



West Virginia Environmental Council's

Green

Legislative

Update

Published Weekly During West Virginia's Legislative Session

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Under the Dome

Donald S. Garvin, Jr., WVEC Legislative Coordinator

Week 3 – Saving EQB

At this week's meeting of the Environmental Quality Board I sat in the back behind the "coal boys" and watched them squirm as the board again and again reaffirmed its support for the water quality rules it sent to the legislature this session.

This was a meeting of the EQB board, and not a public hearing or forum. The main topic of discussion was a letter from the Joint Interim Legislative Rulemaking Committee, asking the board to explain its position on the four industry "weakening" amendments to the water quality rules that the committee had accepted as "pending" and passed on to the legislature for consideration.

So the "coal boys" and other industry representatives sat there squirming in their chairs as the board considered its response to the legislative committee. The EQB response reiterated over and over again that the industry amendments to weaken West Virginia's water quality standards were either not supported by scientific evidence, opposed by the federal Environmental Protection Agency, or were in direct violation of provisions of the federal Clean Water Act!

The "coal boys," who want to relax the water quality standards for selenium, aluminum and manganese to avoid paying the costs for treatment of their water discharges, were in obvious pain – and I was enjoying every minute of it.

Under state law West Virginia's water quality standards are promulgated by the Environmental Quality Board. The board also serves an appellate function, to hear appeals to DEP permit decisions. Currently the board consists of five members, all of whom must have "expertise in water husbandry," they are appointed by the governor,

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And The Water Bill Flows Like A Mighty Stream

Conni Gratop Lewis

The Senate Natural Resources committee passed out the committee substitute for the governor's water resources protection act bill (SB163). A committee substitute, for those new to the process, happens when a committee feels the introduced bill has enough flaws or unpleasant material to warrant a rewrite. The substitute language does no damage to our desired goals.

The committee even accepted two amendments, one from Senator Deem, that made small improvements. His amendment clarified the state's policy regarding water, and is best described as providing a policy with both a belt and suspenders.

He also pointed out that DuPont is probably the largest water user in his district and the company is comfortable with the bill. They too, would not want to find the water in the Ohio River diverted to their detriment.

Well. Who'da thunk it? Senator Deem on our side?

This is wonderful and exemplifies that the legislators understand the gravity of the issue. The bill was reported to the floor this morning for first reading, and will probably pass the Senate middle of next week.

The bill provides that the state finds that "it is the policy of the state to protect and preserve the water resources for the state and to provide for the public welfare." This sounds reasonable. It provides for a study to be done by DEP, which has some of the information already, with the cooperation of any and all appropriate agencies. The study will be reported to the joint committee on government and finance (legislative leadership). And, last but not least, the bill creates a joint legislative oversight commission on state water resources. It will be charged with dealing with all matters relating to the survey and the need for a water resources plan and policy.

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ATV's Still On Wrong Track

Conni Gratop Lewis

The ATV bill, which purported to be a safety bill, ran into some heavy traffic this week. Even better, it attracted a lot of negative attention. Even better, it slowed down.

Friday, the Senate voted to let the bill lay over until Monday. The motion for this came from Sen. Prezioso. The vast majority of Senators voted for the motion. And it's a good thing too. The Medical Association distributed excellent statistics on the dangers of ATV'S and the implications if 4022 should pass. Now the Senators have the weekend to absorb the material.

While the doctors are concerned that allowing ATV'S on paved roads would kill more people, we are concerned that ATV's on paved roads will lead to damaged public lands and a reduced quality of life for rural (and suburban) West Virginians. How on earth can the managers of the Mon Forest or the Canaan Wildlife Refuge protect all their land from people who take a notion to turn off the road and into a meadow? It is simply not good public policy to allow, nay encourage, these machines on paved roads.

Earlier in the week, Senate Transportation had amended the bill to require helmets on all children at all times in all places. This is the bare minimum safety requirement. During a conversation with me, a senator wondered aloud about regulating what folks do on private property. And I replied that when it's a health and safety issue, the government often intervenes. Think septic tanks, building codes, child endangerment, and domestic violence. You get the idea. He did too.

Senate Judiciary spent an entire afternoon making improvements in the bill. All of them were necessary, all made good sense, but none banned ATV's from paved roads. And the bill currently allows the roads on 65% of the state road system.

Let's encourage the senators to do the right thing. Call your senators and ask them to support efforts to keep ATV's off the roads (with a modest commercial and agriculture exemption). Recreational ATV riding belongs on the land of the person who owns them, or on the Hatfield-McCoy Trail.

Not on the roads. Not on the public lands.

New Radio Talk Show Announced: "Head-On With Bob Kincaid"

The new, West Virginia based AM radio talk show, claiming to present something no other radio program in the region offers: local radio talk that doesn't cater to the right-wing! Airing in Beckley, WV station WWNR-AM 620 made the announcement this week.

Bob Kincaid states, "AM radio is filled in most areas with a steady diet of right-wing commentary. It's time the other side got a chance to be heard.....most of all...I want to bring spirited fun back to local talk radio."

"Head On" will premier February 2nd, and will air nightly on News Talk 620, WWNR - at 8:00 p.m. Mondays and Wednesday, and 7:00 p.m. Tuesday, Thursdays and Fridays, with plans to be available all across the state via streaming internet audio in the near future.

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only three can be of the same political party, and none can work for any company that gets NPDES permits from the DEP.

The Farm Bureau, and other business and industry groups, including coal, have basically been upset with EQB since the antidegradation battle three years ago. So last year they fought hard in the Legislature to replace EQB with a new and highly politicized board that they could more easily control. They failed.

But they are back again this year with another attempt to gut the EQB (SB 60). The “regulated community” wants to eliminate EQB because it is the one rulemaking group they can’t control with an iron fist. It’s as simple as that.

And there are some in the legislature who don’t much care for the EQB either, because to a large degree the board uses science and an open public process – not POLITICS – as a basis for making decisions.

As for the environmental community, we have never been overly fond of many of the decisions handed down by EQB, yet the board does have excellent (and highly underpaid) staff, and the process is heavily reliant on open public participation.

While there will no doubt be efforts this session to replace the Environmental Quality Board with some other structure that business and industry feel they can control, we can only hope that legislative leadership will place a high value on the integrity and independence of the current EQB structure and staff.

Meanwhile, watching the “coal boys” squirm at this week’s EQB meeting warmed my bones during this winter’s arctic blast.

It is cold out there, you know, so remember to warm the hearts of our fine-feathered friends and keep your bird feeders full.

And The Water Bill Flows...

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The possibility of a plan is what concerns many business interests. They are concerned about their riparian rights. They are also concerned about many things not in the bill such as taxing water withdrawals, permitting withdrawals and other issues. This reminds me of the parent whose child has gone on his/her first date, while the parent starts to worry about what sort of in-law the date would be.

So all is as well with the water bill as can be expected. Our goals were somewhat more ambitious, but this is a great start. Thanks to Sen. Fanning, attorney Noelle Starek and the Natural Resources committee for their work on this bill.

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“Gas Relief” From Coal?

Allan Tweddle

(Note: legislation is being considered by the legislature that would require the reporting of greenhouse gas emissions produced by coal-fired power plants).

In a recent “promo” to all the legislators, Massey coal sent a small box containing a lump of coal as a solution to the high price of gas generated electricity. They sought to *mislead* the legislators by claiming that consistent low prices of coal would bring “relief” to the power generation industry and would eliminate soaring and wildly fluctuating prices of natural gas, if only the power plants would all switch to coal!

Why does that idea smell so bad? For two reasons. First, the industry quotes numbers for the “total” cost of burning coal that *never* reflect coal’s real cost in health care . . . environmental damage in the immediate area of the mines and power plants, and the airsheds downwind, mine waste clean-up and impoundment remediation.

But the second reason, and what independent scientists all over the globe recognize, is the alarming increase in global warming caused primarily by the generation of the global warming gases, or greenhouse gases, when fossil fuels are burned. Other than mobile sources (cars, trucks, etc.), coal burning in power plants is the single largest source of greenhouse gases. The actual “cost benefits” of coal to global warming may make the omitted costs cited in the first reason seem like peanuts in comparison.

What are greenhouse gases? In a recent issue of *The Green Elephant*, (the publication of Republicans for Environmental Protection, www.REPAmerica.org), Dr. John R. E. Bliese, Ph.D, described what global warming is all about:

“Fact: There is a greenhouse effect that warms the earth, and we should be very glad about it.”

“There are several trace gases in our atmosphere, present in only minute amounts, that trap heat. The most important ones of concern here are carbon dioxide and methane. Like the glass panes of a greenhouse, they let sunlight in to warm the earth but keep some of the heat from escaping back into space. If they were not there, the average temperature of the earth would be well below freezing, and none of us would be living on it.”

“These greenhouse gases have natural sources that produce them, and natural “sinks” that remove them from the air. These natural processes have kept the greenhouse gases stable for the past 10,000 years—since the end of the last ice age. The problem now is that we are producing these gases much faster than the sinks can

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remove them. Our carbon dioxide comes mostly from burning fossil fuels in power plants, cars, trucks and factories, and so on, and from burning tropical forests. Methane comes from agriculture, landfills, leaking natural gas lines, and coal mines.”

Dr. Bliese went on to comment that, “*We can solve global warming without damaging our economy. Over 2,500 economists in the U.S., including eight Nobel Prize winners, signed a statement that concludes: “There are many potential policies to reduce greenhouse gas emissions for which total benefits outweigh the total costs. For the United States in particular, sound economic analysis shows that there are policy options that would slow climate change without harming” “American living standards, and these measures may in fact improve U.S. productivity in the longer run.” When was the last time 2,500 economists agreed about anything? In fact, we can reduce greenhouse gases in countless ways that will save money, leaving us better off than we are now.”*

Politicians and policy makers around the globe are taking action to correct and deal with the problem. ***And deal with it – indeed, reverse the trends — we must.***

On the federal level, Senators McCain and Lieberman, in a bipartisan bill, have set up the mechanisms and plans to accelerate the stopping of greenhouse gases at a faster pace than the current Bush administration. Federal policy makers are moving towards putting caps on all sources of greenhouse gases. They intend on limiting the generation of greenhouse gases regardless of the demand for electric power. That means either alternative energy must take over, or existing fossil fuels, (coal included), must find ways to reduce or even eliminate greenhouse gases, ***OR BOTH.***

Meanwhile, here in West Virginia an exciting bill is before our legislators. In a very ***Wise*** and visionary posture, the Governor, Secretary Timmermeyer and DEP have proposed that West Virginia ***MUST*** ensure that we have a place at the federal negotiating table in determining those greenhouse gas caps.

So SB141 and HB 4029 are in their respective bodies to begin that role for West Virginia. These bills seek simply to determine what amount of greenhouse gases we are generating in West Virginia so we can make informed decisions about what to do about the alternatives. The summary of the bills states:

“The bill establishes a mandatory reporting requirement for emissions from stationary sources of greenhouse gases that are a significant amount . . . The bill also establishes a voluntary registry for facilities that make voluntary reductions in greenhouse gases. This registry will be used to provide these facilities reduction credits in the event of Federally mandated reduction

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requirements.”

It’s a first step toward REAL and measurable GAS RELIEF. Industry should support it enthusiastically, because they will be leaders and innovators if they do. We should support these bills as well. So call your Delegate and Senator and ask them to vote “yes” on SB 141 & HB 4029 — and really help our gas pains go away.

Committees Poised to Take Up Clean Elections

Julie Archer, WV-CAG

Last week the West Virginia Clean Elections Act (now the "Public Campaign Financing Act") was introduced in the Senate (SB 270 and Senate Judiciary Chairman Jeff Kessler has indicated he plans to take up the bill in the next couple of weeks. We are still awaiting the bills introduction in the House, but this week House Judiciary Chairman Jon Amores appointed a special subcommittee to look at the bill.

In order to keep the debate and discussion alive on this much needed legislation, members of these committees need to be hearing from their constituents that Clean Elections is an important issue! For a list of Judiciary committee members, and contact information, visit the legislative website at <http://www.legis.state.wv.us>. Members of the House subcommittee are Delegates Fleischauer (chair), Brown, Craig, Ellem and Webster.

Your calls and letters made the difference during the interims and helped us clear a major legislative hurdle. We need your help again to continue moving towards comprehensive campaign finance reform! If you haven't contacted your legislators yet asking them to support the WV Public Campaign Financing Act, please do so. If you've already sent a letter or e-mail follow up with a phone call.

For talking points see last weeks Legislative Update. More information on Clean Elections is available at www.ohvec.org and www.wvcag.org.

To Contact your Representatives on Issues:

Legislative Reference & Information Center
MB-27, Building 1- State Capitol Complex - Charleston,
WV 25305

304 347-4836 toll free: 1 877 565-3447

On Line: www.legis.state.wv.us

Quote of the week: Senator Minear— while expressing concern about the water preservation bill said this in Monday’s Natural Resources Committee:
“Management of water is less objectionable than protection.”

Power Plant Siting Comments Due

WV Highlands Conservancy

The West Virginia Public Service Commission (PSC) is moving swiftly to formulate electrical generating power plant siting rules. The WV Highlands Conservancy and other organizations have long requested that such siting rules be developed. Your chance to comment on a draft of these rules will expire by mid-February unless a comment period extension is granted.

The rules will cover any and all kinds of commercial EWG (exempt wholesale generation) power plants - including those fueled by coal or natural gas, those driven by wind turbines or water driven turbines - even solar powered or other commercial sized plants whose power is distributed through the wholesale electricity markets.

The draft of the siting rules can be viewed at the PSC's internet site at: http://www.psc.stat.wv.us/orders/2003_12/GO2551cb.htm.

What kinds of concerns and comments might the public want to comment about? The WV Highlands Conservancy will offer comments about the considerations that need to be made to birds, bats and others of nature's precious resources.

Too, we will offer that the draft PSC suggestion that analysis of viewshed effects of smokestacks, large buildings and wind turbines and towers at distances up to 5 miles is inadequate, and that viewshed considerations up to 15 or 20 miles need to be offered as part of applications for siting permits. Some of us have determined that some special places can suffer substantial view detriment from distances of up to 20 miles from certain kinds of power plant installations.

As the Conservancy's wind energy committee reads the PSC's draft siting rules it strikes us that these rules do not seem to contemplate the many miles of scenic vistas directly and significantly affected by structures hundreds of feet tall located in the heart of the mountainous highlands of West Virginia. Facilities located in the already heavily industrialized Kanawha and Ohio Valley may not create the same degree of scenic degradation as do and would similar facilities located on high ridges in the heart of the most scenic and most recreational areas of the state.

In summary, then, public comments might well address extending the area covered by viewshed analysis to 15 or even 20 miles from the PSC's suggested 5 miles, for more critical studies, and projections of potential harm to rare and endangered species and especially birds and bats, and special consideration for scenic recreational areas located in the highest elevations where scenic values are most precious and where large structures can be seen for much greater distances.

Public comments should be addressed to:

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Sandra Squire, Executive Secretary, Public Service Commission of WV, P.O. Box 812, Charleston, WV 25323.

Comment letters should reference "General Order 255.1, Power Plant Siting Certificates"

We have asked the PSC to extend the public comment period. But the current public comment period of these draft siting rules expires February 13th.

Management of the Monongahela National Forest

Dave Saville, WV Highlands Conservancy

Mark your calendars! Plan to attend a public meeting on: Management of the Monongahela National Forest.

For the first time since 1985, citizens have the opportunity to change the direction and focus of the Management Plan for the Monongahela National Forest. The Forest Service began revising the Plan for the nearly million acre National Forest last year. As part of the public participation component of the revision process, the Forest Service will be holding public "Open Houses" in 6 cities.

Will the next 15 years of Mon Forest management be an all you can eat buffet for the timber industry, or will it be managed more with conservation and recreation in mind? Please look at the schedule of open houses below and find one in a city near you and plan to attend. This is your chance to tell the Forest Service that logging is not the highest and best use of our public lands and that watershed protection, wildlife, wilderness and recreation should receive higher priority.

These Open House meetings will provide a forum for discussion with Forest Service officials on aspects of the Forest Management Plan that need to be changed. It is important to voice your concerns to help prevent the Mon from becoming a mere tree farm to benefit the timber industry. You can also follow this issue in The Highlands Voice as the Forest Management Planning process progresses over the next couple years.

Questions? Contact Dave through the WV Highlands Conservancy, daves@labyrinth.net or (304) 284-9548.

Public Meeting Information:

- 2/21 **Elkins, WV:**
Davis and Elkins College Gym. 10 am - 2 pm.
- 2/23 **Morgantown, WV:** Holiday Inn. 4 pm - 7 pm
- 2/25 **Petersburg, WV:** Public Library. 4 pm - 7 pm
- 2/26 **Pocahontas County:**
WV High School. 4 pm - 7 pm
- 2/27 **Richwood, WV:** City Hall. 4 pm - 7 pm

Bills We Are Tracking

Senate Bills

Bill #	Title	Committee
SB 39	Allowing landowners to remove debris to prevent flooding ("Flood Thy Neighbor")	JUD
SB 60	Transferring water quality standard rule-making authority to water quality board (eliminate EQB)	JUD
SB 63	Requiring verification of notice to adjoining landowners of timbering operations	NR
SB 89	Relating to beneficial use of water treatment plant sludge	JUD
SB 90	Regulating of all-terrain vehicles	TRANS
SB 153	Establishing All-Terrain Vehicle Safety Regulation Act	TRANS
SB 155	Creating environmental excellence program	EIM
SB 156	Establishing Public-Private Transportation Act (Governor's version) ("Regional Airport"??)	ECD
SB 163	Creating Water Resources Management Act (Governor's Water Quantity Bill)	Senate 1st reading
SB 215	Regulating all-terrain vehicles	TRANS
SB 221	Establishing Public-Private Transportation Act of 2004 ("Regional Airport"??)	ECD
SB 252	Creating Child Safety All-Terrain Vehicle Act	TRANS
SB 253	Relating to all-terrain vehicles generally	TRANS
SB 264	Regulating of all-terrain vehicles	TRANS
SB 270	Creating Public Campaign Financing Act ("Clean Elections")	JUD
SB 293	Creating Beverage Container Deposit Act ("Bottle Bill")	JUD
SB 323	Continuing office of explosives and blasting	Senate 2nd reading
SB 340	DEP legislative rule relating to nitrogen oxide budget trading program as means of control and reduction of nitrogen oxides from nonelectric generating units	EIM
SB 341	DEP legislative rule relating to emission standards for hazardous air pollutants	EIM
SB 342	DEP legislative rule relating to standards for new stationary sources	NR
SB 343	DEP legislative rule relating to air pollution from hazardous waste treatment, storage or disposal facilities	NR
SB 344	DEP legislative rule relating to emission standards for hazardous air pollutants for source categories	EIM
SB 345	DEP legislative rule relating to requirements for determining conformity of transportation plans, program and projects developed, funded or approved under Title 23 U.S.C. or federal transit	ECD
SB 346	Authorizing DEP legislative rule relating to surface mining reclamation	EIM
SB 347	DEP legislative rule relating to solid waste management	JUD
SB 348	DEP legislative rule relating to hazardous waste management	JUD
SB 349	DEP legislative rule relating to NPDES rule for coal mining facilities	EIM
SB 353	EQB water quality standards rule	NR
SB 367	DOH rule relating to transportation of hazardous wastes	TRAN
SB 386	DNR legislative rule relating to public land corporation rule controlling sale, lease, exchange or transfer of land and minerals	NR

House Bills

HB 4022	Creating "The All-Terrain Vehicle Safety Regulation Act" Passed House 1/22/04 moved to Senate 2nd reading	
HB 4026	Establishing the water resources management act (Governor's water quantity bill)	JUD
HB 4027	Establishing a voluntary environmental excellence program	FIN
HB 4029	Establishing a program to report emissions of greenhouse gases	JUD
HB 4047	Creating a high growth business investment tax credit to encourage investment by state citizens and businesses in certain companies started by fellow West Virginians	FIN
HB 4068	Allowing the hunting of coyotes by use of amber colored artificial light with certain restrictions - House 1st reading	
HB 4120	Establishing all-terrain vehicle safety measures for persons operating and riding such vehicles	JUD
HB 4121	Providing for safety and training for children operating and riding all-terrain vehicles	JUD
HB 4147	Providing for the use of returnable containers for various drinking containers ("Bottle Bill")	JUD
HB 4166	Removing the description requirements in deeds for easements and rights-of-way for mineral leases	JUD
HB 4167	Creating the Exotic Animal Control Board to protect the health and safety of humans and the state's agricultural and forestry industries, its wildlife and other natural resource interests from the introduction or spread of disease	AG &NR
HB 4185	DEP—Air Quality, NOx budget trading program	JUD
HB 4186	DEP—Air Quality, emission standards for hazardous air pollutants	JUD
HB 4187	DEP—Air Quality, standards for performance for new stationary sources	JUD
HB 4188	DEP—Air Quality, prevent & control air poll. from hazardous waste treatment, storage or disposal facilities	JUD
HB 4189	DEP—Air Quality, emission standards for hazardous air pollutants for source categories	JUD
HB 4190	DEP—Air Quality, requirements for determining conformity of transportation plans, etc., under Title 23	JUD
HB 4191	DEP—Mining and Reclamation, surface mining reclamation rule	JUD
HB 4192	DEP—Waste Management, solid waste management rule	JUD
HB 4193	DEP—Waste Management, hazardous waste management rule	JUD
HB 4194	DEP—Water Resources, WV/NPDES rule for coal mining facilities	JUD
HB 4198	EQB water quality standards	JUD
HB 4212	DOH transportation of hazardous wastes upon roads and highways	R&T
HB 4221	DNR public land corporation rule	JUD
HB 4222	Continuing the office of environmental advocate	House 1st reading



Calendar of Events



February 17: WVEC Annual E-Day! at the Capitol. 10:00 - 3:00 p.m. Lower Rotunda area. Environmental Displays, 2004 Award announcements and best opportunity to join citizens from around the state to lobby your legislative representatives!

For more information / reserve a space contact: Denise Poole at the WVEC office, (304) 346-5905 or deniseap@earthlink.net

February 17: Annual E-Day! Benefit Party & Award Presentations! Perfater Law office lobby, 1311 Virginia Street East, Charleston - 5:30 p.m. - 10:00 p.m. Live music, refreshments, great folks - join us half way through the session to honor our award recipients and support WVEC lobbying efforts!

March 14: Last Day of Legislative Session.

April 17: Planning Your Herb Garden: What to Grow, Where and How. 10 am - 4 pm. La Paix Herb Farm, Alum Bridge. Preregistration required. \$55 includes complimentary lunch.

To register & more information: (304) 269-7681, lapaix@iolinc.net, www.lapaixherbfarm.com

April: 2nd Annual "Artists for the Environment" Spring Fund-raiser. Perfater Law office building lobby. Beautiful day with the arts! Visual arts, music, poetry, performance, and more. Booths, art auction, yummy edibles and drinks!

For more information and to participate: Contact

Denise Poole, deniseap@earthlink.net or call her at the WVEC office: (304) 346-5905.

June 19 & 20: Lavender & More Fair! La Paix Herb Farm, Alum Bridge, WV. Workshops, demonstrations, garden tours, lunch, music and slide shows. Admission \$5.

For more information: (304) 269-7681, lapaix@iolinc.net, www.lapaixherbfarm.com

July 17: Hydrosols, Essential Oils and Distillation Workshop. La Paix Herb Farm, Alum Bridge, WV. Complimentary Lunch. Cost is \$55, pre-registration required.

For more information and to register: (304) 269-7681 or lapaix@iolinc.net, www.lapaixherbfarm.com

E-Day! At the Capitol!

Tuesday, February 17, 2004

10:00 am ~ 3:00 pm

Environmental Organizations
Groups

Green Businesses

DEPOSIT Day (bring up to 50 containers - receive 10 cents each)

contact Denise at 304 346-5905 or deniseap@earthlink.net

Support the West Virginia Environmental Council

1324 Virginia Street East, Charleston WV 25301

Phone: (304) 346-5905 Fax: (304) 414-0629 www.wvecouncil.org

Renewed Membership

New Membership

Change of Address

Donation

Membership Levels

Name: _____

\$ 10 Student / Senior

\$ 25 Regular

Address: _____

\$ 50 Seedling

\$ 100 Sustaining

City, State, Zip: _____

\$ 250 Enviro Steward

\$ 500 Canopy

Phone: _____ e-mail _____

\$ 1,000 Old Growth

\$ Other

Time sensitive material - please deliver promptly, Thank You!

The Forest Primeval

"The forest was indeed enormous, for as late as 1880, when timber extraction began in earnest, two thirds of the state was still covered by its ancient growth. It is a measure of how swiftly the transformation to an industrial economy came that West Virginia had been almost completely denuded of virgin forest by the end of the 1920s." – *from "The Forest Primeval: What It Was Like and Where It Went" by Ronald L. Lewis, WU Eberly Professor of History*