KWA Recent Victories! Obama Administration Moves to Slow Coal Wastes Dumped in Streams, Promises Tougther Enforcement

Judy Peterson and Jason Flickner

Fast-tracked Permits

In June, the Obama Administration announced steps to end the fast-tracking of certain coal mine permits and to add tougher enforcement on mining operations in Appalachia, an important step in addressing the threat to Appalachian communities, waterways and mountains. Following a recent West Virginia court ruling against it, the Obama Administration has proposed to revoke the “one-size-fits-all” Nationwide Permit 21 it had used to authorize the dumping of coal mining waste into hundreds of miles of Appalachian headwater streams. At the same time, however, the Obama Administration has taken short of conclusively protecting other streams and communities from devastation when the EPA dropped their review of 42 coal mining permit applications.

For years, KWA has challenged the use of Nationwide Permit 21 stating that we believe coal companies should be required to obtain individual permits for the extent of damage caused to Appalachian streams from surface coal mining and valley fills. The judge never ruled on the merits of the case - instead choosing not to rule, and then determined the issue was moot.

(Continued on Page 6)
I am an optimist. And lately I’ve been feeling really good about our work. I think we’re making significant progress and I am excited about the future. As many of you likely know, Kentucky Waterways Alliance has been working on several very long-term issues to change the way in which we protect streams in Kentucky from new pollution. I just returned from a national conference (River Rally) where I presented information on where Kentucky was back in 1997 and where we are today. And we’ve come a long way baby!

In particular, back in 1997 about 2% of rivers, streams and lakes received additional protection and scrutiny from proposed new or increased pollution. Today nearly 90% of our waters receive this protection. In addition, many of our streams that supported rare fish or mussel populations were not well protected back in 1997. Today we receive additional protection when new or expanded permits are proposed. KWA is still actively working on protecting our clean waters – not only is it central to our mission – it just makes sense. It’s much easier to protect clean waters from pollution that it is to clean up a stream that is already polluted.

On the front page of this issue are two articles about other exciting developments. The Obama administration has promised changes in mining permits and protecting streams, and increased enforcement of existing laws – regulatory programs we’ve been dealing with for at least eight years. And how the administration has now taken a position on both the Army Corps 404 permit (Nationwide Permit 21) and the Stream Buffer Zone that are nearly identical to the positions KWA has advocated for years! Again, I see some reasons for hope.

Also, on the front page is a description about a unique new partnership with the US Fish and Wildlife Service, Kentucky Field Office. The Kentucky Aquatics Resource Fund will maximize the amount of money available for aquatic restoration and make certain these funds are spent here in Kentucky. This is a new and innovative program and a big responsibility for the KWA board – but it is a wonderful way in which we can develop new partnerships and work to accomplish our mission.

Finally, in a time where many groups are cutting staff and programs we are not only expanding our work, we will be expanding our staff. Thanks to the generous support of the Charles Stewart Mott Foundation we have a start on funding to hire a Development program staff person. I envision our new staff member will be a great help to me in navigating through this national economic crisis, and keeping our organization moving forward.

So, to all our faithful and generous members – thank you for your support. I believe we are doing really important and exciting work. I think KWA is working to position our organization and our work to protect and restore Kentucky’s waterways. I look forward to updating you again soon.

Judy Petersen

From the Executive Director
Looking toward an exciting future!
when Nationwide Permit 21 expired and was re-issued. The Clean Water Act only authorizes nationwide permits for stream-filling activities that have minimal environmental effects, both individually and cumulatively. Mountaintop removal coal mining and several other types of surface mining methods, produce enormous quantities of waste that is commonly disposed of in adjacent valleys and streams. Scientific studies have shown that the waters downstream from these valley fills are degraded; and there is no scientific evidence that buried headwater streams can be re-created successfully elsewhere.

The Army Corps’ revocation proposal is an admission that its long-standing permitting practices are scientifically and legally indefensible,” said Jim Hecker, Environmental Enforcement Director at Public Justice in Washington, DC. “This permit should never have been issued, because it was based on the Army Corps’ unsupported assumption that filling these streams has minimal environmental effects.”

Judith Petersen, executive director of Kentucky Waterways Alliance, said: “As a parting “gift” to the coal industry the outgoing Bush administration’s EPA agreed with the Office of Surface mining that coal companies no longer need to keep a 100 foot buffer zone between mining activities and streams. EPA took this action without even providing the public an opportunity to comment on their proposed actions.

The new administration has also promised that:

1. Coal mining permits will undergo more thorough and coordinated reviews under both the Clean Water Act and the Surface Mining Control & Reclamation Act.

2. They will reevaluate how Office of Surface Mining conducts oversight of state mining programs.

3. They will ensure protection of wildlife resources and endangered species by coordinating with the U.S. Fish and Wildlife Service.

Finally, River Rally is a time to re-unite with old friends and meet new ones—and this is where the celebration comes in. Although, these faces pictured below after the “Watershed Quiz Bowl” may seem misleading…did Judy and her friends win?

There was also a River Heroes Award Banquet where five fabulous individuals were recognized for their river work. The evening was followed by live music and dancing.

In an environment made up of like-minded environmental enthusiasts, a person is bound to be educated, inspired, and celebrated. A special thanks to all those who helped make this event possible (you know who you are), and for those who helped sponsor KWA staff to attend—River Network, USEPA, and Marc & Lisa Hult. I wanted to extend a special thanks to Marc and Lisa for helping to sponsor my trip along with River Network. It was my first time experiencing River Rally and these generous folks helped to make it happen. I was enlightened, and at times overwhelmed, to be in the presence of people who have worked so hard to protect the land and waters I love and am dependent on. Thanks all!

Welcome Alec Edward Milburn!

We wanted to congratulate our Outreach Director, Jennifer Milburn & family on their newest addition! Alec was born on May 13th at 3:38 pm. He weighed 7 lbs 14 ounces and was 19” long. What a cutie!

Stop by our table at the Forecastle Festival on the Waterfront in Louisville: July 10-12th! Visit: www.forecastlefest.com
KWA Participates in Southeast Stormwater Conference

JASON FLECKER

In March, KWA took part in a Southeast Stormwater Conference that drew representatives from a variety of water protection organizations from around the southeast to Atlanta to discuss the most significant source of pollution to our nation’s waters: stormwater discharges and runoff from communities and construction sites.

Stormwater pollution occurs during and following precipitation events when water flows over land and impervious surfaces and does not absorb into the ground. The runoff accumulates sediment and chemicals that flow untreated into streams or into stormwater drains.

Construction sites are a significant source of stormwater pollution because of the disturbance and extended exposure of vast areas of soil. Impervious surfaces, such as rooftops, streets and parking lots, reduce the area available for water to infiltrate into the ground and increase flows into storm drains. Construction sites and municipal storm drain outfalls are considered point sources and require a discharge permit.

The intensive two-day conference was highlighted by a roundtable discussion with EPA Region IV staff working on stormwater and stream restoration issues. EPA has recently started requiring municipal governments to register by the KY Division of Water, requires public education and involvement, illicit discharge detection and elimination, construction runoff control, post construction management, and pollution prevention.

The MS4 Phase II program, administered by the KY Division of Water, requires public education and involvement, illicit discharge detection and elimination, construction runoff control, post construction management, and pollution prevention.

For more information on stormwater issues in Kentucky, please contact KWA staff.

Kentucky Stormwater Survey

YVONNE MIECHTRY

A stormwater telephone survey was conducted between June 2008 and January 2009 in 88 communities which are regulated by the Kentucky Municipal Separate Storm Sewer Systems (MS4) Phase II permit. The survey was designed by the KY Transportation Cabinet and KY Environmental Education Council and was conducted by the University of Kentucky Survey Research Center. Local survey results were reported to the communities. The compiled results of all communities and the randomly selected 4,527 adult respondents can be viewed at http://www.stormwater.kytc.ky.gov/MC41/mcm1_MS4surveyresults.htm.

The survey measured knowledge, attitudes, and behaviors related to stormwater pollution and venues that are effective for educating the public about water quality. Results indicate a lack of general knowledge and concern about water quality and stormwater pollution. For example results, see charts. Effective education is key to addressing the lack of knowledge and concern and ultimately leading to citizen behaviors that protect our water resources. Over 60% of the people surveyed said they didn’t know what they could personally do to prevent storm runoff pollution.

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For more information about stormwater pollution prevention and outreach, see www.stormwater.kytc.ky.gov.

Thaxton’s Canoe Trails & Paddler’s Inn

KELLY CRAIG

Here’s an idea…let’s go kayaking! This month, KWA is recognizing family owned and operated Thaxton’s Canoe Trails and Paddler’s Inn, Jim and Ann started Thaxton’s in 1980 and have watched their 4 children: Lori, James, Glen, and Sara grow right along with the business. Now, 5 grandchildren: Danielle, Cory, Jason, Jonathon, and Marie are growing up with various connections to the business too.

They offer operations canoe, kayak, raft and tube trips on an internationally recognized Class I river. Trips range from 6 to 30 miles. They also have beautiful cabins at affordable rates nestled above the river that include paddling privileges for their guests. Or, if you want to rough it they offer river front primitive camping too.

The Licking River is recognized by the Kentucky Division of Water as an Outstanding Water Resource with over 100 species of fish and over 50 species of mussels—about 25% of the mussel population in the US. The Licking River is a unique ecosystem and the Thaxton’s have sought to protect the diversity of the Licking River as avid supporters of Watershed Watch; stream monitoring has been an event that the whole family takes part in. Jim and Ann have been volunteering for Licking River Watershed Watch since its inception. It was at the last annual conference of LRWW that both Ann & Jim were honored for their years of service (picture above).

Education is important to the Thaxton family, and Jim has taught two classes at NKU for the past 12 years: Introduction to Canoeing, and Introduction to Kayaking. Glen, who is also the Operations Manager, generally assisted with the on-water sessions. They also distribute a Smart Start program for folks who have never been on the river before. Glen believes in educating people about the river & safe canoeing practices and connecting people with their waterways not only by having fun on the waters, but by caring enough to keep the waters clean. One of his favorite quotes about canoeing and the business is: “It’s a wonder-ful way to make a living and enjoy a great lifestyle at the same time. The Thaxtons work winter jobs so they can enjoy the summers as canoe outfitters and guards for Licking River. So why not join them? If you decide to head their way, please be sure to tell them you are friends of KWA! And tell ‘em we said ‘Hi!’”

Thaxton’s Canoe- & Paddlers’ Inn is located on the northwest side of the US 27 bridge on the banks of the Licking River at Butler. That is only an hour North of Lexington and just a half-hour South of Cincinnati. To find out about rates or more information about Thaxton’s Canoe Trails and Paddlers’ Inn please visit their website: http://www.gopaddling.com. Or call: 859-472-2000 direct from Northern Kentucky or Greater Cincinnati or outside the area call 877-643-8762; E-mail info@gopaddling.com.
Statewide Drought Preparedness Plan
(This is not an announcement of impending drought!) Parris Wood

All natural disasters impact people and the natural world in varying degrees. A tornado passing through a harvested hayfield isn’t necessarily a crisis, but when it crosses the road into a subdivision, it becomes life-threatening and incredibly expensive. Chances of flooding at a specific site can be calculated, and the differing impacts of floodwaters have been seared into our brains. However, tornadoes leave as fast as they come and floods subside. A good emergency response program knows how to conduct triage and how to allocate resources to begin cleanup. Droughts, on the other hand, “take the cake” when it comes to natural hazards with varied impacts and fuzzy edges.

Droughts leave emergency response personnel a little at odds. Emergency crews can arrange to provide hay and they can help pump water if they have the equipment and an alternate water source, but what else? Droughts creep in, sometimes so subtly that many don’t even know it’s happened. Or they come with scorching heat, ruining crops but not endangering public water supplies that are stored in large reservoirs or underground. Sometimes an agricultural drought ends with a good storm near harvest time, but the public water supply still remains in trouble.

Kentucky’s Water Shortage Response Program developed in response to droughts in the 1980’s—and is helpful for small systems management—but Kentucky has never had a statewide drought plan. A 2008 legislative resolution called for Drought Mitigation and Response Advisory Council (Drought Council) to guide development of a plan to coordinate drought response and mitigation among various state agencies.

Working from a model plan published by the National Drought Mitigation Center (Willhite at al), Kentucky Division of Water’s Bill Caldwell and his capable staff led the Drought Council and Jennifer Thompson facilitated very lively discussions. Formal presentations provided: historical context of Kentucky’s droughts and drought response (Bill Caldwell and State Climatologist Stuart Foster), details of the KY Pollution Prevention Center’s Process Water Management Program (Cam Metcalf), and clarification of water programs of the Governor’s Office of Agricultural Policy (Tim Hughes), Emergency Management and Natural Guard representatives explained their drought response functions.

There were 45 Council members in all. Yours truly was cause of my earlier drought response work, but some of the other especially vocal non-DOW participants included KY Association of Counties’ Roger Recktenwald, Toyota’s Carl Kurz, National Weather Service’s Mike Callahan, Canoe (This is not Pamla Wood)

The Division of Water (DOW) submitted the Kentucky’s Drought Mitigation and Response Plan to the legislature on the due-date of December 31st, 2008. The Plan recommended a permanent Drought Mitigation Team chaired by the Energy & Environment Cabinet and four Assessment Teams that would focus on the following: climate and water resources data, agricultural and natural resources, drinking water & public health, and finally drought & water emergency. The full Mitigation Team would be convened only when drought indicators show a need.

The Plan also outlines coordinated monitoring of drought conditions and levels of response. The Council strongly recommended a website be established that would provide monitoring information and clarify which types of monitoring would impact which kinds of activities, e.g. public water supplies vs. agricultural needs. Some of these recommendations have already been incorporated into DOW’s current site: http://www.water.ky.gov/wateruse/drought.

The Plan addresses drought preparedness—including inventorying resources, identifying vulnerabilities, and encouraging water use efficiency as a preparedness measure. It also recommends measures for increasing public understanding and preparedness for drought.

Watershed Teams Taking Care of Business
Tessa Edelen

Our communities in Kentucky are creating watershed based plans and helping KWA write and revise the Watershed Planning Guidebook for Kentucky Communities in the process.

- Darby Creek (subwatershed of Harrods Creek) in Oldham County
- Dry Creek (subwatershed of Triplett Creek) in Rowan County
- Hancock Creek (subwatershed if Strodes Creek) in Clark County
- Stockton Creek (subwatershed of Fleming Creek) in Fleming County.

So far, all of the groups have finished the introductory and information gathering chapters and are in the process of analyzing data and getting down to business with Best Management Practices recommendations. Each of the watershed teams will be hosting a roundtable event in the fall to update communities on the plans. They are doing great work!

If you would like to keep up with our progress or take a look at the draft version of the Guidebook visit the “Watershed Planning Projects” section of our website: www.KWAlliance.org

Activists invited to chat with Corps about Coal
Jason Flickner

In April, KWA staff Judy Petersen & Jason Flickner joined several of our partner organizations from around the state at the US Army Corps of Engineers (USACE) - Louisville District’s office to meet the new District Commander Colonel Landry, and to discuss the Corps’ regulatory practices for coal mine permitting. After a warm introduction, Colonel Landry explained he had met with industry representatives and was inviting the environmental perspective, to gain a well-rounded understanding of issues surrounding surface coal mining in Kentucky.

Many vital concerns were raised on USACE 404 permits required to fill streams & construct valley fills including: problems surrounding Freedom of Information Act requests & public comment period limitations, inadequate mitigation requirements, after-the-fact permitting, and insufficient monitoring, inspection, and enforcement.

As the meeting concluded, Col. Landry identified 4 areas where the Corps’ practices could improve: transparency, information availability, notice of actions given sooner rather than later, and routine meetings with all stakeholders. Colonel Landry agreed to visit Eastern Kentucky with KFTC, and also agreed to a possible town hall style meeting in the region. KWA would like to thank Colonel Landry for his willingness to hear all sides concerned with the controversy of coal mining in Kentucky and for inviting our participation. We look forward to continuing the discussion in the near future.

Red River Gorge Grant Award
Tessa Edelen

We are proud to announce that KWA will be partnering with the Daniel Boone National Forest on an EPA 319 funded grant to create and implement a watershed-based plan for the Red River Gorge area. The project area includes Swift Camp Creek, Cooperers Creek, Gladie Creek, Wolfpen Creek, and Indian Creek. The Forest Service’s analysis of the lower portion of the watershed, “The Limits of Acceptable Change,” points to overused and rogue hiking trails, vista lookout spots, and campgrounds as sources of erosion contributing to stream sedimentation. The new project will implement Best Management Practices outlined in the analysis in the lower portions of the waywater and begin the planning process in the headwater areas. KWA Watershed Program Director Tessa Edelen will be working with the Forest Service on the project.

Red River Gorge cliffline

June 2009
Events

Aug. 2: Summer Wildflower Hike at Blackacre SNP (Jefferson Co.) at 2 p.m. EDT. Hike through Blackacre’s fields of wildflowers & native grasses with botanists Julian Campbell and Pat Haragan. www.naturepreserves.ky.gov

Aug. 8: Green River Day at RiverPark in Livermore on Green River. Starts at 10:30 EDT w/streamside litter pickup; riverside nature hike, fishing, & afternoon canoe floats. Contact:alomadew@siersclub.org

Sept. 18 – 19: KAE 2009 Conference: Currents in Environmental Education at General Butler State Park in Carrollton, KY. Contact: Jennifer Adler, 859-707-7421, conference@kae.org

Announcements

Reforesting Old Mine Sites

If you put aside the issue of coal mining - just for a moment, and consider the mine sites as reclamation projects, there are some interesting things going on in Appalachia. In recent years, mine site reclamation has often consisted of replacing the topsoil to the former mine site and driving over it with heavy machinery until the soil is so compacted that almost nothing will grow on it. There are folks who apparently value the aesthetic of this method. Some grasses will grow on these sites, but not much else. Other folks would prefer to see trees growing there, both for their intrinsic value and their potential commercial value. But trees will not grow on compacted soil. So ARRI stepped in to loosen things up - the soil that is.

The Appalachian Regional Reforestation Initiative (ARRI) is a coalition of groups, including citizens, the coal industry, and government, dedicated to restoring forests on coal mined lands in the Eastern United States (see www.arti.osmre.gov).

ARRI was established in early 2004 as people in neighboring states realized that many of their reforestation efforts were similar. Kentucky’s Reforestation Initiative began in 1995 as a cooperative effort between the Department for Surface Mining Reclamation and Enforcement (DSMRE), the University of Kentucky, and the Environmental Quality Commission to promote reforestation by requiring the planting of high-value hardwood species on mined lands. Other several branches of our state government also partner with ARRI.

The technique that ARRI calls Forestry Reclamation Approach is, in a nutshell, a way of piling up a lot of soil and growing material and not driving over it to give trees a chance to thrive. Ideally, the growth medium is four to six feet deep! They also focus on proper tree planting techniques and suitable species for the habitat. Having a forest on a former mine site, the thinking goes, is much better for the environment than a field of fescue. The Forestry Reclamation Approach may be the post mining land-use of choice.

Kentucky Natural Lands Trust Protects More Old Growth Forest

Hugh Archer, Executive Director KNLT

Kentucky Natural Lands Trust (KNLT) recently purchased 400 acres in Harlan County adjoining the Blanton Forest State Nature Preserve. Blanton Forest is Kentucky’s largest remaining old growth forest and the 14th largest uncut forest east of the Mississippi River. In partnership with the Kentucky State Natural Preserves Mission, KNLT has helped acquire more than 3,100 acres for Blanton Forest, Kentucky’s largest nature preserve. The 400 new acres add to the protected landscape level forested migratory corridor through the coal fields of eastern Kentucky. Through the Pine Mountain Legacy Project, KNLT is striving to preserve and protect Pine Mountain’s ecologically significant natural areas like Blanton Forest by providing an ecological corridor and contiguous forest block for plants and animals and encouraging long term environmental stewardship.

Pine Mountain spans well over 120 miles and forms the northwest border of the Cumberland Mountain Ecoregion. It is home to many species of rare plants and animals, and, because of the numerous caves, harbors federally endangered bats (including Indian bat) and even native animals known from nowhere else in the world. KNLT continues to raise funds for the stewardship of these natural areas as well as for new acquisitions. The next acquisition will be nearly 2,000 acres of forested wild lands in Whitley County which will anchor the project on the southern end of the mountain.

ORSANCO Accepting Public Comments on Ohio River Water Quality Standards

The Ohio River Valley Water Sanitation Commission (ORSANCO) has formally released the proposed revisions to its Pollution Control Standards for the Ohio River. On initial review, we believe most of the revisions are minor and are designed to reflect current US EPA criteria. ORSANCO’s formal comments will be available via our website, www.kwalliance.org, in the near future. ORSANCO’s proposed revision can be found at: http://www.orsanco.org/index.php/standards

For Watershed Watch in Kentucky SAMPLING DATES please visit our website: www.KWAlliance.org under events.

Reforestation of Old Mine Sites

Arbor Day 2008 – was indeed a Walk in the Park

An interest group, Plant for the Planet! made up of neighborhood associations, local businesses, and individual donors were able to give away over 1,350 native KY trees to help the urban tree canopy, protect water sheds, and reduce global warming on Arbor Day this year at Warnehm Park in Louisville. Do you live in Deer Park, Upper Highlands, Highlands-Douglass, Bonncastle, or Belknap? This event is looking for a leader for next year. Please contact KWA member and supporter Stephen Spanyer: srs@iglou.com

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