeguards including remediation and engineering controls should be implemented to mitigate air and water pollution related to MTR mining activities.

This recommendation can be addressed by the passage of the Appalachian Community Health Emergency Act (ACHE Act, HR 526). This legislation would require the first comprehensive federal study of the health dangers of mountaintop-removal coal mining and would place a moratorium on all new mountaintop-removal mining permits while federal officials examine health consequences to surrounding communities.

In an afternoon event, also on April 23, Reps. John Yarmuth (D-KY) and Louise Slaughter (D-NY) hosted a Congressional briefing on the science behind the ACHE Act.

"I love the mountains," Yarmuth said. "It was a beautiful area; some of it still is. What is going on there is immoral and a tragedy on many, many levels."

WVU's Michael Hendryx was one of the scientists who addressed the briefing, as did ACHE campaigners Bo Webb, Bob Kincaid and Aimee Rist, a mother of two from Fayetteville, WV. "I had two miscarriages in West Virginia before I had Emma," Rist said. "And so I wonder, is it something that I was breathing or something that I was drinking?"

The ACHE Act includes a provision to impose a one-time fee on MTR operators in order to fund government studies. The *Charleston Gazette* reported that ACHE Act supporters say this fund "provides an alternative to a \$15 million industry-funded project that critics worry can too easily be influenced by mining companies... The studies by Hendryx and others have come under fire from other researchers whose work is being funded by the National Mining Association and by the industry-funded Appalachian Research Initiative for Environmental Science, or ARIES."

During the briefing Hendryx, responding to a reporter's question, said the ARIES studies he had seen so far were "bought and paid for" and "laughably bad."

Join the efforts to pass ACHE, visit acheact.org 🍌

Update: Coalfield Environmental Health Project

by Andrew Munn

Many Fayette County residents are coming together to learn about and discuss the effects of surface mining on our communities in the Coalfield Environmental Health Project.

At our first forum, we heard a presentation on the expansion of Frasure Creek's surface mines and an overview of the active and proposed permits that make up the site. It sparked an in-depth conversation about the permits and the mining techniques being used and how the regulatory process oversees them.

These questions were addressed at the first training session of the coalfield environmental health project, where Rob Goodwin of Coal River Mountain Watch and Dennis Stottlemeyer of the WV DEP's Office of Environmental Advocate led training for residents of Beards Fork and Page on spotting water contamination from mine sites and reporting violations. There was interest among attendees in getting Beards Fork listed as a trout stream, which would give it greater protections from mine impacts.

Dr. Michael Hendryx of WVU joined us at the second community forum to give a presentation on public health and surface mining. His presentation covered a range of health problems, all of which are at higher occurrences in areas where large-scale surface mining takes place. These include heart disease, respiratory ailments, kidney disease, birth defects and increased mortality rates. Regulatory agencies have a metric to quantify the economic value of a human life, and, using this figure, the cost to the region in deaths greatly exceeds the economic benefits. Though the health effects are across the board, a cause has not yet been pinpointed. Higher concentrations of particulate pollutants in



air and water are both among the possibilities.

Following Dr. Hendryx's presentation, Charlene Newkirk spoke about the seemingly high rates of cancer in Beards Fork and expressed interest in a community health survey to give residents an accurate picture of health and possible environmental influences on health. So, we are set to begin the Beards Fork/Page/Kincaid Community Health Survey this summer. *We need volunteers to implement the survey.* If you are interested, call me (Andrew Munn) at 304-924-1506.

We hope you will make plans to attend one of our upcoming community forums and training sessions. One, to be held at 6 p.m. on August 19, is titled Mountain Community Economics. We'll talk about efforts to diversify the coalfield economy. As the coal industry continues to contract in West Virginia, it is up to West Virginians to chart their economic course forward. Call me, find us on Facebook or check the OVEC website calendar for location details and info on later meetings, including, in September, Environmental Protection Training and in October Surface Mining and Water Quality, with Dr. Ben Stout.

The Southern Appalachian Labor School leads the Coalfield Environmental Health Project with support from OVEC and Plateau Action Network. 🍁

In the first four photos, Bo Webb captured the cloud of dust rising from a MTR blast above his Raleigh County, WV, home. The cloud spreads out over his community. The dust contains particles from the explosives and the exploded rock layers. Sandstone can be blasted into silica particles. The last photo, taken by Vivian Stockman, illustrates that health-devastating dust is created by the equipment on the mine sites. The off-road diesel emissions also impact human health.

Banks Better Back Off Funding Blair Mountain's Destruction

In early March, The Blair Mountain Heritage Alliance (BMHA) organized a march to call upon Morgan Stanley to stop funding MTR operations like the Adkins Fork permit at the site of Blair Mountain. OVEC helped spread the word and boost the turnout.

As part of the action, BMHA organizer and OVEC board member Brandon Nida, Logan County resident Kenny King (who has been leading the work to save Blair Mountain for two decades) and OVEC organizer Dustin White attempted to deliver a new Rainforest Action Network report on the risks investors take when they finance the coal industry. In a blog, RAN's Ben Collins wrote:

Blair Mountain is a national treasure: The Mountain is the site of arguably the most important post-Civil War battlefield in the U.S. Currently, Arch Coal plans to build a mine that would destroy the heart of the Blair Mountain battlefield site, which has been officially acknowledged to be historically significant.

This mine cannot be built without the support of the banks that finance Arch. Of particular concern, nine major banks (Bank of America, Bank of Montreal, BBVA, Citigroup, Credit Suisse, Morgan Stanley, PNC Financial, Royal Bank of Scotland, and Union Bank) loaned \$250 million dollars to Arch Coal last November, providing a financial lifeline to the coal company.

For these banks, this loan to Arch Coal is just a routine transaction. But for residents of Blair, the stakes are a lot higher. The town used to be a thriving community of 700 people and now has less than 50 residents because of the extreme dangers posed by existing mountaintop removal mines near the town. The people who stayed behind live with dynamite blasts, dust from mine sites, and water that is no longer safe to drink. Arch's proposed mine would further harm Blair's residents, while obliterating an irreplaceable piece of history.

Six of the banks on the Arch loan have policies that prohibit financing companies that violate human rights. If these policy commitments were working as they should have been, the Arch loan should



Kathryn Stone, left, and Maria Gunnoe sum up the message.

have raised red flags due to several human rights concerns, including the following:

The potential water, noise, and air pollution impacts from the mine will threaten the human rights to water and health of Blair's residents.

According to testimony of Arch officials, Arch's past mining operations near Blair, "**would make life so miserable for many Blair residents that they would want to sell their homes and move**" raise concerns about the human right to

housing.

Human rights norms also proscribe the intentional destruction of cultural heritage sites such as the Blair Mountain battlefield.

So will Arch's planned mine violate human rights? Due to systemic regulatory failure on the part of state and federal environmental protection agencies, the risk of human rights violations from MTR remains acute. And Arch's environmental and community relations track record at its existing mines in Blair, combined with sworn statements by Arch employees such as "It is easier to mine coal without people around" cast doubt on Arch's willingness or capacity to respect human rights norms.

For Arch's lenders, Arch's planned mine raises serious concerns: these banks failed to flag a transaction that was deeply flawed on environmental and human rights grounds. Arch's lenders should, at a minimum, overhaul or establish lending policies and due diligence processes that are robust, verifiable, and capable of screening out similarly egregious transactions in the future. For unless they are implemented effectively, lending policy commitments are merely paper promises.

This should serve as a warning that respect for international human rights norms is no longer "optional" for banks: The UN Human Rights Council's adoption of the Guiding Principles on Business and Human Rights in 2011 (see related story on page 14) established a global baseline for the corporate responsibility to respect human rights, which Arch and its lenders have failed to meet.

Learn more: ran.org/coal-risk-update-03-2013. 🍌

United Nations Human Rights Group Tours Lindytown

In late April, the United Nations (UN) Working Group on Business and Human Rights visited the United States to examine the human rights impacts of assorted business practices.

On April 25, the Working Group came to West Virginia to look at mountaintop removal coal mining. The delegation conducted morning meetings with officials at the Department of Environmental Protection and then the WV Coal Association.

OVEC organized the delegation's afternoon session, which included a field trip to the Boone County towns of Twilight and Lindytown. Lindytown has suffered a "forced extinction" due to the encroachment of mountaintop-removal operations.

In Twilight, more than 20 people from across southern West Virginia met with the UN delegation to tell their stories about the human rights cost they have encountered as the coal industry brings mountaintop removal into their communities. Among those present were representatives of Blair Mountain Heritage Alliance, Coal River Mountain Watch, Keepers of the Mountains, OVEC and the WV Highlands Conservancy.

The visit was part of a targeted effort to assess current initiatives, opportunities and challenges in implementing the UN Guiding Principles on Business and Human Rights (which can be found online via



Left, UN representatives Michael Addo and Lene Wendland listen as Leo Cook tells of the changes MTR has wreaked upon his Boone County community. Looking on, left to right, are Nada White, Dustin White and Paula Swearingen.



Wilma Steele of Mingo County relates the bloody history wrought by the coal industry.

an Internet search) in the United States.

Those principles were unanimously endorsed by the UN Human Rights Council in 2011 and represent the first global benchmarks to address the negative impacts of business activities on human rights, articulating both a state's duty to protect its citizens' human rights and corporate responsibility to respect human rights.

On May 1, in Washington, D.C., the UN

Working Group held a press conference to discuss its preliminary observations from the U.S. visit. They issued a statement reading, in part:

We travelled to West Virginia to engage with stakeholders (regulators, industry representatives and community representatives) related to the challenging and divisive issue of surface mining.

... we have heard allegations of significant adverse human rights impacts, most notably related to the enjoyment of the rights to health and water.

The Working Group also heard allegations of intimidation, threat and harassment of individuals and groups who are vocal in their opposition to

surface mining production. The Working Group urges that these allegations be investigated and addressed as soon as possible. In line with the Global Principles, the (Working Group) also urges companies engaged in surface mining production to take any necessary steps to prevent, mitigate and address any adverse impacts and

I am hopeful that our visit from the United Nations is a sign that they're starting to take notice of the human rights atrocities being committed in Appalachia today. It's a sad thought that our politicians are so crooked that we have to ask the United Nations for help, but no one else will listen.
 – Junior Walk, with Coal River Mountain Watch

account for how such impacts are addressed, and for business entities linked to any adverse impacts to seek to prevent or mitigate such impact.

The Working Group will follow its site visit with a



Blair, Logan County, resident Delta Merner shows the Working Group samples of well and stream water collected in her community.

detailed official report containing findings and recommendations, which will be presented to the United Nations Human Rights Council in Geneva in June 2014.

The report will facilitate dialogue between the U.S. and other member states of the UN Human Rights

Council about improving respect for human rights. 🇺🇸

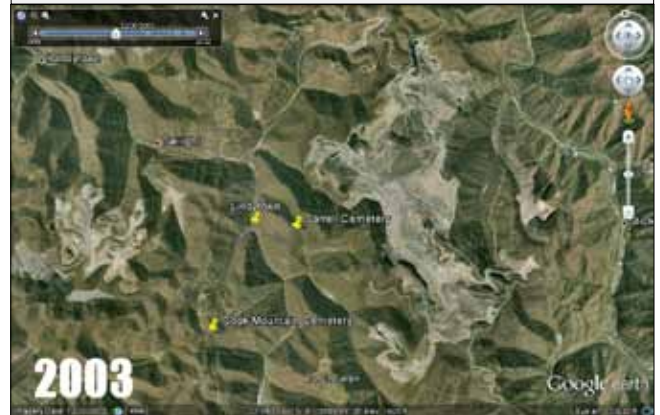
Below: Only the power lines show where Lindytown once was. From this spot, you can only glimpse a bit of the vast MTR operation above the former town.



All of our world leaders need to work to protect human rights, including the rights of those living in Appalachia who constantly struggle with the devastating impacts of mountaintop removal mining.
 - Larry Gibson Jr., a member of the group his father started, Keeper of the Mountains



Above: Google Earth photos document the forced extinction of Lindytown. Below: Two Google Earth snapshots show the growth of mountaintop removal around Lindytown.



Below: In June 2009, the forced extinction of Lindytown was well underway. The occupants of this house may have once supported the coal industry, but it appears sentiments changed.



Earth Day Outreach

Earth Day 2013 offered us a slew of chances to meet interesting and enthusiastic people. On April 16, we participated in the Marshall University Earth Day celebration, along with some feathered friends from Three Rivers Avian Center. OVEC sponsored the travel expenses for the birds, and OVEC volunteers manned a table full of informational materials inside the MU Student Center, while Energy Efficient WV (EEWV) tabled outside.

On April 22, OVEC and EEWV hit the road again to set up table displays at the WV State University Earth Day festival. OVEC materials were also on display in Fayette County at an Earth Day weekend event, with OVEC staffer Dustin White. Our table there included information on the Coalfield Environmental Health Project, a joint venture of Southern Appalachian Labor School, Plateau Action Network and OVEC.

Thanks to volunteers Sylvia Arthur, Marilyn Howells, Connie Mayle, Mike Sullivan, Pattie Wilds and Nada White for all their hard work and time. And thanks to everyone who signed up to learn more about OVEC. — we look forward to taking action with you! 🍌

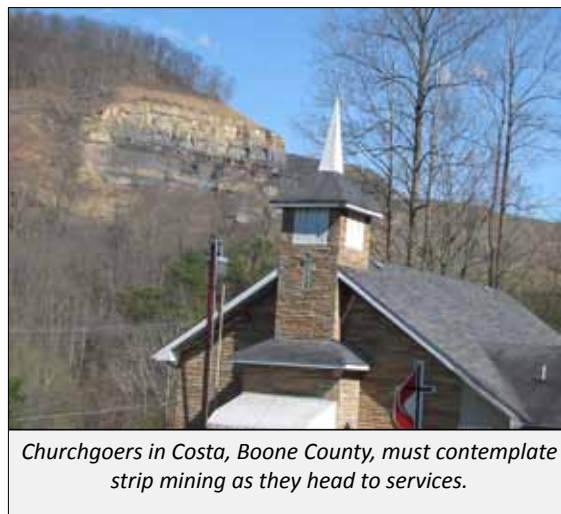


Top right photo: Robin Blakeman at OVEC's MU Earth Day table. Middle right photo: Seated, membership committee members Sylvia Arthur, Blakeman and board member/ membership committee member Mike Sullivan at MU. Bottom right photo: Seated, Stacy Gloss and OVEC organizer Dan Taylor at EEWV's table at MU. Bottom middle photo: Fine feathered friends from Three Rivers Avian Center at MU. All MU Earth Day photos by Connie Mayle. Left photo: Nada White at OVEC's Earth Day table in Fayetteville. Photo by Dustin White.

Blakeman Addresses National Council of Churches

On April 6, OVEC organizer Robin Blakeman spoke about mountaintop removal as part of an ecojustice panel discussion at the National Council of Churches (NCC) Ecumenical Advocacy Days event, held in Alexandria, VA.

Hundreds of faith leaders attend the annual event and are motivated to do legislative lobbying by what they hear at the conference. The 2013 event had an overarching theme of



food justice. Blakeman, who is a Presbyterian reverend, presented information about the devastating effects of MTR on streams and aquatic food sources (fish, crayfish, etc.) in our state, as well as information on soil contamination near MTR sites that is affecting local gardeners. The presentation was well received by those who attended; attendees included one Environmental Protection Agency representative. 🍌

Rally to Move Beyond MTR and Fracking

As the grand finale to Mountain Justice Spring Break 2013, Radical Action for Mountain Peoples' Survival (RAMPS) and Mountain Justice organized a March 15 rally in which more than 100 mountaintop-removal opponents and fracking opponents converged on the State Capitol to demand a bright future for West Virginia.

Mingo County resident Dustin Steele asked the crowd, "If coal is so great, why are all these hillbillies so poor?"

OVEC organizer Dustin White spoke, "It is not our patriotic duty to die for gas or coal. We will stand up and demand a better West Virginia. We will fight. We will fight for clean air. We will fight for clean water. We will fight for our history and our future. And one day we will win."

Chants outside the governor's office included, "Hey, Governor Tomblin, stop mountain bombing!"

With legislators in session, the rally participants expressed anger over a raft of legislation that would undercut the state's already meager pollution controls, including the selenium bill (see story on page 4). They were also there to bolster job-creating, energy-saving bills championed by Energy Efficient WV (see story page 21).

Mountain Justice and RAMPS note that this rally was just the beginning of a spring and summer of escalating action against extreme energy extraction methods. 🍌



Top: The crowd rallied outside then mounted the Capitol steps, chanting and singing all the way to the hall outside the governor's office. Bottom: Left to right, Janet Keating, Kathryn Stone, Dianne Bady, a formidable Ladies Caucus set to take on the Coal Caucus.



Documentary photographer Mark Schmerling took the above photo of Sandy McDaniel of Clearville in Bedford County, PA. Schmerling says she became seriously ill from the fallout (including mercaptan) from this shale gas compressor station near her home. Her neighbors are also having health issues since the compressor station was built. McDaniel dons the activated carbon mask when she suspects any pollution flare-up at the compressor station.

Worry: Fracking Impacts on Farming

On FrackCheck.org, Diane Pitcock, who founded www.wvhostfarms.org, muses:

In rural communities in WV, we have many small farms that rely on farmers markets to sell their produce for supplemental income. We also have "Mountain State Naturals," which is a WV Beef Farmers' Cooperative that markets its beef as being pasture-fed and raised without the use of growth hormones.

That raises a concern. These pasture-fed cattle are being raised for the entry into the food market in areas of WV where there is significant Marcellus Shale gas drilling.

What kind of risk will this create if the cattle are grazing in meadows and drinking from streams right next to drilling sites? They may be at risk of contamination from the hundreds of thousands of gallons of toxic chemicals that are being injected down into gas wells in meadows where these cattle live. Spills and leakage are of great concern. Migration from cracks and faults can occur. Is anyone studying this? They should be!

Perhaps these concerns will be addressed at our June 29 Water and Wellness II event. See back page for details. 🍌

Schools: One Day of Our Side Speaking Out Versus Ongoing Coal Industry Propaganda

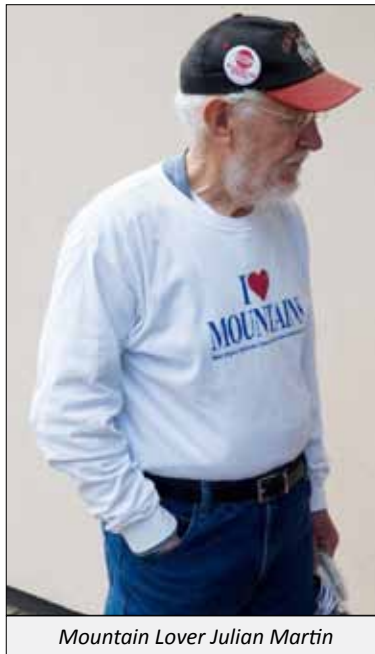
In late March, OVEC organizer Maria Gunnoe and former WV Highlands Conservancy board member Julian Martin were invited to speak to a Boone County High School class.

Posters on a “Citizens for Coal” Facebook page were not at all happy about our organizer speaking with the students. People were encouraged to contact the principal to tell him how wrong the posters felt it was for Gunnoe to speak at the school. After a slew of rude, ignorant comments, one brave student at the school, Gage Messer, posted to that page:

I am a student in that class and you all don't know anything you are talking about at all. There were three people giving their opinions on a topic, those people are not anti-coal but against mountaintop removal, which ruins the land and is very harmful to the community's health. Those three talked about the environment and how mountaintop removal is damaging the land around all of you.

I think people are allowed to give their opinions, Maria isn't anti-coal; she has family that works in the mines and she does care about your families that's why she has tried to stop it and keep people aware of the health issues which could affect all of our lives. Maria was not rude to anybody and neither were the other two people. Many of the children were being rude, as were the teachers.

If you have such a problem with people trying to enlighten your children on other ways of looking at something, then you need to homeschool them. If I had a child, I'd rather it be raised with a mind and heart more like Maria's than someone who thinks a piece of rock is the only way of life and of more value than any human being. Stop bugging my principal please, he has more important stuff to deal with than a bunch of arguments over a debate held in a class. I would like to thank every guest speaker who came to the classes, to teach us about the environment. Thank you for taking your time Maria and Julian, and the other speaker. (Ed. note: that being a certain former CEO of a notorious coal company).



After mulling over the events and comments in the school and on Facebook, Julian Martin crafted the following op-ed, which appeared on May 1 in the Charleston Gazette.

A teacher presented a unit on coal to her ninth-grade classes. She invited guest speakers to present four days of the positive aspects of coal. To offer a different perspective, she asked a fellow teacher if he knew any “tree huggers,” as she put it.

Complying with her request, the second teacher invited two of us “tree huggers” to “balance” the coal industry perspective. We were given only one day compared to the four days of coal industry perspective. Besides

the four days of corporate presentations, there were also classroom days in which materials and activities from the Coal Association's CEDAR program were presented to the students.

It is faint praise to say that **this is the only time I know of that any alternative perspective to the coal industry has been offered in counties where CEDAR has been allowed in the classroom.** That said, it should be noted that the ninth-grade teacher interrupted our presentation with coal industry propaganda that the students had already been exposed to.

CEDAR stands for Coal Education Development and Resource. As stated on their website, “CEDAR's mission is to facilitate the increase of knowledge and understanding of the many benefits the coal industry provides in daily lives by providing financial resources and coal education materials to implement its study in the school curriculum.”

The Coal Association believes that, “Our coal industry is facing the biggest reclamation challenge of our history. And that job is to reclaim the understanding and support of our state and nation's citizenry.” Reading that, I figured that if the reclamation of their reputation is anything like how they reclaim mountains and valleys, then we can look for the truth to have its head lopped off and covered with tons of coal waste.

The Coal Association continues, "Many of us in the coal industry believe the solution now, and over the long term, to many of the current issues facing coal can be achieved through better education." In other words, get the coal company spin into classrooms.

Through CEDAR, coal companies are dumping money into this project by "providing financial resources and coal education materials for implementation in school curriculum grades K thru 12."

There are many benefits that the coal industry provides. But it is not part of school curriculum to extol the "many benefits" of any industry. Promoting the many benefits of coal qualifies CEDAR as one-sided propaganda, not education.

Does anyone believe that a coal company program could possibly include an objective presentation of the never-ending problems with coal mining, especially when its mission is to promote the many benefits of coal?

The killing of more than 20,000 West Virginia miners is not a "benefit" the coal companies are likely to present. Nor are the coughing death of black lung or the increased rates of terrible diseases in coal-producing counties and the massive and irreversible destruction of our environment. Will selenium-poisoned fish with both eyes on one side of their heads and curved spines be presented as a benefit of coal?

How much of the violent reaction of coal companies to union organization will fall under the heading of the many benefits of coal? Will the trickery of the coal companies, which culminates in retired miners and widows losing their retirement benefits, be included as a benefit of coal?

The Friends of Coal Ladies Auxiliary wants CEDAR mandatory in every school in the state. That's the ticket — the coal companies mandating school curriculum. 🍌

Sane idea for school curriculums: instruction on renewable energy and climate change science



Grim Climate Milestone Makes Coal Propaganda More Odious

While the coal industry is busy trying to propagandize the youth and marginalize anyone who speaks up about coal industry abuses, let alone talks about climate change, Earth has passed a grim milestone.

On May 9, the U.S. National Oceanic and Atmospheric Administration (NOAA) reported that, for the first time ever, a carbon dioxide (CO₂) counter at the Mauna Loa Observatory in Hawaii recorded a daily average of 400 parts per million (ppm) of the greenhouse gas in the atmosphere. CO₂ hasn't been at these levels for about three million years — well before humans appeared on Earth.

The *National Geographic* reported, "The last time the concentration of Earth's main greenhouse gas reached this mark...the Earth then was in the final stage of a prolonged greenhouse epoch, and CO₂ concentrations were on their way down. This time, 400 ppm is a milepost on a far more rapid uphill climb toward an uncertain climate future."

The 400 ppm level isn't static; it will fluctuate, but the mark has been passed. "What we see today is 100 percent due to human activity," said Pieter Tans, a NOAA scientist. Human combustion of fossil fuels, such as coal for electricity and oil for gasoline, has generated most of the man-made increase in CO₂.

"This number is a reminder that for the last 150 years — and especially over the last several decades — we have been recklessly polluting the protective sheath of atmosphere that surrounds the Earth and protects the conditions that have fostered the flourishing of our civilization," Al Gore said.

Author, professor and activist Bill McKibben leads a group working to stop climate change. (In February, OVEC's Maria Gunnoe was arrested alongside him at a climate action at the White House.) McKibben says:

We started 350.org five years ago and took our name from what scientists identified as the safe upper limit of carbon dioxide in the atmosphere: 350 parts per million. When we started, carbon dioxide levels were around 390 parts per million — and we knew that to get back to 350 we needed to build a movement to stand up to the fossil fuel money that had stymied all progress.

Together we've built that movement, and it's beginning to pay off — just an hour after the news from Mauna Loa, we got word that the trustees of a fifth U.S. college had voted to divest their fossil fuel stocks, hard on the heels of 11 cities who'd done likewise the week before. But there's no happy-talking the fact that for now we're losing: the carbon in the air keeps rising, and with it the temperature, and the devastation. We've got to build the movement bigger yet. If you've been waiting for the critical moment to toss yourself into this battle, well, the news from Mauna Loa is as good a signal as you're going to get about how much this planet and all its people need you.

Go to 350.org to help build the movement. Here in state check out WV350.org — Reversing Climate Change by contacting Robin Wilson at robin@wvcag.org. 🍌

Green Is the Thing to Move Us Forward

A delegation from Energy Efficient West Virginia recently attended the Building Conference in Morgantown. This included Stacy Gloss from WV Citizen Action Group, Robin Wilson from WV 350.org, energy efficiency expert Cathy Kunkel and, your very own OVEC staffer, Dan Taylor.

The diverse conference brought together building industry experts, vendors, community builders, building owners, students, researchers, municipal leaders, lawmakers and advocates. At one point Mepco (a privately owned coal company that runs Longview Power), American Electric Power and the Appalachian Stewardship Foundation even shared the stage together! So, interesting discussions ensued about ways in which we can work together to help create more sustainable economic opportunity in West Virginia, especially by utilizing green building techniques.

Workshop topics included reclamation, renewable energy, sustainable schools, architecture, food production, LEED building and building codes, planning and public policy. LEED (Leadership in Energy and Environmental Design) is a voluntary, consensus-based, market-driven program that provides third-party verification of green buildings.

Highlights included Stephen Ritz from the Green Bronx Machine. His Bronx classroom features a “green wall,” the first indoor vertical garden plot in the NYC Department of Education, which routinely generates enough produce to feed healthy meals to 450 students. Ritz developed a curriculum around the green walls and uses the process to teach science and technology. With the help of their extended community, Ritz’s students have grown more than 25,000 pounds of vegetables in the Bronx, while generating extraordinary academic performance and earning money. Through his guidance, his program has increased attendance from 40% to 93% and helped to fund and create 2,200 youth jobs.

Mark Miller, a West Virginia native, also spoke about his project called Studio H, which is a public



high school “design/build” curriculum that sparks community development through real-world-built projects. Originally launched in rural Bertie County, North Carolina, Studio H helps students build a farmer’s market building for the community. Studio H is now based out of Realm Charter School in Berkeley, California.

WVU’s School of Art and Design and Office of

Sustainability, WV State University’s Research and Public Service Extension and the WV chapter of the U.S. Green Building Council collaborated on the conference, which was a great experience. It’s extraordinary to find so many different people and organizations working together to make our state’s future better and to help us transition to a more sustainable economy. 🍌

Renewable Electricity Standards Work

Excerpted from a May 7 blog entry by Jeff Deyette at the Union of Concerned Scientists

Recent efforts to repeal renewable electricity standards (RES) by fossil-fuel backed opponents have been thwarted in Kansas and North Carolina. The reason? As a newly released review of state RES policies by the Union of Concerned Scientists report clearly shows, these popular, bipartisan policies are working effectively all over the country (but not all states have these); affordably driving new renewable energy development and delivering substantial economic benefits to states and local communities in the process. Simply put, the facts on the ground are proving difficult to overcome for those seeking to roll back progress toward a clean energy economy.

The U.S. supply of renewable electricity—including wind, solar, geothermal, and biopower—has been growing at a remarkable pace recently. The wind and solar industries experienced record installations in 2012, and non-hydro renewables now supply more than 5 percent of the total U.S. power supply, up from less than 2 percent in 2007. A key driver of this development is the state RES, which requires electric utilities to gradually increase the amount of renewable energy in their power supplies. 🍌

WV Legislature Votes for Rising Electric Rates

by Energy Efficient West Virginia

We sincerely thank you for following and supporting House Bills 2210 and 2803 with us through the Legislative Session. Thank you for contacting your delegates on behalf of stronger energy efficiency in West Virginia. West Virginia ranks 49th in the nation in terms of energy efficiency initiatives: Electricity rates increased 68% between 2000 and 2011 for AEP Appalachian Power customers and 39% for FirstEnergy's customers, and our state still has the 11th-lowest electric rates in the country but the 26th-highest electric bills. Energy Efficient West Virginia has fought and will continue to fight for common-sense policies and practices that will help businesses and residents get their electric bills under control.

House Bill 2210 would have supported energy efficiency resource standards here. House Bill 2803 would have required the Public Service Commission (PSC) to routinely ask our regulated utility companies to submit Integrated Resource Plans to the PSC as a long-range planning tool for future electricity generation in the midst of a volatile energy market.

In meetings with members of the House Judiciary Committee, we learned that there was too much opposition by Appalachian Power and First Energy to any requirement of meeting energy efficiency targets. House Bill 2210 was dead on arrival.

Integrated Resource Planning took a different path. As written the IRP bill was more palatable to our supporting delegates, because it codified a practice the industry has said they already follow. If the electricity utility industry has been asked to submit plans to the PSC in certain cases, there should be no problem for the utilities to include energy efficiency in their planning analysis and submit their plans to the PSC for review on a consistent basis every two years. The legislature makes policy decisions for the PSC, and it is within the legislature's ability to set an IRP policy, which 34 states already use in some form. Integrated Resource Planning was introduced on March 29 by committee substitute in the House Judiciary Committee.

Though we went into the meeting confident that the majority of the committee would vote for the bill, we left stunned and disappointed. When the committee's attorney finally introduced our bill, it was as an environmental bill — defined as taking



into consideration the environmental impacts of coal fired and natural gas industry on electricity. This was about as wrong as it could be. Integrated Resource Planning is a planning tool for the PSC; it is not an environmental bill.

Members of the committee asked questions that clearly demonstrated their lack of understanding, such as, "Will this bill require the utilities to monitor peoples' energy consumption?" Another question was, "Isn't this going to require them to look at the environmental impacts of coal generation?" Delegates didn't call on the experts in the room — Byron Harris, director of the Consumer Advocates Division of the PSC, or Ryan Palmer, one of three commissioners on the PSC.

Before we could blink, the Integrated Resource Planning Bill was put to a voice vote despite misinformation about the bill. About half the voices in the room voted "Aye," and half emphatically yelled "No!" So, delegates then had to raise their hands in a roll-call vote, which resulted in an 11-11 tie. After the tied vote, no delegates asked more questions about the bill. The Democrats who voted against it were Marcum (D-Mingo), Ferro (D-Marshall), and Moore (D-McDowell). We were shocked by Del. Cliff Moore's vote, because he was an original co-sponsor of the Integrated Resource Planning Bill, H.B. 2803. His vote was the difference between the bill passing and failing to pass.

Misinformation about our bill branded it as an environmental bill that would threaten coal. Integrated Resource Planning would do no such thing. It is sad, because IRP would provide the PSC with a planning tool that in the long term would benefit families and businesses struggling across West Virginia, including those in our poorest southern counties. 🍌

OVEC WORKS!

Thanks to everyone near and far for taking action to end mountaintop removal, with an extra special thanks to all the residents of the southern mountain communities who speak out courageously. We hope you know how much we appreciate you. OVEC works because of you!

THANKS!

AEP to Retire Three Coal-Fired Power Plants in Major Clean Air, Climate Victory

In late February, a coalition of citizen groups (including OVEC), states and the U.S. Environmental Protection Agency announced a landmark settlement agreement with American Electric Power (AEP), which requires AEP to stop burning coal by 2015 at three power plants in Indiana, Ohio and Kentucky. AEP also agreed to replace a portion of these coal plants with new wind and solar investments in Indiana and Michigan, bringing more clean energy online to meet the region's electricity needs.

In all, a total of 2,011 megawatts (MW) of coal-fired power will retire as part of the settlement, removing almost 12 million tons of climate-disrupting carbon pollution and nearly 84,000 tons of sulfur dioxide pollution that the three coal-fired power plants spew into the air each year.

The settlement comes in a lawsuit originally filed in a federal court in Ohio in 1999 and is a modification to a prior 2007 settlement. Parties in the suit include the EPA, eight states and 13 citizens groups, including OVEC, WV Environmental Council, Ohio Citizen Action, Citizens Action Coalition of Indiana, the Hoosier Environmental Council, the Sierra Club and the Natural Resources Defense Council.

Coal-fired power plants are the nation's largest source of mercury, sulfur dioxide (SO₂) pollution, carbon pollution and many other deadly pollutants that can trigger heart attacks and contribute to respiratory problems. According to estimates from the Clean Air Task Force, 203 deaths, 310 heart attacks, 3,160 asthma attacks, and 188 emergency room visits per year will be averted once the Muskingum River (Ohio), Tanners Creek (Indiana) and Big Sandy (Kentucky) power plants stop burning coal.

"Tanners Creek, Big Sandy and Muskingum River are dirty and outdated plants that should have been cleaned up or retired decades ago," said Shannon

Fisk, an attorney with Earthjustice who was co-counsel for the Sierra Club on this matter. "We're glad AEP is going to retire these aging dinosaurs, and we urge the company to ensure an equitable transition for the workers and communities most directly impacted by these retirements."

The agreement commits AEP to developing 50 MW of wind or solar power this year and an

additional 150 MW of wind or solar power in Indiana or Michigan by 2015. AEP also agreed to invest \$2.5 million to improve air quality in Indiana through various measures, including retrofitting outdoor wood boilers, investing in distributed renewable generation, and land acquisition.

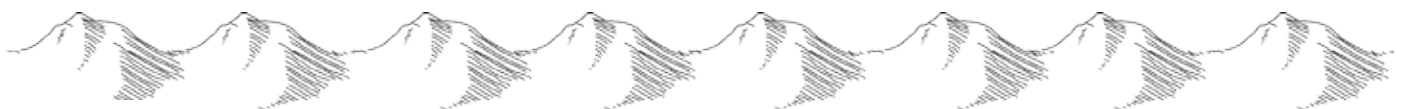
"Across the Midwest and the Great Plains, in states like Iowa and South Dakota that already get 20 percent of their energy from wind

sources, clean energy is powering homes, putting people back to work and protecting families from dangerous and expensive coal-fired power plants," said Kerwin Olson, executive director of Citizens Action Coalition of Indiana. "Indiana has one of the fastest-growing wind industries in the nation and is creating thousands of local jobs. This settlement builds on that success and will only accelerate Indiana's and our nation's responsible transition to an economy powered by clean, renewable, affordable sources of energy."

"With enormous potential for jobs in clean energy and energy efficiency, it is critical that AEP use the next three years to invest in affordable clean energy projects and transition workers into new careers," said Jesse Kharbanda, executive director of the Hoosier Environmental Council. "By replacing decades-old coal plants with homegrown, clean and affordable energy sources, AEP can do right by affected workers and their families and continue clean-energy job creation across Indiana and Ohio." 🍌



Outdated coal-fired power plants are major polluters.



Community Organizer in Chicago Wins Goldman Prize

OVEC extends hearty congratulations to Kim Wasserman (right), community organizer at Little Village Environmental Justice Organization (LVEJO), who received the Goldman Environmental Prize in 2013. Wasserman led her neighbors in a successful campaign to shut down two of the oldest, dirtiest coal plants in the country, located in her southwest Chicago neighborhood. She is now working to transform old industrial sites into parks and other multi-use spaces.



Kim was “called” to this work when her 3-month-old baby boy began gasping for air from an asthma attack in 1998. According to the doctors, her son’s asthma attack had been triggered by environmental pollution. Kim was fired up about this and went door-to-door, talking with her neighbors and learning that their family members’ health was also suffering as a result of the pollution from the dirty coal-fired power plants. Through the use of community organizing, public protests, keeping impacted people’s voices front and center and forming strategic alliances, the coal plants, which couldn’t afford the expensive retrofits to meet air-quality standards, were finally shut down in the fall of 2012.

The Goldman Environmental Prize, now in its 24th year, is awarded annually to environmental heroes from each of the world’s six inhabited continental regions, including one North American winner. In 2003 and 2009, Coal River Mountain Watch’s Judy Bonds (now deceased) and OVEC’s community organizer Maria Gunnoe, respectively, were awarded this prestigious “environmental Nobel” because of their effective leadership and grassroots organizing efforts to end mountaintop removal in West Virginia. Personally affected but also deeply concerned for fellow community members, all three of these women have met enormous challenges, overcome tremendous odds and refused to be silent about the environmental injustice around them. What a different world we would live in if more people possessed such indomitable spirit!

Read more about Wasserman’s work and that of the other 2013 Goldman Prize winners (impressive and inspiring work), visit www.goldmanprize.org. 🍌

*About that Victory; Coal-Politicians Hoppin’ Mad, Veto Power in Jeopardy

In mid-May, the Water Resources Development Act (WRDA) of 2013 was on the Senate floor. Pressure was high to pass this bill, because it was loaded with pork for projects around the country. Hence, Senator Manchin (D-WV) and other coal-funded politicians found it the perfect vehicle to load with anti-EPA, pro-MTR amendments.

As Liz Judge at Earthjustice pointed out, Manchin’s WRDA amendments #846 and #850 would undermine the Clean Water Act and protections for waters from mountaintop-removal mining pollution and a host of other industrial pollution sources. The first would have prohibited the EPA from stopping dumping projects that would cause unacceptable impacts on municipal water supplies, fisheries, wildlife and recreation, if the Army Corps has granted a permit. The second amendment would have effectively prevented the EPA from enforcing water-quality standards and objecting to many inadequate discharge permits.



So, Manchin was acting to broadly take away the EPA’s authority under the Clean Water Act. He wants to retroactively reverse the EPA’s power to veto mountaintop removal permits, even reaching back to 1972. With this amendment, Manchin put EPA’s Spruce veto (see page 1), and vital Appalachian waterways in the crosshairs.

Those of you who have been in the movement to end MTR for more than a decade will remember that this has happened before. We’ve had a major legal victory upholding a law or rule written to protect us from the coal industry’s abuses. Politicians here then pitch a fit and try to revise or reverse that law or rule. Think definition of the word “fill” and think buffer zone. And read the story on page 4.

Groups moved to counter Manchin’s actions. We sent out an action alert asking people to tell their senators to oppose the Manchin amendments. You called; we prevailed. Stand by for more maneuvers like this. We trust you will be there with us to take the next steps. Perseverance pays off. 🍌

Clean Elections

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its sister organization WV Citizen Research Group. In November 1997, we organized a conference about money in politics to identify other WV groups that wanted to join our coalition — groups focused on good government, the environment, labor and workers' rights, healthcare, faith issues, community, etc.

To bolster public support for this work, OVEC, WV CAG, and WV Citizen Research Group formed the People's Election Reform Coalition (PERC), which analyzed and publicized state political campaign donations by special interests of campaign donors giving \$250 or more. PERC's motto was "Wake Up and Smell the Money!" To compile the data from the WV Secretary of State's office, our staff members and volunteers had to comb through reams of reports submitted by the candidates. From 1997 to 2007, Janet Keating (now OVEC's executive director), was OVEC's lead staff person on this campaign.

In 1998, we released our first report that profiled each winning legislator and identified the special interest affiliations of their campaign contributors. OVEC's primary focus became outreach to individuals and other state groups, with the goal of educating the public and building a broad coalition to decrease the influence of big corporate interests on "our" politicians. OVEC was also the primary fund-raiser for this effort.

In our early years, we and our partners succeeded in initiating and promoting passage of five new state election laws. For example, one new law outlawed the then-common practice of political candidates accepting big campaign "loans" from individuals, with no accountability on whether those loans were ever repaid by the candidate.

The years of campaign finance analysis provided convincing data on how the coal industry's contributions influenced legislative votes. For example, when citizens appealed to the legislature to do something about vastly overloaded coal trucks, instead of making the coal-truck drivers *obey* the weight limits, the 2002 legislature voted to increase

the weight limits despite a huge citizens' campaign against the weight increase. Coal money spoke louder than the will of the people.

Although we knew that public financing wouldn't solve all the problems of money in politics, we believed it would be a good first step. In 2002, with assistance from former state senator Si Galperin and Bob McDonald of Common Cause WV, we wrote and introduced the first public financing bill aimed at state legislative races. With our many partner groups in WV Citizens for Clean Elections, this bill was lobbied through 2010.

OVEC members and staffers often joke that sometimes our opponents do really dumb things that make our work easier. In 2004, Massey Energy appealed a \$50 million judgment against the company to the WV Supreme Court. Then-CEO Don Blankenship figured that he could "fix" this



Spike and Don, carrying on. Source: News photo.

problem. During that election cycle, he spent \$3 million of his own money to defeat progressive Justice Darrell McGraw — through a 527 group (an IRS designation for independent campaigns) called And For the Sake of the Kids. At that time, no laws were in place to shine light on Blankenship's shadowy 527

organization; the public had no clue who was funding Brent Benjamin, a virtual no-name candidate. Not surprisingly, Blankenship was successful in getting "his" previously unknown candidate elected.

In 2006, Blankenship was photographed partying in the French Riviera with Elliot E. "Spike" Maynard, his friend and then chief justice of the WV Supreme Court. The publicity surrounding these scandals made the time ripe for action to clean up judicial elections in West Virginia, so our focus switched from public funding of legislative races to Supreme Court races. Because OVEC, WV CAG and our other allies had spent many years widely publicizing the need for public funding of elections and had found champions among the legislators and the Secretary of State's office (starting with Ken Hechler in 1997 through Natalie Tennant at present), it was possible to quickly build a campaign for public funding of Supreme Court races.

As Secretary of State, then-Governor Joe

Citizens Unite Over *Citizens United*

Manchin, after the WV Supreme Court scandals, appointed an independent commission on judicial reform to look at a variety of judicial issues. After several meetings across the state soliciting public input, public financing of justices was one of that committee's recommendations. A major boost to public funding came when, in Manchin's 2010 State of the State address, he expressed his support of public financing for state Supreme Court elections. We celebrated when the WV Supreme Court Public Financing Pilot Project was passed during that session—with major work by our coalition.

All this led to the publicly financed election of Allen Loughry to the WV Supreme Court and our 2013 legislative victory, the public-funding law for Supreme Court races. Again, we owe special thanks to Julie Archer from CAG, who not only developed our PERC campaign finance reports, but also worked with the Brennan Center for Justice, Public Campaign and other allies, and lobbied this and other public financing bills along with Carol Warren (former OVEC staffer) for many years. We also want to thank the Piper and the Proteus Fund for their many years of generous support and give a big “shout out” to Jackie Kendall, whose organizing expertise was invaluable.

Many observers have attributed West Virginia's new public funding law to then-Massey-CEO Don Blankenship's stunning “purchase” of a Supreme Court judge. And, of course, that is a big part of the story. But I believe that 16 years of our collective coalition work played an equally key role. Without the solid base of educated legislators, our organized coalition and energized citizens that took so many years to build, I don't think the new Supreme Court law could have passed so quickly.

It's one more victory that OVEC, along with WV Citizen Action Group and other allies, won by being super tenacious. Even when prospects looked bleak and our funding for this work dwindled, we kept on keeping on. We were savvy enough to know how to turn a “fatal” misstep by a proponent of dirty elections into a big win for us and for the entire state. I hope we all look upon this victory as an example of how relentless pressure, relentlessly applied for many long, hard years, combined with fortuitous circumstances to bring a major victory for democracy to West Virginia — a state that few national observers would have expected to adopt such a groundbreaking advance in election reform. See wvoter-owned.org 🍌



2010 ruling in *Citizens United v. Federal Election Commission*.

A diverse coalition of good-government groups organized together to educate legislators about this resolution, which asks Congress to pass a constitutional amendment to end the corrosive influence of corporate money in politics and restore constitutional rights to the people. The resolution passed with strong support in a Senate voice vote, following a 60–39 bipartisan vote in the House.

“Our success in enlisting the state of West Virginia in this effort to correct serious errors in the Supreme Court's interpretation of the First Amendment is a victory for everyone in this state, whether they realize it or not,” said Barbara Frierson, co-founder of West Virginians for Democracy.

Momentum is building nationwide for a constitutional response to the flood of money from corporations and the ultra-wealthy that has inundated elections since the *Citizens United* decision. Twelve states and the District of Columbia, 500 local governments and more than 125 members of Congress have shown support for this constitutional amendment.

“I am pleased that the Senate joined the House in voting to send Congress this message calling for a constitutional amendment to correct the situation created by the *Citizens United* decision. Debate and free speech are crucial to our democracy, but a corporate interest, controlled by an anonymous select few, should not be able to spend an unlimited amount of money to spread its specific message,” said House Speaker Rick Thompson (D-Wayne).

Thanks to everyone who made calls or sent e-mails to urge your legislators to support this resolution. We made history! 🍌

EPA's Veto Power Stands

continued from page 1

communities from the harm caused by mountaintop removal mining in Appalachia. The Corps' permit would have allowed Arch Coal subsidiary Mingo Logan Coal to bury and destroy over six miles of pristine mountain streams under mining waste dumps (called "valley fills") created from the destruction of more than 2,000 acres of land, releasing harmful pollutants into downstream waters that



At left, some of the mining already underway as part of the Spruce Mine. At right is Pigeonroost Hollow, slated for destruction under the Spruce No. 1 permit.

Thanks, as ever, to SouthWings.org for the flyover.

sustain local communities and wildlife. Appalachian citizen groups have been fighting to save the streams that would be destroyed by the Spruce Mine — one of the largest, most harmful mountaintop-removal mines ever proposed — for more than a decade.

The Spruce Mine case will now go back to the D.C. District Court for decisions on other coal-industry claims. Coal lawyers argue with the science behind the EPA's Spruce Mine veto, alleging that the EPA did not reach a rational decision when determining the unacceptable adverse effects from the fill disposal. The coal industry is also challenging the EPA's consideration of downstream impacts, claiming that this has usurped state authority. We at OVEC believe that the industry is grasping at straws and that the D.C. District Court should find these claims inconsistent with the law.

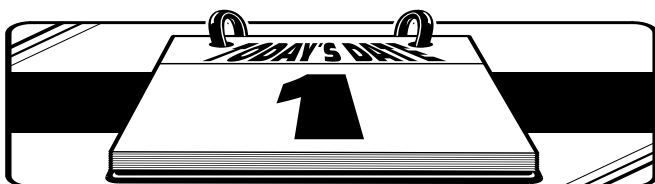
"Thank goodness the court ruled that the EPA has the ability to veto Army Corps permits," said Joe Lovett of Appalachian Mountain Advocates. "The U.S. Army Corps of Engineers has literally overseen

the destruction of Central Appalachia, and EPA oversight is needed to stop it."

Earthjustice and Appalachian Mountain Advocates are representing OVEC, the West Virginia Highlands Conservancy, Coal River Mountain Watch, the Sierra Club and the Natural Resources Defense Council as friends of the court in support of the EPA's veto in this case. For more than a decade, Public Justice has also worked with our groups to challenge the


Corps' permit in litigation brought in the Southern District of West Virginia.

"This decision upholds essential protection for all Americans granted by the Clean Water Act. Communities in Appalachia can finally breathe a sigh of relief knowing that the EPA always has the final say to stop devastating permits for mountaintop-removal mining. Now, we just need the EPA to take action to protect more communities and mountain streams before they are gone for good," said Earthjustice attorney Emma Cheuse. 🍌



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Appeals Court Invalidates Nationwide Permit 21

continued from page 1

In 2003, coalfield residents and state and national environmental groups began challenging the legality of Nationwide Permit (NWP) 21 in West Virginia and Kentucky federal courts. In 2009, litigation brought by OVEC, the WV Highlands Conservancy and Coal River Mountain Watch resulted in a federal court decision to require more detailed individual permits for valley fills in West Virginia. This meant that new valley-fill permits were not as easy to obtain.

A Kentucky court disagreed with that decision in 2011 and allowed valley fills in Kentucky to continue to be permitted via the more lenient NWP 21 permitting system. In April of this year, the Sixth Circuit Court reversed that Kentucky decision, so now only the individual, more stringent, permits can be granted in Kentucky.

The Sixth Circuit Court found that the Corps' determination that the 2007 NWP 21 would have cumulatively minimal effects was irrational, because the Corps failed to analyze the current effects of its past actions allowing the filling of hundreds of miles of streams prior to 2007 and improperly limited its analysis to the effects of *future* filling from 2007 to 2012. Additionally, the Corps had no documented information showing that mitigation could offset the loss of headwater streams at mining sites.

The Sixth Circuit Court stayed its decision for 60 days to give the lower court and the involved parties time to assess its impact on existing projects. While the appeal in the Sixth Circuit was pending, the 2007 NWP 21 expired, but the Corps reissued the NWP 21 in 2012 for five more years, with more stringent conditions (namely, a 300-foot limit on filling and a prohibition against valley fills). In reissuing that permit, the Corps created a new loophole that gave about 70 uncompleted projects under the old 2007 NWP 21 five more years to use it without meeting the more stringent conditions of the 2012 NWP 21. The Sixth Circuit Court's decision threatens that loophole. At a minimum, then, these grandfathered projects will



Plain to see: Nothing minimal about the impacts of these valley fills.

require additional analysis and should have to comply with the more stringent 2012 conditions.

More broadly, the Court's decision raises serious questions about the Corps' entire approach to cumulative impacts and compensatory mitigation for coal-mining projects.

The Court directed the

Corps to use past mining impacts more carefully to assess cumulative impacts and to document in detail whether mitigation can effectively reduce cumulative impacts. Until now, the Corps has refused to take these issues seriously and to measure mitigation effectiveness. Recent scientific studies on the relationship between the percentage of mining in a watershed and the severity of downstream biological impairment indicate that surface coal mining is having serious cumulative impacts.

This is yet another instance of persistent, years-long efforts paying off in the long term!

The groups that have challenged NWP 21 in court actions are: Kentucky — Kentuckians for the Commonwealth, Kentucky Waterways Alliance and Kentucky Riverkeeper; West Virginia — OVEC, Coal River Mountain Watch and the Natural Resources Defense Council.

The legal team opposing NWP 21 has been led by Jim Hecker at Public Justice in Washington, D.C., assisted by Joe Lovett at Appalachian Mountain Advocates in Lewisburg, WV, and Stephen Sanders at the Appalachian Citizens Law Center in Whitesburg, KY.

“The Court agreed with us that the Corps failed in 2007 to demonstrate that filling streams with mining waste has minimal cumulative impacts and that the mining companies can mitigate those environmental impacts to insignificance,” said Jim Hecker, who is environmental enforcement director at Public Justice. “This permit should never have been issued, because it was based on the Corps' unsupportable assumption that filling these streams has minimal environmental effects.” 🍷

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Two Events Where We'd Love to See You

Picnic with OVEC: OVEC members and their guests are invited to our picnic in a Charleston-area park on Friday, July 26. Food is served from 5-8 p.m. Come earlier if you like, for swimming, paddle boating, relaxing; we have reserved a picnic shelter all day. E-mail info@ohvec.org or call Robin Blakeman at 304-522-0246 for details.

What is the future of our drinking water?



Wellness and Water II

When June 29-30, 2013

Where West Virginia Wesleyan College, Buckhannon, WV

Agenda **SATURDAY, June 29:** Full day of events including two plenary speakers, panelists and workshops addressing drinking water impacts and health problems associated with mountaintop removal coal mining and unconventional gas well drilling, as well as waste disposal problems from both of these industries.

Movie and/or social events in the evening on Saturday.

SUNDAY, June 30: Half day of solution-focused speakers and roundtable discussions.

Hear testimonies from residents whose drinking water has been impacted.

Meals Saturday/Sunday—continental breakfast provided; Saturday—lunch and dinner; Sunday—lunch available on site.

Fee \$40 for entire event, above meals included; lodging not included.

Speakers

- **Dr. Tom Darrah, Duke University**—He is a medical geologist who focuses on the environmental and human health impacts of exposure to geological materials.
- **Leslie Fields, Esq., Sierra Club, Director of Environmental Justice & Community Partnerships**—She has worked extensively on oil/gas natural resource extraction issues on an international level, as well as on climate change and water privatization.
- **Grant Smith, Civil Society Institute**—He will address the potential of truly renewable energy sources to alleviate health problems and water pollution.

Contact

- **Bill Price** at bill.price@sierraclub.org or 304-389-8822 for information on scholarships.
- **Julie Archer** at julie@wvsoro.org or 304-346-5891 for general information.

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Sponsored by Sierra Club WV, WV Surface Owners' Rights Organization, Doddridge County Watershed Association, Ohio Valley Environmental Coalition, West Virginia Highlands Conservancy