



# Green Legislative Update

Published Weekly During West Virginia's Legislative Session

Volume: 19 Number: 3

Date: January 25, 2008

## Under the Dome

By Donald S. Garvin, Jr.  
WVEC Legislative Coordinator

### Week 3 – Ready for Prime Time

WVEC rolled out our “Citizens’ Energy Plan” on the second day of this legislative session at a successful press conference that was well attended by our supporters, press and legislators.

Then last week we presented the Plan at a meeting of the Public Energy Authority, a meeting that was also well attended.

As these things go, our Plan has gotten considerable positive “ink” from the press.

And we weren’t “laughed out of the room” at either event.

WVEC lobbyist Vickie Wolfe – who seems to have an endless supply of energy herself – immediately went to work with Delegate Barbara Fleischauer (D-Monongalia) signing up co-sponsors for a list of her bills that would implement some of the elements of our Plan.

Vickie made quick work of this, and all but one of Del. Fleischauer’s bills have been introduced and are now ready for committee consideration.

Now comes the hard part. Getting a bill introduced is one thing; getting a bill passed by both chambers and signed by the Governor is another matter all together.

But I am optimistic that at least a couple of the ideas contained in our Plan can make it through the legislative process this year.

I am optimistic because of all the hard work we have done to get to this point.

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## DEP Not Monitoring Pollution Reports

Last week we reported the massive EPA fine leveled against Massey Energy which cited the company for more than 4,500 water pollution violations, enough to amount to 28 violations per day over a six-year period.

Most of the federal government’s lawsuit was based on self-monitoring pollution reports Massey subsidiaries filed every month with the state Department of Environmental Protection.

In a follow-up article this week *Charleston Gazette* reporter Ken Ward reported that for nearly five years, DEP officials had not been looking at the reports.

Ward added: “Inspectors didn’t print them out and read them. Enforcement staffers didn’t study them on computer spreadsheets. And the problem wasn’t confined to Massey. DEP gave the entire coal industry a pass.”

According to Ward, DEP actually issued no citations or fines for mine water violations in late ’06, early ’07.

“That doesn’t mean that we won’t,” Jeff McCormick, the DEP mining division’s assistant director for enforcement told Ward. “It just means that we haven’t.”

When questioned by Ward, DEP mining officials blamed the situation on problems with new computer programs being used to track discharge monitoring reports.

“Imagine letting the Bush administration be tougher environmental enforcers,” said Joe Lovett, a lawyer and executive director of the Appalachian Center for the Economy and the Environment, in Ward’s article.

“It’s astounding that the state agency with the primary responsibility for enforcing the Clean Water Act didn’t do anything about this problem, and left it to the federal government.”

Yes, Joe, it’s astounding!

# E~Day at the Capitol

Friday, February 22nd

House & Senate Halls / Upper Rotunda (well) area  
WV State Capitol, Charleston WV  
10 am ~ 2 pm

## E-Day Benefit Reception

Women's Club - Corner of Virginia St.  
East & Elizabeth St, Charleston

6:00 p.m. - 10:00 p.m. ~ \$15. per person at the door

*Includes a deluxe soup & salad dinner buffet  
Live music throughout the evening*

### Award Presentations for:

*Mother Jones*

*Chuck Chambers Public Service*

*Laura Forman Grassroots Activist*

*Linda Schnautz Environmental Courage*

*Green Entrepreneur*



## Legislative Session 2008 Information

### Sources:

#### **Legislative Reference & Information Center:**

MB-27, Bld. 1 - State Capitol Complex, Charleston WV 25305

**WV Legislative web-site:** [www.legis.state.wv.us](http://www.legis.state.wv.us)

(For bill tracking, bulletin board (journals), legislators' e-mails.)

**To Call Toll Free:** 1-877-565-3447 or local Charleston area:  
(304) 347-4836

**WV Environmental Council Web-site:** [www.wvecouncil.org](http://www.wvecouncil.org)

**Ohio Valley Environmental Coalition:** If you want to easily get the latest news during the legislative session, check [www.ohvec.org/ovec\\_news.html](http://www.ohvec.org/ovec_news.html) and [www.ohvec.org/news\\_gen.html](http://www.ohvec.org/news_gen.html) daily.

Every morning, OVEC checks scores of news sources and posts links to make it easier for you to stay informed.

### **WV Environmental Council**

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Don Garvin  
*Legislative Coordinator*  
[dsgjr@aol.com](mailto:dsgjr@aol.com)

Denise Poole  
*Program Coordinator*  
[deniseap@earthlink.net](mailto:deniseap@earthlink.net)

Don Alexander  
*Web Site Coordinator &  
E-Mail Listserve Coordinator*  
[paradox@spectrumz.com](mailto:paradox@spectrumz.com)

[www.wvecouncil.org](http://www.wvecouncil.org)

**Legislative Update** is published by the West Virginia Environmental Council (WVEC) - a statewide organization dedicated to facilitating communication and cooperation among citizens in promoting environmental protection in West Virginia. *LegislativeUpdate*, is published weekly during the Legislative Session.

**Legislative Update** welcomes letters, articles, and art work from readers and reserves the right to edit or reject submissions. Please send materials to:

**Denise Poole, editor**  
[deniseap@earthlink.net](mailto:deniseap@earthlink.net)  
2206 Washington Street East  
Charleston, WV 25311  
(304) 414-0143

# WV-SORO: A Voice for Surface Owners and Their Rights

By Julie Archer, WV Citizen Action Group  
Norm Steenstra III, WV Citizen Action Group

As many of you know, in August of last year WV-CAG helped form a new organization, the WV Surface Owners' Rights Organization, which is dedicated to protecting and expanding the rights of surface owners when oil & gas companies explore and drill on their property. The organization has grown rapidly since its inception 6 months ago and we can now count among our ranks members from 50 WV counties, 19 states and 2 countries.

WV-SORO has had a presence at the legislature since last summer. During an August special session, WV-SORO helped defeat a bill supported by oil & gas producers and Governor Manchin to let companies off the hook after they were found guilty of shortchanging landowners more than \$133 million in royalty payments. In the *Tawney* case, the jury also awarded the landowners \$270 million in punitive damages. The bill proposed by the Governor would have let the companies out of this verdict and shielded them from similar lawsuits in the future.

More recently, WV-SORO has been recruiting co-sponsors and talking with legislators about a Surface Owners' Bill of Rights. The bill should be introduced early next week. WV-SORO identified several changes that are needed to level the playing field between operators and surface owners and ensure good stewardship of the land and economic fairness in the state's oil and gas fields. These changes include:

- Earlier notice that the driller is coming, including requiring notice before the driller comes on the property to survey well site, access road or pipeline locations.
- Requiring a face-to-face meeting between the drill and the landowner before the permit application is filed.
- Allowing for a pre-permit negotiating period to give the surface owner input in planning and executing well site(s) and access roads.
- Ensuring fair and equitable compensation by requiring the driller to post an individual well bond if no pre-drilling agreement is reached between the driller and the surface owner.
- Requiring the driller to offer the surface owner residential gas service, at cost, from the wells or gathering lines on their property.

We also received valuable input from WV-SORO members at our first regional and information meeting in

Weston in December. WV-SORO will be working on behalf of surface owners to get the legislature to implement many of these changes during the upcoming legislative session.

WV-SORO will be holding another regional and information meeting in Spencer on January 31, 2008 from 6:00pm to 8:00pm at the Heritage Park Community Center.

WV SORO is also sponsoring a Surface Owners' Rights Day on February 6 at the State Capitol. This will be a great opportunity to come down and show support for the Surface Owners' Bill of Rights. Visit our website, [www.wvsoro.org](http://www.wvsoro.org) for more details or contact norm or julie @wvsoro.org.

## Under The Dome ..... continued from pg. 1

WVEC has been working on our Renewable Energy Campaign for several years now. And while we haven't had a lot of money to throw at this endeavor, we have benefited from an abundance of personal energy from some wonderfully bright and dedicated people.

We are where we are because of folks like Bob Hamburg, Mary Wildfire, Jim Kotcon, Tom Degen, Rick Eades, Frank Young, and Allan Tweddle. Their voices were singing the renewable energy message long before its time.

We are where we are because of Sierra Clubbers Paul Wilson and Bill Price, who facilitated a strategic planning session to help us focus our campaign.

We are where we are because of support we have received from Wayne Dunn and the Dunn Foundation to help us take the renewable energy message to the public.

We are where we are because of folks like Denise Poole and Myra Bonhage-Hale and their long-time commitment to a sustainable planet.

We are where we are because of \$100 per barrel oil and indisputable scientific evidence that global climate change is real, and it is now.

And, finally, we are where we are because sixteen long years ago U.S. Senator Al Gore wrote a book called *Earth in the Balance*.

The upshot of all of the above is simply this: while not every delegate or senator we talk to about renewable energy is on our side, they all finally seem to know something about the issues.

And that makes our "Citizens' Energy Plan" ready for prime time.

Don't forget to keep your bird feeders full this week. It's the "sustainable" thing to do.

# Clean Streams: Valuable For the Future

*Charleston Gazette* Editorial - January 23, 2008

For years, West Virginia has been arguing over how many clean mountain streams to include on a list to be protected from pollution, or degradation.

The state Department of Environmental Protection narrowed a list to 309 streams it recommended for a moderate level of protection, known as Tier 2.5.

Last June, Gov. Joe Manchin ordered DEP Secretary Stephanie Timmermeyer to remove a number of streams, lowering the list to 157.

Just before the legislative session started, members of the Joint Legislative Rulemaking Review Committee voted to put those streams back on the list, which must be approved by the full Legislature. This is a sensible move.

The Tier 2.5 category was created in a series of compromises with industries to keep more streams from being listed in the even more restricted Tier 3 category. Tier 2.5 streams cannot be degraded more than 10 percent. Tier 3 streams cannot be degraded at all. The federal government requires the state to develop policies to protect streams under the Clean Water Act.

“Water is the most important asset in West Virginia,” Delegate Joe Talbott (D-Webster) said at the time of the joint committee meeting. “It’s more important than coal, more important than timber.”

West Virginia, blessed with abundant clean, fresh water, would be wise to take a conservative approach toward it. Water has become scarcer in many parts of the world and in the United States. How foolish the state would be to spoil something that its residents are going to need - and that others are going to want.

Owners of land where the streams run have complained that the anti-degradation limit may prevent them from developing or using their land in the future.

However, loggers and farmers are exempt from the policy as long as they voluntarily follow best-management environmental practices. The list represents less than 4 percent of West Virginia’s waterways. Status as a protected stream would not prevent hunting and fishing on those lands or many other kinds of development, as long as streams were not degraded by more than 10 percent.

The House Judiciary Committee, led by Delegate Carrie Webster (D-Kanawha) should approve the policy

with 309 streams and advance it through the process. West Virginia has argued about this for long enough. The feds will not wait forever for the state to follow the law.

Unless someone can explain how allowing more pollution would benefit the state, West Virginia should take care of what it has. Once water is dirtied, it is much more difficult to make it pure again.

## Action Alert !

### Contact Legislators NOW to Keep Streams Clean

The Senate Natural Resources Committee will possibly take action on the two major DEP water rules next week. Now’s the time to contact the members of this committee (as well as ALL of your legislators) and ask them to pass both of these important rules.

The message is simple: tell them you strongly support keeping all 309 streams on the Tier 2.5 stream list as proposed in 60CSR5, the Antidegradation Implementation Procedures Rule, as well as the expanded list of trout streams (called the “B2” list) contained in 47CSR2, the Water Quality Standards Rule. Ask them to pass both of these rules as proposed by the Joint Legislative Rule-Making Review Committee, with no amendments.

#### Senate Natural Resources Committee members:

Senator John Pat Fanning (Chair) (D - McDowell) (304) 357-7867 *E-mail:* [fanning@mail.wvnet.edu](mailto:fanning@mail.wvnet.edu)  
Senator Randy White (D-Webster) (304) 357-7906 *E-mail:* [crwhite@mail.wvnet.edu](mailto:crwhite@mail.wvnet.edu)  
Senator Edwin Bowman (D - Hancock) (304) 357-7918 *E-mail:* [jwazell1@mail.wvnet.edu](mailto:jwazell1@mail.wvnet.edu)  
Senator Mike Green (D - Raleigh) (304) 357-7831 *E-mail:* [mkgreen@mail.wvnet.edu](mailto:mkgreen@mail.wvnet.edu)  
Senator Walt Helmick (D - Pocahontas) (304) 357-7980 *E-mail:* [whelmick@mail.wvnet.edu](mailto:whelmick@mail.wvnet.edu)  
Senator Shirley Love (D - Fayette) (304) 357-7849 *E-mail:* [shlove@mail.wvnet.edu](mailto:shlove@mail.wvnet.edu)  
Senator Brooks McCabe (D-Kanawha) (304) 357-7990 *E-mail:* [bfmccabe@mail.wvnet.edu](mailto:bfmccabe@mail.wvnet.edu)  
Senator Roman Prezioso (D-Marion) (304) 357-7961 *E-mail:* [rprez@mail.wvnet.edu](mailto:rprez@mail.wvnet.edu)  
Senator John Unger (D - Berkeley) (304) 357-7933 *E-mail:* [unger@mail.wvnet.edu](mailto:unger@mail.wvnet.edu)  
Senator Clark Barnes (R - Randolph) (304) 357-7973 *E-mail:* [cbarnes@mail.wvnet.edu](mailto:cbarnes@mail.wvnet.edu)  
Senator Frank Deem (R - Wood) (304) 357-7970 *E-mail:* [fdeem@mail.wvnet.edu](mailto:fdeem@mail.wvnet.edu)  
Senator Karen Facemyer (R - Jackson) (304) 357-7855 *E-mail:* [kfacemyr@mail.wvnet.edu](mailto:kfacemyr@mail.wvnet.edu)  
Senator Andy McKenzie (R - Ohio) (304) 357-7984 *E-mail:* [senatormckenzie@aol.com](mailto:senatormckenzie@aol.com)

## WV Beverage Container Recycling & Litter Control Act Presentation Scheduled

By Linda Frame, WV Citizen Action Group

Next Tuesday, February 5, a presentation on SB 135 and HB 2773, the WV Beverage Container Recycling and Litter Control Act will take place in the House Chambers at the State Capitol - 3:00 PM.

John Ferrari, President of NexCycle's California operations, will discuss California's Container Deposit Law (Bottle Bill), which has been in effect for over 20 years.

NexCycle-California is one of six divisions under NexCycle SMI Holding Corporation and provides beverage container redemption services to affected Grocers/Retailers mandated by California's Beverage Container Redemption Act of 1986 (AB 2020). SMI (Strategic Materials Incorporated) is the largest glass recycler in the United States with thirty-one plant operations in the US, Canada and Mexico.

Prior to joining NexCycle, John worked for Reynolds Aluminum Recycling (20 years) and Anheuser Busch Recycling (3 years) in various operative, marketing and management capacities.

In the first half of last year, Californians recycled more than 6.9 billion beverage containers, up nearly 800 million from the same period a year ago, the state's largest recycling rate increase in the last 15 years, according to a recent study released by the state's Department of Conservation.

Officials believe this marked increase is due to the increase in the state's deposit (California Refund Value) to a nickel for small beverage containers - and a dime for large ones. Seven in 10 deposit containers are now redeemed, according to the study.

For more information, contact [linda@wvcag.org](mailto:linda@wvcag.org) or 346-5891. For WV's Bottle Bill campaign, [www.wvbottlebill.org](http://www.wvbottlebill.org).

Learn more about NexCycle at: [www.nexcyclecalifornia.com](http://www.nexcyclecalifornia.com) and [strategicmaterials.com](http://strategicmaterials.com).

**"Clean Coal ...  
is an Oxymoron"**

## On the Energy Front

By Vickie Wolfe, WVEC lobbyist

Five of Delegate Fleischauer's six energy-related bills have been introduced and assigned to committees. Senator Jon Hunter is going to introduce three of them in the Senate: the Green Buildings Act; the West Virginia Clean Power Act; and the bill authorizing counties and municipalities to enter into performance-based contracts with providers of energy conservation measures. Senator Hunter has also introduced a Renewable Portfolio Standard bill (SB 299).

Senator Billy Wayne Bailey (D-Wyoming) has introduced a bill (SB 11) that would decrease state vehicles' petroleum consumption by 12/31/2011. We are concerned about a couple of the bill's provisions; one is that it requires state-owned vehicles to use at least 20 percent "alternative" fuels by 2012, and liquified coal qualifies, according to the bill's definitions. However, we have spoken with Senator Bailey and he seems receptive to suggestions. Stay tuned!

## Clean Elections Update

By Carol Warren

Our efforts on the Public Campaign Financing Act (HB 4050 SB 240) are focused right now on the House Judiciary Committee, where the bill could be taken up for consideration soon.

Please help us in contacting Judiciary members, especially if your own delegate is on the committee. Delegates Ellem, Lane, Brown, Moore, and Fleischauer are sponsors on Judiciary committee, so please thank them for their support. Delegates Proudfoot, Burdiss, Guthrie, Kessler, Shook, Pino, Tabb, and Hamilton seem inclined in our direction, but would definitely benefit from friendly contacts.

And don't forget our **very special event** planned for **February 28**. Senator Jon Hunter, a dedicated Clean Elections supporter, has agreed to join us for a reception honoring him and his work. The event will be held at the Charleston Women's Club, on the corner of Virginia and Elizabeth Streets from 6:00 to 8:00 PM. Mark your calendar now and plan to attend. The event will be a fundraiser in support of our new Challenge Grant.



# Bills We Are Tracking

<u>Bill Number</u>	<u>Title</u>	<u>Committee</u>
<b>Senate Bills</b>		
SB 11	Reducing state vehicles' petroleum-based fuel consumption	Gov Org
SB 23	Public health assessment of DEP rules ( <b>WVEC Bill</b> )	H&HR
SB 80	Requiring verification of notice to adjoining landowners of timbering operations	Nat Res
SB 88	Brownfield economic development	Econ Dev
SB 124	Prohibiting timbering operations near brook trout streams	Nat Res
SB 135	Establishing returnable beverage container deposit program ( <b>Bottle Bill</b> )	Judiciary
SB 216	Eliminating coalbed methane tax exemption	EIM
SB 240	Creating WV Public Campaign Financing Act ( <b>Clean Elections</b> )	Judiciary
SB 299	Creating Renewable Portfolio Standards Sustainable Energy Act	EIM
SB 300	Disallowing accelerated rate recovery for transmission lines	Judiciary
SB 302	Public comment process for Health & Human Resources rules	H&HR
<b>House Bills</b>		
HB 2083	Relating to drilling gas wells near active coal mines	Judiciary
HB 2184	Prohibiting solid waste authorities from competing with private businesses	Judiciary
HB 2212	Requiring DEP to adopt federal surface coal mining regulations (Bad Bill)	Judiciary
HB 2321	Increasing the penalties for discarding trash on land and in streams	Judiciary
HB 2367	Requiring the DEP to remediate waste tire piles	Finance
HB 2385	Increasing DEP Advisory Council membership to nine members (Bad Bill)	Gov Org
HB 2492	Defining "fill material" in the Water Pollution Control Act ( <b>Terrible Bill</b> )	Judiciary
HB 2773	Establishing returnable beverage container deposit program ( <b>Bottle Bill</b> )	Judiciary
HB 2946	Removing the five year coalbed methane severance tax exemption	Finance
HB 3147	Allowing DEP to use portion of civil penalties collected for watershed projects	Finance
HB 3154	Increasing timber severance tax and eliminating exemptions from the tax	Ag & Nat Res
HB 4006	Including bicycle and pedestrian ways in planning state roads	Roads & Trans
HB 4028	Authorizing counties and cities to enter into contracts for energy-savings	Judiciary
HB 4041	Eliminating coalbed methane tax exemption	Finance
HB 4050	Creating WV Public Campaign Financing Act ( <b>Clean Elections</b> )	Judiciary
HB 4066	Green Buildings Act	Gov Org
HB 4083	Creating Renewable Portfolio Standards	Ag & Nat Res
HB 4095	Creating commission to study impact of global warming	Ag & Nat Res
HB 4133	Strengthening vehicle emission standards	Roads & Trans
HB 4161	Increasing number of Public Service Commission appointees	Gov Org

**NOTE:** Above is a list of bills that WVEC will track throughout the session. Some will be removed as they die a natural death or when we need more room to notify you of more important legislation. Hopefully this will help you identify and track proposed legislation that is of interest to you.

**Rules:** All of the agency rules bills were introduced in both houses on Friday, January 25. We will not list them here because their bill numbers will tell you nothing about the content of the rule. We will keep you posted on important DEP Rules as they progress throughout the session.



# Calendar of Events



**February 5:** Bottle Bill Presentation on SB 135 and HB 2773, the WV Beverage Container Recycling and Litter Control Act. House Chambers, State Capitol - 3:00 PM.  
**For more information:** WV-CAG office, 346-5891 or linda@wvcag.org.

**February 7:** Book signing by Michael Shnayerson, author of "Coal River: How a few brave Americans took on a powerful company - and the federal government - to save the land they love." Taylor Books, 226 Capitol Street, Charleston WV. 6:00 p.m.

**February 20:** Documentary Film Showing, "A Cow At My Table". Location: Unitarian Universalist Congregation, 520 Kanawha Blvd. West, Charleston WV. 7:00 pm. Admission is free.  
**For more information:** (304) 345-5042.

**February 22:** WVEC's annual E-Day at the Capitol. Location: House & Senate halls & around the well. From 10:00 a.m. ~ 2:00 p.m. Environmental & sustainable business displays, citizen lobby day, press conference.  
**To reserve tables for your organization or sustainable business contact:** Denise Poole, (304) 414-0143 or deniseap@earthlink.net.

**February 22:** WVEC's E-Day evening benefit reception. Location: Women's Club, on the corner of Elizabeth Street & Virginia Street, Charleston. From 6:00 pm till 10:00 pm. Highlights include: 2008 Environmental awards bestowed; live music; delux soup & salad bar buffet dinner and more. Cost: Donation of \$15 or above.  
**For more information:** WVEC office, (304) 414-0143 or e-mail deniseap@earthlink.net.

**February 26:** Anniversary of Buffalo Creek disaster.

**March 8:** Last day of the 2008 regular Legislative Session. Join WVEC for an "Open House End of Session" gathering. To be held at our office, located at 2206 Washington Street East, Charleston. Bring your favorite dish and beverage!

**March 18-20:** WV Environmental Education Association 2nd Annual Conference, "No Educator Left Inside". WVU Jackson's Mill, Weston WV. Stewardship & Sustainability, training & certification, trends, research, recreation and more.  
**For more information:** (304) 242-6855.

**March 20:** Film showing, "The Great American Meatout". Location: Unitarian Universalist Congregation, 520 Kanawha Blvd. West, Charleston WV. 6:00 pm. Music to follow until 10:00 pm. from The Synergy Collective and more. Admission is free.  
**For more information:** (304) 345-5042

**April 18- 20:** Sustainable Fair. Davis & Elkins College - Elkins, WV. Highlights include: Keynote address by Deborah Koons Garcia, "The Integrity of Food"; a "Taste of WV" buffet on Friday night, with live music to follow; a splendid "Sustainable Feast" dinner (reservations only) Saturday evening featuring chef Dale Hawkins; workshops, booths, and much more. Spearheaded by, Sustainable Living for West Virginia org. in association with Davis & Elkins college and a host of groups and green businesses.  
**For more information and to participate contact:** Denise Poole, deniseap@earthlink.net or call (304) 617-7073

**June 28:** 5th Annual "Lavender & More" Fair. La Paix Herb Farm, Alum Bridge WV (Lewis County). Highlights include: workshops, presentations, demonstrations, variety of booths, wood walks, garden tours, plants, gourmet lunch. Admission: \$5. per person or \$10. per family.  
**For more information contact:** Myra Bonhage-Hale, steward: lapaixpeace@gmail.com or visit the website: www.lapaixherbfarmproducts.com

**October:** WV Environmental Council's annual Fall Conference. Join WVEC this fall as we set our 2009 agenda, offer workshops, recreation outings and more. Stay tuned for exact date, location and other details for our 19th annual Fall Conference.  
**For more information:** WVEC Office, (304) 414-0143

## Support the West Virginia Environmental Council

2206 Washington Street East, Charleston WV 25311

Phone: (304) 414-0143 www.wvecouncil.org

\_\_\_\_\_ Renewed Membership  
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 \_\_\_\_\_ \$ 50 Seedling  
 \_\_\_\_\_ \$ 100 Sustaining  
 \_\_\_\_\_ \$ 250 Enviro Steward  
 \_\_\_\_\_ \$ 500 Canopy  
 \_\_\_\_\_ \$ 1,000 Old Growth  
 \_\_\_\_\_ \$ Other

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