

## USA

## Appeal Court Dismisses Strip Mining Decision

In 1999, a federal district judge in West Virginia handed down a decision to curtail drastically “mountain-top removal” – the decapitation of coal-rich hills with explosives and the discarding of slag into surrounding hollows by mammoth bulldozers.

Alarmed at the blockage and disappearance of Appalachian streams by large-scale backwoods dumping, state residents of West Virginia had sought a judgement in a citizens’ lawsuit that accused the state of permitting the coal industry to engage in wholesale violations of federal regulations protecting the streams from pollution.

A federal appeals panel, in a ruling issued on 24 April 2001, dismissed the lower court’s finding that the strip mining of West Virginia mountain-tops violates environmental law by allowing vast amounts of coal slag to block hundreds of miles of vital streams. The panel ruled that the citizens’ complaints had no federal standing. It held that federal oversight of the 1977 Surface Mining Control and Reclamation Act ended as soon as West Virginia set up its own enforcement programme under the Act’s provisions. The Act allows either state or federal regulation of surface coal mining, “but not both,” and held that complaints about abuses could be heard only in state courts.

Environmentalist groups in Washington and in West Virginia immediately conferred on plans to challenge the decision. They said the ruling reversed guidelines of state-federal cooperation and invoked state primacy in a way never approved by Congress.

The appeals ruling held that, to the contrary, the state sovereignty was clear and that allowing federal suits from citizens would “undermine the federalism established by the act.”

Jim Hecker, of Trial Lawyers for Public Justice, a lawyer in the suit brought by state residents and the West Virginia Highlands Conservancy, said the decision ignored that Congress, in writing the Act, specifically rejected the jurisdictional dichotomy posed by the appeals panel. Rather, it invited citizens’ appeals to the federal government about state failures in enforcement. He said the Clinton administration’s legal authorities had endorsed continuing federal oversight of state enforcement.

“The appeal will be a crucial test of where the Bush administration is on the whole issue of cooperative federalism, the bedrock philosophy under many environmental statutes,” he said.

