



ADVOCACY in ACTION

Quarterly Highlights from the Southern Environmental Law Center • Spring 2014



Dan River Spill Thrusts Coal Ash into National Spotlight

In early February, as 39,000 tons of coal ash from a retired Duke Energy power plant poured through a ruptured stormwater pipe into the Dan River just outside Eden, North Carolina, the pressing dangers of coal ash burst once again into the national consciousness. The public was reminded that millions of tons of toxic ash, mixed with water, sits in porous, unlined pits next to rivers and drinking water throughout the Southeast.

National coverage from such media outlets as the Associated Press, *New York Times*, NPR, CBS, and MSNBC revealed a disturbing pattern: SELC pressing to clean up coal ash through enforcement of clean water laws, but state authorities stepping in to obstruct or undermine our efforts.

After the Dan River incident, however, a federal grand jury announced a criminal investigation into Duke Energy's handling of coal ash and the company's cozy connections with the North Carolina Department of Environment and Natural Resources (DENR). Then, in early March, as both the state and Duke scrambled to deal with their environmental and public-relations disasters, SELC secured a significant victory in court with a ruling that the company must take immediate action to stop coal ash pits from contaminating local groundwater.

Resistance and delay precede spill

The judge's rebuke wasn't directed only at Duke Energy. It was also a repudiation of the state's continued refusal to uphold the law.

The court's ruling also repudiated the lax interpretation of the law by the Environmental Management Commission and DENR.

Emails obtained by SELC also show that DENR staff had repeatedly raised the issue of stormwater pipes at coal ash sites as early as 2009, pointing out that several did not have proper discharge permits. Agency higher-ups put off addressing those concerns, and only after the spill did the state decide to cite and fine Duke for violations of the Clean Water Act in Eden and at five other power plants.

SELC's involvement in coal ash cleanup in North Carolina, and our battles with the state, started well before the spill, however. In January 2013, our legal team served notice of our intent to sue Duke for releasing illegal levels of coal ash pollution into branches of the French Broad River near

Asheville and, later, into Mountain Island Lake, metro Charlotte's main drinking water supply; the state then stepped in to block our action.

The same scenario unfolded at another Duke plant just outside Wilmington. This time, DENR played a new card in the game by filing enforcement actions targeting the rest of Duke's coal ash ponds in the state, a maneuver to preempt additional legal action by SELC. Over Duke's objections, the courts have granted our motions to join these lawsuits.

In the state enforcement proceedings, SELC is representing local conservation groups, local riverkeepers, the Sierra Club, the Waterkeeper Alliance, and the Southern Alliance for Clean Energy.

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REGIONAL HIGHLIGHTS

Two Wins Will Protect Mountain Forests in North Carolina

SELC has secured two significant victories in our ongoing work to protect the forests of the Southern Appalachians.

First, the U.S. Forest Service has agreed to scale back the Courthouse

Creek timber sale in North Carolina's Pisgah National Forest—a project that threatened an iconic mountain landscape below Devil's Courthouse, one of the most popular and scenic spots on the Blue Ridge Parkway. Before

SELC and our partners intervened, the plan called for extensive logging in habitat for rare plant and animal species and on steep, hard-to-reach slopes in the headwaters of the French Broad River. The retooled project preserves the most picturesque and ecologically significant areas, decommissions existing roads to return the area to its natural state and discourage future logging efforts, and better protects headwater streams.

SELC also appealed the Forest Service's recent decision to approve a new road adjacent to the scenic and ecologically rich Fires Creek that would provide access to a privately owned tract within the Nantahala National Forest. In response, the Forest Service's regional office ruled that the agency must consider alternative access routes outside this sensitive, high-quality watershed, which also encompasses the popular Fires Creek Rim Trail.



SELC Victory Restores Protections for Coalfield Streams

With a victory in federal court, SELC has overturned the 2008 Stream Buffer Zone Rule, a rollback issued in the waning days of the Bush administration that removed one of the few regulatory curbs on mountaintop removal coal mining. The rule gave mining operations virtually complete leeway to dump the rock and rubble blasted from mountaintops into streams and valleys below.

Culminating a legal battle that began five years ago, the court's decision reinstates a Reagan-era regulation requiring a 100-foot buffer between surface coal mining operations and waterways. Even before the rollback, lax enforcement of the stream buffer zone led to the obliteration of hundreds of miles of mountain streams. In fact, according to federal government estimates, mountaintop removal coal mining has damaged or destroyed more than 2,000 miles of streams in four central Appalachian states.



SELC Takes Action to Protect Alabama's Streams from Strip Mining

Nearly 100 active coal mines dot the countryside in the Black Warrior River watershed around Birmingham and Tuscaloosa, Alabama, where surface or “strip” mining is prevalent. SELC has filed suit to stop federal permitting practices that have allowed mining operations to destroy almost 27 miles of streams and wetlands in the Black Warrior basin.

This pattern of regulatory neglect stems from the U.S. Army Corps of Engineers' improper application of Nationwide Permit 21, a general permit intended for mining activities that cause minimal harm. To avoid having to issue individual permits that require a public review of the environmental impacts, the Corps has used the general permit to give rubber-stamp approval to 41 strip mines in Alabama. The result has been significant harm to the state's unparalleled water resources: since May of 2012, more than 145,000 linear feet of streams have been filled. Wetlands have suffered, too, as heavy metals



and sediment pollution from mining sites increase.

Our aim is to force the Corps to authorize mines through the proper individual permitting process so that the cumulative effects can be thoroughly and openly examined.

Trump Golf Development Threatens Conservation Property in Virginia

In the rolling countryside southeast of Charlottesville, Virginia, one of Donald Trump's companies has proposed a luxury golf development on land protected by a conservation easement. Moreover, the proposed golf course would be in the heart of a historic district that includes the homes of two Founding Fathers: James Monroe's Ash Lawn-Highland and Thomas Jefferson's iconic Monticello, a UNESCO World Heritage Site. Donald Trump's son Eric was recently quoted by *Golf.com* as saying of the location, “I've never seen a piece of land as good as this....We can hit a pitching wedge to Monticello.”

SELC is working with local citizens to prevent construction of the project, which would set a precedent that undercuts safeguards for other conservation properties. SELC will make certain local authorities look thoroughly at the impacts of the Trumps' proposal when it comes up for review for a special use permit. We are also urging the Virginia Outdoors Foundation to defend the conservation easement, which it obtained through a donation from a previous owner. Such legally binding arrangements are intended to shield open lands from development in perpetuity, even if the property changes hands.

Uranium Mining Off the Table in Virginia

Facing strong political opposition, the company that has been pushing to develop a uranium mine just north of Danville, Virginia, has put its plans on hold. That should bring a sigh of relief to communities whose water supplies would be downstream from the mining operation and its waste, which would remain radioactive for thousands of years.

After Virginia's new governor, Terry McAuliffe, took a bold stance on this issue and pledged to veto any pro-uranium legislation that reached his desk, the parent company of Virginia Uranium, Inc., disclosed that it is suspending its campaign to repeal the state's longstanding ban on uranium mining. Working with a broad coalition of local governments, business leaders, health advocates, and conservation groups, SELC has been a leading defender of the ban and will continue to educate local and state decision-makers about the health and environmental risks of lifting the freeze.

WHAT'S HAPPENING IN YOUR STATE?

ALABAMA

1 Northern Beltline Creeps Forward. Two miles down, 50 miles—and \$5 billion—to go. That could be the net result of a recent ruling by a federal judge allowing construction to begin on a 1.8-mile stretch of the controversial Northern Beltline outside Birmingham. Although the judge denied SELC's request for an injunction to halt construction, the proposed 35-year project is



far from a sure thing. SELC and its partners will continue to work against the more than \$100 million-per-mile road that would yield, at best, only a 3 percent reduction in traffic, wasting money that could support at least 49 other transportation initiatives, including projects that would truly benefit the area's economic viability and quality of life.

GEORGIA

2 Solar Tariff Withdrawn. Score one for clean energy in Georgia. In its latest rate case before state regulators, Georgia Power sought approval to impose a “standby tariff” on households and businesses that produce their own solar power. SELC appeared before the Georgia Public Service Commission to argue against the solar tax and to point out that customer-owned solar power provides benefits to electric companies and ratepayers that far outweigh any costs. Solar-generating customers send valuable clean energy to the grid at or near peak daytime hours, reduce stress on the electric system, and can help defer or avoid the need for expensive new power plants. In a settlement approved by the commission, Georgia Power agreed to withdraw the tax, which would have

wiped out more than half of a typical customer's savings from going solar.

NORTH CAROLINA

3 Flawed Assumptions, Flawed Bypass. In ongoing work to advocate for traffic solutions on U.S. 74 east of Charlotte, SELC uncovered significant flaws in the \$900 million Monroe Bypass plan. Transportation planner Dr. David Hartgen's study, commissioned by SELC, revealed NCDOT's projections for traffic on the proposed toll road relied on trends not in evidence for over a decade. More strikingly, the department entirely ignored the potential for highways to induce sprawling growth when assessing its environmental impact. NCDOT's original plan also overstated the time drivers would save by over 100 percent. Meanwhile the lower-cost, higher-efficiency improvements SELC has been promoting on the existing road have yielded speed increases of 15 to 20 mph.

4 Cleveland County Reservoir. In Cleveland County near Charlotte, the North Carolina De-

partment of Water Resources has decided to do its job after all. Following a legal challenge from SELC, the agency has quietly reversed its initial ruling allowing a proposed reservoir to move forward without any review or public comment. SELC's investigation of the project—and the state's highly unusual waiver—revealed a host of irregularities in what

was essentially a real estate scheme designed to create lakefront property. With cheaper, smarter options for securing the water supply, the law prohibits the Cleveland County Water District from damming the First Broad River. Thanks to SELC's intervention and continued vigilance, the water district's application will now undergo proper state review.

5 Small Particles, Big Problems. Ultrafine particulates are the most dangerous airborne pollutants. Measuring less than 2.5 thousandths of a millimeter, these microscopic droplets of mercury, arsenic, and selenium can pass directly into the bloodstream from the lungs and cross the blood-



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it's been estimated that as much as 90 percent of the river water downstream from the plants is treated effluent.

VIRGINIA

8 New Turn for Charlottesville Bypass.

SELC has posted two major victories in our campaign to stop the proposed Charlottesville Route 29 bypass, an outdated project that would upend our work with the community to develop



brain barrier. Their effects are so toxic that scientific studies show no safe level of exposure. Yet the State of North Carolina seeks to weaken the U.S. Environmental Protection Agency's standard for particulate pollution, allowing paper mills and coal-fired power plants to emit more. SELC is defending public health by intervening in the state's lawsuit against EPA, which would reinstate weaker limits from four decades ago.

SOUTH CAROLINA

6 **Sewage in the Saluda.** South Carolinians have long enjoyed the Lower Saluda near Columbia, but they may not be aware that Carolina Water Service's private sewage plant discharges foaming wastewater into the river, in violation of its permit. Measurements show at least 19 violations since 2009, and the facility has regularly exceeded its daily limits for fecal coliform bacteria—sometimes by more than 500 percent. The plant, designated as “temporary” more than 18 years ago, has also failed to connect to the regional public

sewage system, as the law has required for the last 15 years. SELC has given notice of our intent to sue to eliminate pollution in one of the state's most scenic and popular rivers.

TENNESSEE

7 **Saving the Harpeth River.** The Harpeth River southwest of Nashville suffers from high levels of nutrient pollution, which can lead to oxygen-starved conditions in which fish and other aquatic life can't survive. To give the Harpeth a chance to restore itself, SELC has threatened legal action against three sewage plants to limit discharges of treated wastewater that are overwhelming the river, and to eliminate untreated sewage spills. The Harpeth is one of the few free-flowing waterways in middle Tennessee, and its water levels rise and fall with the seasons. In the dry summer months,

better solutions for the congested Route 29 corridor. First, the Federal Highway Administration informed the state that it must fully evaluate alternatives to the bypass, as we have advocated all along. And second, after a public hearing that drew hundreds of bypass opponents, the Albemarle County Board of Supervisors reinstated its opposition to the highway and its support for the set of improvements to Route 29 that we have been championing. Bypass proponents, who resurrected the dormant project with an infamous “midnight vote” and political maneuver two years ago, had been trumpeting the road as a “done deal.”

Coal Ash Spill (Continued from Page 1)

To add insult to injury, state authorities proposed a hasty, slap-on-the-wrist settlement that levied a modest \$99,000 fine on the \$50 billion company and required Duke Energy merely to study its coal ash problems with no timetable for cleanup.

Thousands of North Carolinians voiced their objections to the deal, but the state and Duke stood by it. Only after disaster struck in the Dan River—and after the criminal investigation, public pressure, and media scrutiny ensued—did the government withdraw its sweetheart deal.

Success in South Carolina

Despite the legal twists and turns, the most important facts are relatively easy to understand: it is unsafe to store toxic coal ash in wet, unlined lagoons behind simple earthen barriers next to rivers and lakes. Coal ash contaminants such as arsenic, thallium, boron, and selenium have been seeping into

our region's waters for years, but it has unfortunately taken a disastrous spill like the one this year—or the much bigger one at TVA's Kingston plant in 2008—to raise the level of public concern.

The best option has always been to move the ash into dry, lined landfills away from water sources. Thanks to legal pressure from SELC, that's just what major utilities in South Carolina have agreed to do. South Carolina Gas and Electric has already begun removing 2.4 million tons of coal ash from lagoons at its plant on the Wateree River. And in November, after months of litigation and negotiations, Santee Cooper committed to clean up 11 million tons of coal ash throughout its system.

Duke Energy should do the responsible thing and follow their lead. The state of North Carolina should immediately move to put in place clear,



EDITOR'S NOTE:

If you are looking for one good, concise summary of the coal ash story in North and South Carolina, we urge you to watch this video. It takes nine minutes.

Go to SouthernEnvironment.org/coal-ash-coverage.

enforceable requirements to recycle coal ash or move it to lined landfills away from our waterways. To do otherwise is to ignore both the public will and the public good. And as long as they prevaricate and delay, SELC will continue to take actions to make the system work.

Follow the Unfolding Story ...

Cleaning up the South's coal ash problem continues to be a fast-moving story with important new developments taking place almost every day.

Visit SouthernEnvironment.org/coal-ash-coverage for late-breaking news.



Why I Do What I Do: Keith Johnston Coming to SELC Was Really About Coming Home for Me

I was born and raised in Alabama, and I grew up hunting, hiking, fishing, camping, and canoeing all around the Tennessee Valley region. After college I set off on a journey that took me around the country—first working for the U.S. Forest Service in Alaska and Idaho; then for the Audubon



Keith Johnston is managing attorney of SELC's Birmingham Office

Society in Maine; then to law school in Vermont—but I always felt the tug of special places back home. I appreciated the experience of working for an environmental law firm in Washington, D.C., but when I was offered the chance to head up SELC's new office in Birmingham, I knew it was the perfect fit.

Alabama's has world-class ecological importance and natural beauty, but our state government is often unwilling to enforce safeguards that have been put in place to protect our health and environment. The importance of SELC's role as watchdog and enforcer was brought home to me soon after we opened our Birmingham office. Out of the blue, with no public notice, up pops a proposed oil and gas lease sale in the Talladega National Forest, one of this state's natural treasures. Local communities voiced strong opposition, SELC notified the Forest Service of our intent to sue—and the agency withdrew its fracking proposal. This case, which dealt with both a site-specific threat to a special area and with a potential precedent impacting public lands throughout the state, shows the kind of impact that SELC can have.

SELC Announces Winners of 2014 Writing Award

From a celebration of Alabama's biological diversity to a look back at Tennessee's Kingston coal ash spill, this year's Reed Environmental Writing Award winners cover the full range of what SELC fights to protect—and prevent. From left are R. Scot Duncan, winner of the book award for *Southern Wonder: Alabama's Surprising Biodiversity*; Brys Stephens, author of *The New Southern Table* and keynote speaker at this year's awards presentation; and Duane Gang, winner of the journalism award for eye-opening articles in *The Tennessean* on coal ash and fracking. Read more at SouthernEnvironment.org/phil_reed.



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People like you who care about the health and beauty of this special region are our most important partners, and we want to make it easy for you to get up-to-date information on the issues you care about most. So we have overhauled SELC's website to make it easier to navigate, more dynamic, and more flexible for your tablets and phones.

