

GROUNDTRUTHING THE PUBLIC TRUST: ETHNOGRAPHY, MOUNTAINTOP RETENTION, AND THE RECLAMATION OF NEPA

By Mary Hufford

I resigned as a matter of principle, for I did not want to share in the blame nor guilt for the loss of West Virginia's heritage through the loss of our forested mountains.

— William Maxey, Director, WV Division of Forestry, 1992-1998

I met William Maxey in 1996, during the annual meeting of the Lucy Braun Association for the Mixed Mesophytic Forest (LBA) held that year in Charleston, West Virginia. The LBA had formed four years earlier in Beckley, West Virginia, for the purpose of studying and preserving the hardwood forest system covering the Central Appalachian Plateaus. The founders of the organization named it for the pioneering woman botanist who first recognized the ecological integrity of the Central Appalachian forest, and linked that integrity to the region's unglaciated topography. A quasi-scientific organization, the LBA welcomed all devotees interested in promoting the well-being of the mixed mesophytic forest (mmf) throughout its range (see Figure 1), including me, a practicing anthropologist trained in folklore with a special research interest in ecological crisis.

The LBA meetings were multi-sectoral, drawing together scientists working in academic, government, and corporate settings, state and federal environmental agencies, forest activists, and residents of the region with a keen interest in its natural history and forest health. They were also multidisciplinary, featuring presentations on aspects of the region's ecology, history, and culture, and their relevance to the LBA's primary effort, which was a four-year citizen science monitoring project to answer the question: Are mortality rates for mixed



Base map of the Appalachian Region courtesy of the Appalachian Regional Commission (2014)

Figure 1. Boundaries of the Mixed Mesophytic Forest Region, Based on Drawing Produced by the Lucy Braun Association

mesophytic forest species changing? The study found that forest species mortality rates had risen to three to five times historic rates, and that the rates were highest where wet ozone deposition was most concentrated. Implicating coal-burning plants upwind of the region, the findings were politicized by environmental professionals and foresters employed by West Virginia state agencies and by coal and timber corporations. This issue, and those collaborating to solve it, appeared to be central

not only to the mission of the government agency for which I worked—the American Folklife Center at the Library of Congress—but of applied anthropology. What could civic professionals trained, as I was, in ethnographic research applications contribute to the study and amelioration of ecological crisis?

At the LBA's 1996 meeting in Charleston I presented a slide-illustrated overview of my research with communities at the headwaters of southern West Virginia's



Adapted from the EPA (US EPA 2005). Base map courtesy of the Appalachian Regional Commission (2014)

Figure 3. The United States EPA Boundaries of the “Mountaintop Mining and Valley Fill Study Area” Superimposed on the Mixed Mesophytic Forest

the point of view of industry. Terms like “the coalfields,” the “oilfields,” the “tar sands,” are industrial identities that have come to eclipse all other possible identities. The result was noted by Hannah Arendt (1958:58) in *The Human Condition*: “The end of the common world has come when it is seen only under one aspect and is permitted to present itself in only one perspective.” Naming a region fixes its identity within national and global imaginaries. An example of how this works is provided in the United States Environmental Protection Agency’s (EPA’s) Final Programmatic

Impact Statement on Mountaintop Mining/Valley Fills, *Mountaintop Mining/Valley Fills in Appalachia: Final Programmatic Environmental Impact Statement* (MTMVF) (US EPA 2005). Naming the region the “mountaintop mining and valley fill study area,” the EPA’s map further consolidates an identity seen from one point of view: industry’s. It is when juxtaposed against an alternative ecological identity, the “mixed mesophytic forest” region, that the impact becomes more clear (See Figure 3). Such a juxtaposition can be a powerful act of resistance, for not

only does it clarify the relationship of MTMVF to the region as an ecological system, it re-opens public space, as Arendt theorized, by adding another point of view.

Under the paradigm of Environmental Law, MTR has become a behemoth, around which scholars, including engaged ethnographers such as myself, have lately found ourselves clambering like Lilliputians. Pointing to breaches of statutory intent, we observe that the rock lined drainage ditches simulate neither the form nor the ecological functions of mountain streams; that the correlation of high rates of mortality, birth defects, and cancer with proximity to MTR warrant putting a stop to MTR; that the commons is a socio-ecological institution to which cultural properties and natural resources are touchstones to protect from MTR. The broad discretionary latitude granted to employees of environmental agencies to fashion the rules and regulations for environmental planning removes the administration of environmental law from the public realm. Yet all of these issues are assimilable within a public trust model. What we need to do is constitute the public trust in terms appropriate for our time.

The Public Trust Paradigm

Maxey’s published statement illuminates the capture of West Virginia agencies by the industries they are supposed to regulate. But behind that, we see the persisting, though shadowy, outlines of a public trust for which Maxey saw himself as a trustee. This trust, Wood argues, is safeguarded not by *environmental* law, which segments it into decontextualized and fungible objects of expertise and administration, but by *property* law that, rooted in early Roman law and recognized internationally, deems public property to be inalienable from the peoples’ sovereignty. This inalienability has been upheld, Wood notes (2007a:576-77), in every United States Supreme Court ruling on the public trust. “As the Supreme Court declared in the 1907 case, *Georgia v. Tennessee Copper*

Company: “[T]he state has an interest independent of and behind the titles of its citizens, in all the earth and air within its domain. It has the last word as to whether its mountains shall be stripped of their forests and its inhabitants shall breathe pure air.”

Property law, explains Wood, safeguards not only the right to quiet enjoyment of private property, but the right to public property, a right that “ranks so fundamental to citizens that some scholars describe it as a natural right or a human right. As Professor Joseph Sax (qtd. in Wood 2013:14) suggested more than four decades ago...the public trust responsibility underpins democracy itself, demarcating a society of ‘citizens rather than serfs.’” In this view, the sort of dignity that surprised Maxey is assured through participation in public life grounded in shared stewardship of and benefit from the commons of forested mountains. Indeed, people living on Coal River have described the experience of living with the routinized destruction of the mountains as a violation of dignity: “They’re taking our dignity by destroying our forest,” wrote one man in signing a 1994 petition supporting the documentary project on the place of the forest in community life, the Coal River Folklife Project (Hufford 1999).

The resuscitation and defense of public property that Wood urges does not require new statutes and regulations, because, as she explains (2007b:260), “in this vast bureaucracy lies the tools and funding to halt much environmental destruction.” What is required is that we substitute what she calls the “trust” lens for the “regulatory” lens (2007b:266). The “lens” metaphor is key to unfreezing the corporate state’s view of private property as wholly alienable from public sovereignty. Using the “trust” lens brings back into focus three aspects of the public trust that vanish when we view it as “environment” through the regulatory lens of the state: the trustee (charged with stewardship), the beneficiary (present and future generations), and the corpus. Though identities of this corpus—mountains, air, lakes, rivers, roads, soil, biodiversity, forests—mani-

fest differently at local, state, regional, and planetary levels, it is one substance. In reciprocity at each level with a multitude of perspectives, the corpus of Nature’s Trust secured as public trust could be a powerfully inclusive object of shared inquiry, stewardship, and governance.

In places like Coal River, the material foundations for commons—in effect, the local commonwealth—have not been recognized by the state and are therefore quite vulnerable under environmental law. The concept of the multi-tiered public trust offers a framework for applied anthropological research as the retrieval of multiple points of view, to engage the sort of public dialogue that Reid and Taylor (2010: 155) call “participatory reason.”

The doctrine of the Public Trust, together with its subset, Nature’s Trust, supports two emerging trends: 1) the broadening of protected resources to include socio-ecological systems linked together around the planet (Wood 2014); and 2) the growing recognition of commons and commoning as socio-ecological institutions (Weston and Bollier 2014). In modeling the shared inquiry foundational to democratic ecological governance, community-based, socio-ecological ethnographies can engage both trends to support 1) the constitution of local public trusts within existing frameworks of commoning, and 2) the identification of regional and global ecological systems (political ecologies) that sustain local public trusts. While this work entails *reconstituting* state and national public trusts in relation to ecological assets, under the sign of nation-building, we may find that, in the Appalachian coalfields, local public trusts have rarely been recognized by the state. While Appalachian communities have been mined for cultural assets to place in the heritage troves of state and nation, local public trusts have yet to be ratified. As witnesses to the local commonwealth, applied anthropologists may find themselves, as I did, positioned to affirm the constitution of local commons and their anchoring of public trusts for the first time, through the apparatus of environmental law.

Constituting Local Public Trusts

Commoning is a key framework for the exercise of local trusteeship. At the local level, the corpus of the public trust on Coal River has many uniquely named elements, such as places, species, structures, and topographic features, names for which are prominent in conversation: Coal River, Bradley Mountain, the Perry Jarrell Farm, the Arnett hole of water, Indian Gap, the Ramp House, Wills Newground, Burnside’s orchard, Charley Rock, molly moochers, ginseng, mountain locust, and thousands more. These elements are not visible at state, regional, and federal levels, nor do they appear on maps. The local trustees are those who tend and use the resources, abide by the customary rules of the community, and initiate new trustees, that is, those who will teach the future beneficiaries. On Coal River, community members reported a number of rules and stewardship practices. For example, “Don’t cut down nut trees, they’re good for the animals;” “Leave the bee trees and den trees: the honey and the homes for bees and animals are worth more than the timber;” and “When ginsenging, don’t just scatter the seeds, but also replant the stalk with enough of the root attached to support the development of a new root.”

The time-spaces of commoning are framed by an ecological (or “relational”) epistemology: “plant corn when the oak leaves are the size of a squirrel’s ear.” “Creasies don’t grow unless you till the soil.” Allowing timber to be cut at twelve inches diameter breast height is “robbing the land.” There are many, many such examples. These are not romanticized expressions of “traditional ecological knowledge” to be used in support of managerial ecology, but expressions of an Appalachian land ethic that should be supported as needed by expert knowledge systems.

Because it has not been recognized by the state over the past century and more of coalmining and timbering, the local public trust is particularly at risk in the present process of environmental review that relies on pre-existing

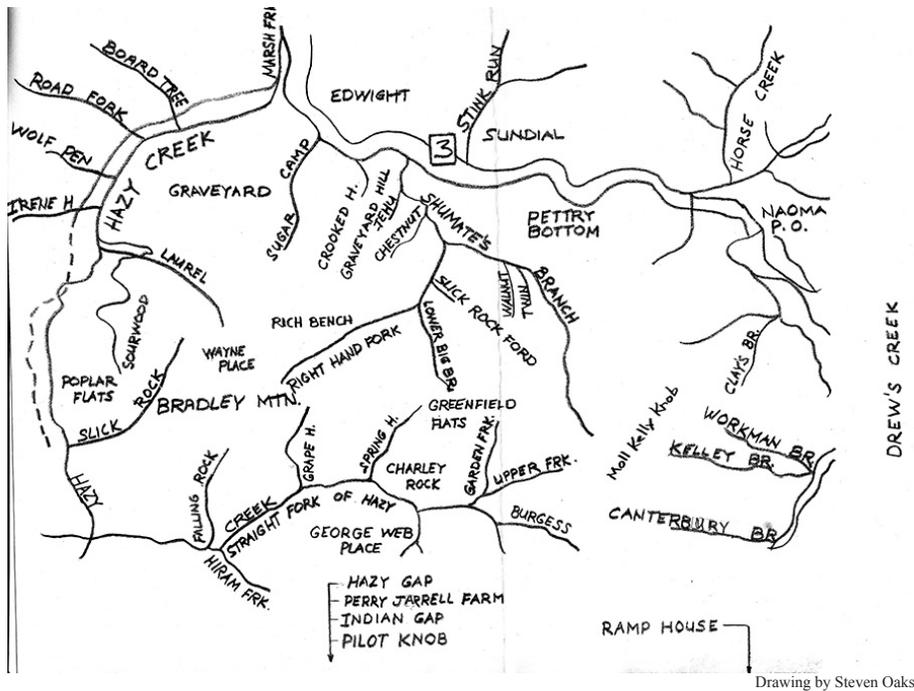


Figure 4. *The Cultural Landscape of Hazy Creek, Bradley Mountain, and Shumate's Branch. Based on Field Interviews and Sites Plotted on USGS Quadrangles by Mary Hufford with Community Members on Coal River*

documentation of the state's resources. Thus, though the Appalachian Commons has drawn scholarly attention over the past two decades, the public trust on which it depends has been excluded from consideration by environmental agencies captured by mining interests in the United States.

In the Appalachian coalfields, environmental assessments are "check-the-box" exercises, with scant consideration given to the cultural, social, and ecological functions of environmental resources. "Culture" is narrowly construed as pre-historic and historic artifacts, documented by archeologists and architectural historians, who rely on information already on file with the State Historic Preservation Office, supplemented with windshield surveys and shovel samples. There is no requirement or even a guidance suggesting that community members be contacted at the time of the assessment.

The assessments, paid for by the permit applicant, in effect construct a sieve designed to catch discrete resources

that are protected by state and federal law: high quality streams, wetlands, prime farmland, antiquities, cemeteries, listed rare, threatened, and endangered species, and so forth. Administrators of environmental law may allow the destruction of protected resources by requiring "mitigation," that is, reconstruction of streams and wetlands, replacement of topsoil, documentation and relocation of cultural resources, a plan for reclamation that improves on the mountains and streams as they are. What pops out at the end is "overburden": "material of any nature, consolidated or unconsolidated, that lies on top of a deposit of useful materials, ores, or coal, especially those deposits that are mined from the surface by open cuts" (Squillace 1990:138).

Mountaintop removal mining is permitted at the State's discretion, but thousands of decisions to destroy the public trust that no title to private property can alienate require an alibi: that is, MTR constitutes a higher and better use of the land. This alibi, reproduced

in thousands of permit applications over the past forty years, has been formulated through recourse to both sciences and social sciences. For the first thirty years, very little attention was paid in peer-reviewed scholarly literature, including applied anthropological or anthropological literature, to the gray literature in the state archives justifying decisions to destroy West Virginia's portion of the public trust. This archive represents what Wendy Espelund (1993:298), in her study of environmental review documents produced for the controversial Orme Dam in Central Arizona, calls "an enormous and revealing paper trail." Even if those documents are regarded as inherently meaningless "boilerplate," "window dressing," or "red tape," Espelund (1993: 314) argues, "Their ability to legitimate something to some relevant party makes them significant cultural texts." Espelund (1993:299) also observes that the texts are "objectified social forms," that reproduce power while structuring social and political interactions between government agencies and their constituencies.

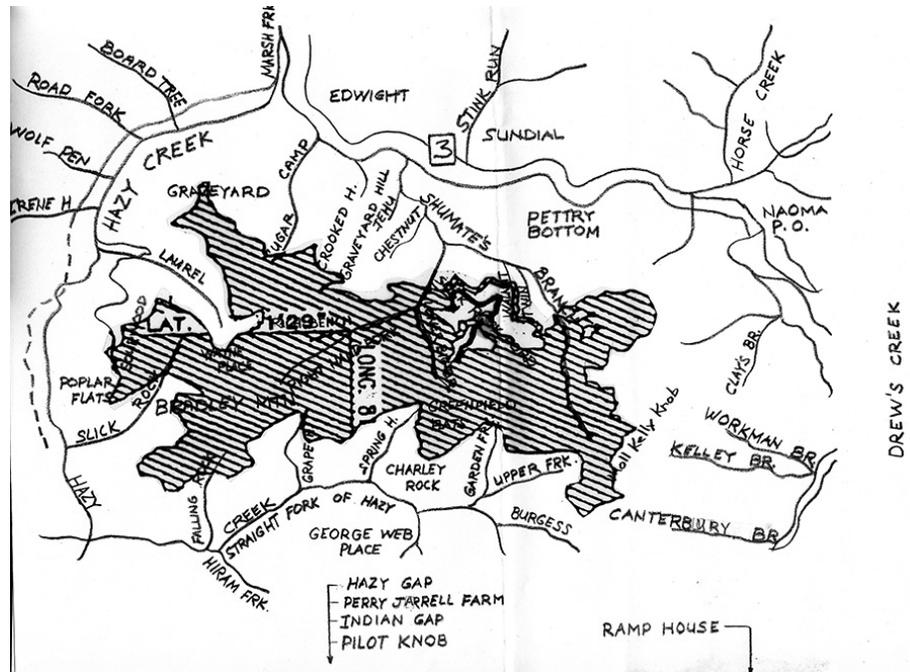
West Virginia permit applications display many of the attributes that Espelund notes in her 1993 study of environmental impact statements (EIAs). Relying on passive voice and authorial invisibility, the style in which EIAs are written is supposed to convey objectivity and neutrality. But a closer reading of West Virginia documents suggests a pathological poesis, whereby the language itself mimes the trivializing and decapitation of the local subject: a proposed site for mountaintop removal is found to contain "unmanaged forest land" and "unnamed streams." It is used 'only' for recreation, or 'only' for subsistence. The smooth surface of neutrality and objectivity is occasionally disrupted by advice-giving: "agriculture on the steep slopes is ill advised." A negative incantation pulsates throughout the EIAs. If they could talk, they would say: "worthless, worthless, worthless." While striving to project the "neutrality, inevitability and incontrovertibility" (Espelund 1993:299) of what Howitt (1995:389) calls the "resource narrative

of extractive regions,” the texts on file in the State Archives display the systematic shredding of value enshrined as environmental review.

Because of the co-constitutive relationship between communities and their ecologies, such assaults on value are assaults on dignity. As Reid and Taylor (2010:37) point out, “Independence of political thought and action...is hinged into the commons in a relation of co-constitution. And, in important ways, that hinge is *dignity*—a sense of personal integrity, security, and honor that is highly charged affectively, as well as the incarnation of abstract political principles in daily embodied practices of livelihood, social interaction, and speech among equals.”

One way to vet the retrieval of the public trust from the proposed overburden is to produce maps that clarify the impact of a proposed mine on the local public trust. Like the United States EPA map of the MTMVF study area, the maps published in local newspapers show mining projects floating in nearly empty space. Juxtaposing a map of a local commons against the footprint of a proposed MRT project rematerializes perspectives annihilated in the EIA. For a public hearing in 2004 on the proposed MTRVF mine at Edwight, I prepared such a set of maps (see Figures 4 and 5).

The state public hearings are exactly that: “hearings.” They are not dialogues. Employees of the state make video recordings of testimonies, and make no comment. Decisions to alter or not to alter the design of a project are made by the staff of the Department of Environmental Protection (DEP) behind closed doors. It is worth noting, however, that our maps (Figures 4 and 5) opened up just enough public space to elicit a chagrined defense from one of the project engineers: “But we used a viewshed design!” His point was that, while Bradley Mountain, with all of its cultural, historical, and ecological memories and cues, would no longer be accessible to the local public, at least the reclaimed site had been designed to look good to that public from one perspective: the road.



Adapted from the West Virginia Division of Environmental Protection location map for Surface Mine Application (SMA) 3012-99

Figure 5. The Footprint of the Proposed Edwight Mine, Superimposed on the Cultural Landscape of Hazy Creek, Bradley Mountain, and Shumate's Branch

A number of weeks later I received a certified letter from the West Virginia DEP thanking me for my testimony, and advising me that while the protection of ginseng and ramp patches does not fall under the purview of the DEP, seeds of these species would most likely be in the topsoil recovered for use in reclamation.

Over the past two decades, practitioners of social and environmental impact assessments, including applied anthropologists, have been critically examining the potential of SIA and EIA to democratize environmental decision-making (Vanclay and Esteves 2012). Articles on the impacts of extractive industries on communities around the globe are proliferating in the environmental sociology and environmental anthropology literature. As we work with communities to constitute local public trusts, we need a more concerted effort in the social sciences to publish critical readings of specific bodies of gray literature together with resistant mappings that

can be used to directly challenge the legitimacy of the documentation used by the state to justify its destruction of the public trust.

Clinton Westman (2013:119) argues that, because Social Impact Assessment generates planning documents, they form a site for the anthropology of the future. As does Wendy Espelund, he notes the power of the predictions made by communities facing disruption from megadevelopment. “Local people’s predictions of a future with no moose to hunt, no medicinal plants to harvest, no muskeg to trap in, no untainted fisheries, and no voice for the children remain powerful, in spite of the editorial constraints of the authors [of SIAs] and their proponent paymasters, deadening the effects of such remarks.” The corpus of the local trust is interembedded with the corpus already protected in the nation’s public trust of “headwaters of the United States.” The variances sought by industry allow the destruction not only of the local public trust of named streams and places surrounding the

headwaters, but the national democratic polity that is anchored in all headwaters. The protection of headwaters depends on the awakening of the sense of fiduciary obligation in public trustees at state and national levels, whom we hope will respond, as did William Maxey, as if their own dignity is at stake.

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