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Southern  
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# ADVOCACY in ACTION

Quarterly Highlights from the Southern Environmental Law Center • Winter 2013

## A Legacy of Success: Protecting Our Southern Appalachian National Forests

The southern Appalachian Mountains are the crown jewels of our region,” says SELC Founder and Executive Director Rick Middleton. “From the day we opened our doors in 1986, preserving these forests has been the heart of our mission.” Spanning nearly five million acres from Virginia to Alabama, the national forests that blanket our mountains offer endless opportunities for recreation, safeguard our drinking water supplies, provide habitat for a diverse array of fish and wildlife, and contribute millions to our economy. But the forests we enjoy today exist in large part because of behind-the-scenes efforts led by SELC and our partners over the last several decades. “When I take a step back and think of how far we’ve come, I couldn’t be prouder,” Rick says.

### Saving One Acre at a Time

In SELC’s early days, clear-cutting was common practice in southern national forests and had been for decades. Too often, ill-planned timber sales destroyed rare stands of old growth, required miles of new roads, and caused polluted runoff in mountain streams. SELC’s very first case, in 1986, sought to address these and other issues in the initial management plan for Virginia’s Jefferson National Forest (see *Inside Story*, page 6). Determined to stop these needlessly destructive practices, we began building our expertise in forest protection by consulting scientists, commissioning studies, and partnering with conservation groups, and we challenged the worst timber sales. Over time, as we developed deep legal experience complemented by our team’s broad knowledge of forest ecology and

economics, we established great working relationships with foresters and regional administrators. We spent years educating the U.S. Forest Service on more appropriate scales and locations for commercial projects, steering timber sales, new roads, and oil and gas drilling away from the most valuable places.

Thanks to the perseverance of SELC and our partners, clear-cutting is now virtually nonexistent, timber sales are undertaken with greater care and scrutiny, new road building is limited, and efforts to restore damage from past logging are under way.

### A Line in the Sand

In 1999, we turned our focus toward protecting the wildest, most valuable areas of our national forests. We and our partners identified more than 700,000 acres in our region for inclusion in the Roadless Area Conservation Rule, which would shield 58 million national forest acres nationwide from road building and commercial logging. Politics put the rule on hold for several years, leaving our forests’ future uncertain. SELC made an institutional commitment to guard these treasured areas and challenged every project in our region that threatened them. “We drew a line in the sand, publicly stating that we would protect these invaluable wild acres at all costs,” says Middleton. “In 14 years, not a single acre has been lost.”

Last year, we celebrated a major victory for our southern forests when the U.S. Supreme Court allowed the Roadless Rule to stand, effectively protecting these special areas for generations to come.

Not a single  
roadless  
acre lost in  
14 years

# REGIONAL HIGHLIGHTS

## Victory for Charleston's Historic Waterfront

A federal court has sent the U.S. Army Corps of Engineers back to the drawing board to review a proposed \$35 million cruise ship terminal on Charleston's historic waterfront. The judge found that the Corps had bypassed public review and minimized the potential impacts by treating the project as "maintenance," involving only a few new pilings. In actuality, the new 108,000-square-foot terminal would greatly expand cruise operations in downtown Charleston, threatening the balance between its historic charm and its tourist industry. Thanks to SELC's intervention, the court ordered the



Corps to consider the impacts from the proposed terminal expansion on the environment and historic resources in its

revised permit, and to give Charleston's residents a chance to weigh in on what is best for their community.

## Lawsuit Seeks to Protect Red Wolves in North Carolina



LYNDA RICHARDSON

SELC has filed suit against state regulators who are causing the death of endangered red wolves through their authorization of coyote hunting in North Carolina, including within the Red Wolf Recovery Area inhabited by the world's only wild population of red wolves. Red wolves are often mistaken for coyotes, and this risk of mistaken

identity is increased by a newly adopted state rule that allows spotlight hunting of coyotes at night. SELC convinced a state court to suspend a temporary rule last year, but not before several of the rare wolves were mistaken for coyotes and killed. Six wolves have already been killed by suspected gunshot since hunting season started in October.

## Court Allows Evidence Against Alabama Power

We are applauding a federal appeals court victory that allows SELC and EPA to continue an ongoing Clean Air Act enforcement case against Alabama Power. The ruling clears the way for presenting expert evidence indicating that the utility undertook pollution-increasing renovation projects at multiple old coal-fired units—but failed to install the air pollution controls required by law. This case builds on a far-reaching precedent we set in 2007 with a unanimous decision in the U.S. Supreme Court against Duke Energy. There, the court agreed with us that projects increasing annual pollution emissions trigger the Clean Air Act's New Source Review program, which requires updated air controls. The latest decision against Alabama Power is a major victory in our fight to clean up the nation's oldest and most outdated coal plants.

## Wood Pellet Mills Threaten Southern Hardwood Forests

**A**s wood pellet facilities built to feed Europe's expanding biomass industry continue to open up in North Carolina and around the Southeast, SELC is raising concerns about this growing threat to our region's forests and wildlife. Our on-the-ground investigation revealed that the industry has misrepresented where the wood for the pellet mills comes from. The fact is, in eastern North Carolina, nearly all exported wood pellets are made from whole hardwood trees and not the sawdust and waste wood that has been asserted by the industry.

Following our 2012 report proving that whole-tree biomass is not a beneficial strategy to combat climate change, SELC commissioned a sepa-

rate independent study with the National Wildlife Federation that corroborates our research on whole-tree sourcing. North Carolina's hardwood wetland forests—remarkably rich wildlife habitat—are already a conservation concern, and the new report reveals that cutting grounds include mature hardwood wetland forests in the Roanoke River basin and its tributaries. Moreover, figures show that the volume of whole trees harvested for export doubled from 2012 to 2013. Projections indicate that demand will continue to escalate at an alarming rate; in North Carolina and Southeast Virginia, Enviva pellet mills could require harvesting more than 30 square miles every year.

SELC is working vigorously stateside

to expose industry practices and to bring wood pellet mills and harvest under environmental review. Our forest team is also collaborating with European Union partners to dispel the belief that biomass sourced in the U.S. is carbon neutral and meets sustainability principles—incorrect assumptions that are driving industry demand in Europe.



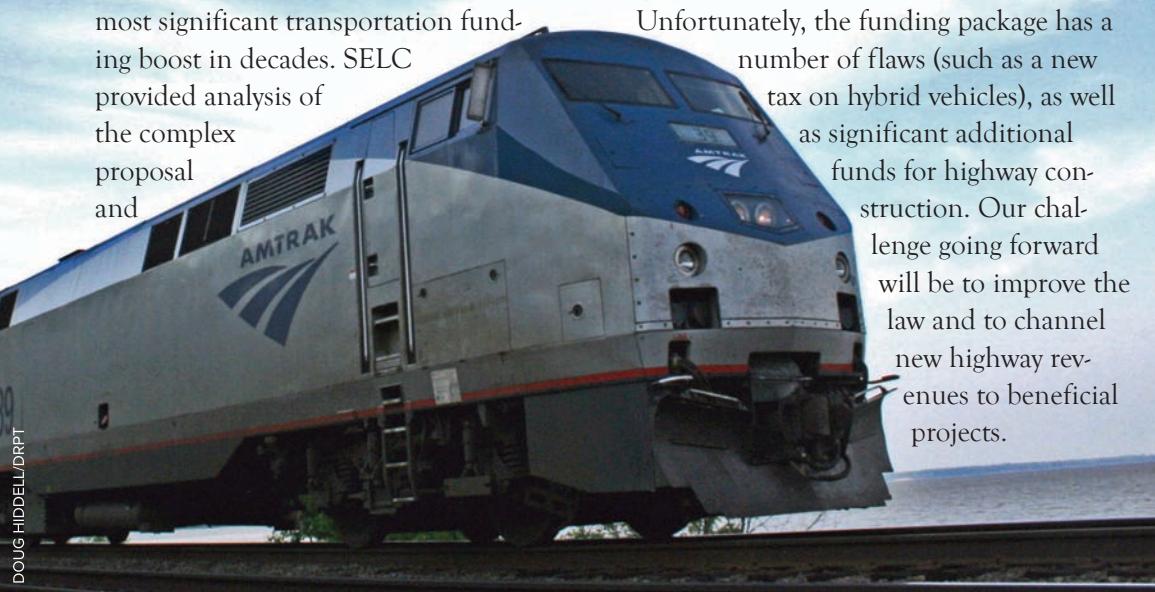
## SELC Helps Pass Important Transportation Bills in Virginia and North Carolina

**S**ELC played a major role in transportation overhauls recently adopted by North Carolina and Virginia. In the Tar Heel State, construction of a number of wasteful and politically driven projects we've long opposed is no longer mandated by state law, and a more objective method of rating and selecting highway projects is being instituted (see *Transportation Reform*, page 4).

Meanwhile, Virginia adopted its most significant transportation funding boost in decades. SELC provided analysis of the complex proposal and

worked to improve it throughout the 2013 General Assembly session. The new law contains substantial funds for cleaner transportation options, such as \$300 million for the Dulles Corridor Metrorail Project. And SELC partnered with the business community and other rail advocates to help secure more than \$50 million annually for passenger rail—the largest level of dedicated funding in the country—to maintain and extend services at a time of record ridership.

Unfortunately, the funding package has a number of flaws (such as a new tax on hybrid vehicles), as well as significant additional funds for highway construction. Our challenge going forward will be to improve the law and to channel new highway revenues to beneficial projects.



## Defending the Last, Best Chance for the Chesapeake Bay

**A**long with an alliance of conservation groups, SELC is celebrating a federal judge's decision to uphold the multistate water quality restoration plan crafted by EPA that is the last, best hope for rescuing the Chesapeake Bay. SELC worked with the Bay Coalition over several years to help shape the plan, and we will continue to defend it from continuing attacks.

This victory complements our earlier effort to help expose the illegal dumping of fish waste from Omega Protein's menhaden fleet into the Bay. We spent months analyzing company data and ultimately alerted EPA, which put a stop to the discharges. This resulted in one of the largest reductions in nutrient pollution in the Bay ever.

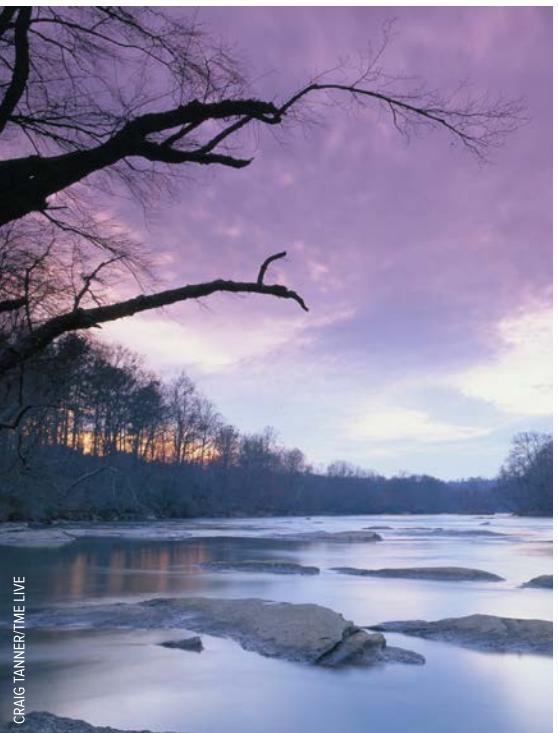
# WHAT'S HAPPENING IN YOUR STATE?

## ALABAMA

*Court Allows Evidence Against Alabama Power, please see page 2.*

## GEORGIA

**1 Locust Stake.** The off-highway vehicle trails at Locust Stake have been documented by the U.S. Forest Service as causing “unacceptable” erosion as far back as 1996, yet they remained open until January 2012, pouring severe amounts of sediment into the watershed of the North Fork of the Broad River, a designated trout stream. When the Forest Service suggested that half the trails might be reopened before conducting an environmental assessment, SELC and Georgia ForestWatch pushed for the agency to conduct an assessment with



CRAIG TANNER/TIME LIVE

time for public input. The agency apparently agreed, as the area remains closed, and an environmental assessment is expected to begin in the near future. We will remain involved to ensure the water and wildlife in this area are protected.

## 2 Strong Protections for Hog Farms.

In the late '90s, SELC helped establish strong protections concerning large industrialized swine feeding operations in Georgia to avoid the degraded water quality experienced by other states, such as North Carolina. Now a state agency is attempting to nearly double the requirement threshold for operations, from 7,500 hogs to 12,500 hogs. If adopted, most industrial hog farms will be exempted from important protections that prohibit open waste ponds and spray irrigation and require wide buffers between hog waste and waterways, residences, and schools. The proposed change has very negative implications for statewide water quality, and we are strongly opposing this rollback.

## NORTH CAROLINA

### 3 First Broad River Reservoir.

The proposed First Broad River Reservoir project just west of Charlotte would wipe out 1,500 acres of forest and farm land and 24 miles of the First Broad River, streams, and wetlands. Championed by politicians and real estate developers who have purchased rights to the land around the reservoir, it has been cloaked as a water supply necessity, although studies have repeatedly identified far cheaper and less damaging alternatives that will meet water needs for the area in even the worst drought conditions. Despite admitting that the project should be ineligible for a permit, North Carolina buckled to powerful political pressure and waived its legal obligation to determine whether the proposed reservoir will degrade water quality, say-

ing that it will leave it to federal agencies to protect the state's waters. SELC is demanding that the state uphold its responsibility to protect North Carolina waters and conduct an independent review of the project.

**4 Blounts Creek.** SELC is challenging a water pollution discharge



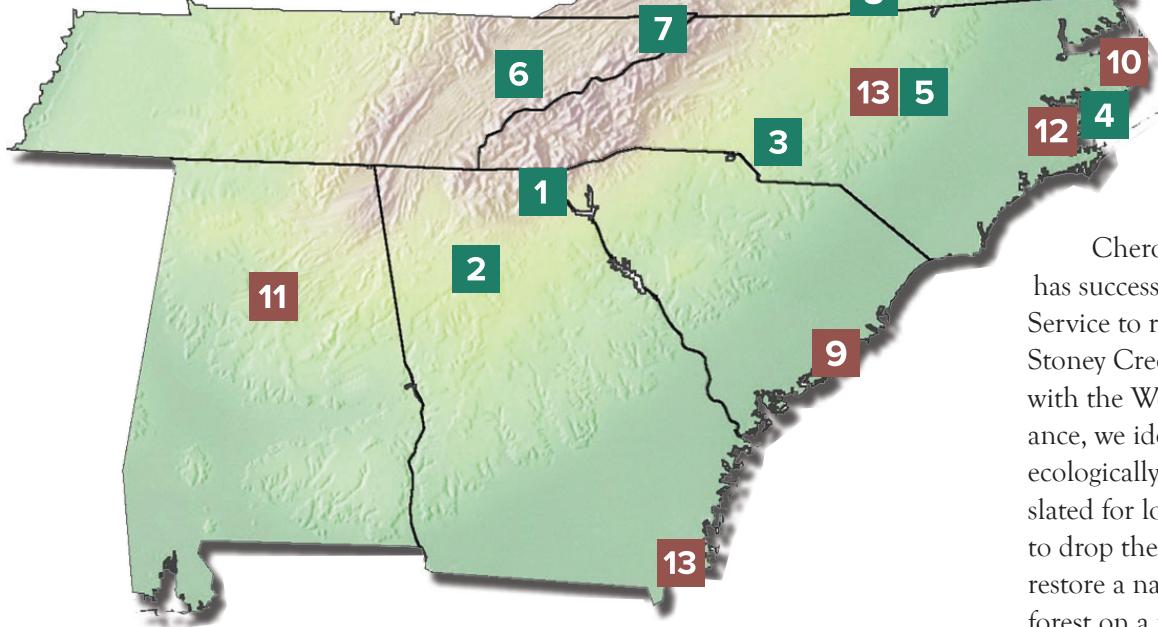
SCOTT GOLDSMITH

permit that would allow a mining company to pump up to 12 million gallons of wastewater each day into Blounts Creek, a blackwater coastal stream in the Tar-Pamlico River Basin. The upper reaches of the creek are classified as swamp waters—a unique set of biological conditions that supports a diverse array of fish species, including red drum, speckled trout, and the imperiled river herring. The mining wastewater will turn the swampy headwater habitat into a fast-flowing stream, permanently altering the creek's biological makeup and violating the Clean Water Act.

### 5 Transportation Reform.

SELC worked to pass a new law that will help take the politics out of selecting transportation projects in North Carolina. It removes costly, destructive highway proposals—like the Mid-Currituck Bridge, the Garden Parkway, and the Cape Fear Skyway—that were written into statute by powerful legislators and then blindly pursued. We will still have to oppose damaging projects, but NCDOT can no

- 9** Victory for Charleston Waterfront: see page 2.
- 10** Endangered Red Wolves: see page 2.
- 11** Clean Air Enforcement: see page 2.
- 12** Pellet Mills Threaten Forests: see page 3.
- 13** Landmark Transportation Bills: see page 3.
- 14** Defending the Chesapeake Bay: see page 3.



longer claim that state law mandates their construction. SELC also helped shape the data-driven formula that will now be used to score projects based on need. Our task now is to keep pork-barrel politics from creeping back into the selection process and to make sure that the new formula results in genuinely needed projects.

#### SOUTH CAROLINA

*Victory for Charleston's Historic Waterfront, please see page 2.*

#### TENNESSEE

##### **6 University of Tennessee**

**Fracking.** The University of Tennessee has halted its controversial plan to lease 8,600 acres of valuable state land in the Cumberland Forest to oil and gas

companies for fracking. SELC led the inquiry into the university's questionable methods when it attempted to gain state approval without independent appraisals. The information we uncovered about UT's plans and tactics helped generate widespread public attention to the plan, including coverage in the *New York Times* that quoted SELC's concerns about conflicts of interest, and the university has shelved the project for now. Our Nashville office will continue to be on watch to protect this renowned forest and its vital watersheds.



DWIGHT DYKE

##### **7 Stoney Creek.**

Building on our hard-won result in the recent Clarke Mountain timber sale, in which we were able to advance efforts with the U.S. Forest Service to identify and protect the few remaining areas of old growth in the Cherokee National Forest, SELC has successfully convinced the Forest Service to redraw its proposed 383-acre Stoney Creek logging project. Working with the Western North Carolina Alliance, we identified 119 acres of rare and ecologically important old growth forest slated for logging. The agency agreed to drop the logging plan and to instead restore a native shortleaf pine and oak forest on a former mining site where the forest has been heavily degraded.

#### VIRGINIA

##### **8 Southern Virginia.**

The Keep the Ban Coalition is continuing to shine a spotlight on the dangers of potential uranium mining, processing, and waste storage in southern Virginia in preparation for the 2014 General Assembly session. Last year, a groundswell of support for Virginia's 30-year ban on uranium mining succeeded in defeating industry efforts to repeal the ban. The mining industry has informed legislators, however, that it intends to revive the issue in the upcoming session. A National Academy of Sciences study highlighted flooding threats from hurricanes and other severe weather events, finding that it is questionable whether modern best practices could prevent groundwater contamination in perpetuity.

# THE INSIDE STORY

## Forest Planning: SELC's Vision for the Southern Appalachians

**S**ELC uses a variety of tools and approaches to defend our treasured southern Appalachian forests; the greatest leverage comes in shaping the management plan that decides a national forest's future for 15 or more years at a time.

DJ Gerken, managing attorney of SELC's Asheville office, explains, "If we can get the Forest Service to agree, up front, to keep out of certain critical areas like old growth stands or sensitive watersheds, or to exclude destructive practices such as natural gas fracking, then we can work together in subsequent years on positive projects that move our conservation vision forward—rather than having to duke it out, repeatedly, over multiple site-specific logging, mining, or road building proposals."

**Envisioning the Forest Under New Planning Rules.** Last year, for the first time in decades, the U.S. Forest Service redrew the ground rules for national forest long-term plans. SELC's forest experts played a significant role in this process, so the resulting guidelines include top-priority issues for the Southeast, such as protection of drinking water sup-

plies and restoration of forests degraded by past logging. We are now working with the Forest Service and our partners on the new management plan for North Carolina's Pisgah-Nantahala National



Forest—the first in the eastern U.S. to be drafted under the new guidelines. This puts SELC on the front line to not only help create the strongest plan that we can for this beloved forest but also to help clarify murky areas in the new guidelines and chart a course for the other management plan revisions upcoming in our region.



### Protecting Old Growth.

SELC has long put the Forest Service on notice that we will vigorously oppose any attempt to cut any old growth in the southern Appalachians, and our efforts to date have been very successful (with the Globe

timber sale, the Clarke Mountain timber sale, and the Haystack timber sale being notable examples). Rampant clear-cutting around the turn of the twentieth century wiped out most of the southern Appalachian forests, leaving only scattered remnants of original forest—often growing in the steepest, driest, least accessible areas. We and our partners have hit the ground in the Pisgah-Nantahala, building on a decade-long effort to identify old growth and pressing the Forest Service to draw official protective zones for old growth.

**Restoring Ravaged Lands.** Today's forest has been planted or allowed to grow back after the massive clear-cutting mentioned above. The new management plans are an opportunity to focus the Forest Service on active restoration, and ultimately for SELC to partner with it on these projects. In the Pisgah-Nantahala, we are working to identify areas where selective thinning—for instance, in areas previously planted with monoculture pine—or other intervention could improve the health and biodiversity of our forestlands.

## Catawba Riverkeeper's Rick Gaskins Wins 2013 Environmental Leadership Award

We are pleased to announce that Rick Gaskins is the recipient of SELC's 2013 James S. Dockery, Jr., Award for Environmental Leadership. "Rick is the exact type of person we had in mind when we created this award," says SELC Founder and Executive Director Rick Middleton.

For 20 years, Gaskins was in private practice in Charlotte and was considered among the top environmental attorneys in North Carolina. He joined the Catawba Riverkeeper in 2008, devoting his energies full time to protecting the Catawba-Wateree River system in North and South Carolina. He is now the foundation's executive director and works hand in glove with SELC on multiple matters—most notably in our milestone agreement with SCE&G to remove 2.4 million tons of coal ash from the banks of the Catawba-Wateree.

The award strikes a poignant note this year, as Rick was a friend and law partner with SELC's first chairman, Jim Dockery, for whom the award was established in 1993 to honor his environmental leadership in North Carolina. Now given in Jim's memory, the award recognizes leaders at the state and local level, particularly those who have helped build excellent environmental institutions.

## Read Any Good Books Lately?

We're kicking off the 20th year of our Reed Environmental Writing Award, which identifies and honors the best environmental writing in the Southeast. SELC is seeking nominations in two categories: Book (nonfiction) and Journalism (magazine and newspaper). Entries must have been published in 2013 and be postmarked by January 2, 2014. Visit [SouthernEnvironment.org/phil\\_reed](http://SouthernEnvironment.org/phil_reed) to learn more.



SELC board member Stephen Dockery, Rick Gaskins, and Rick Middleton at the award presentation.



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You and I know that the environment is an important reason the South is such a special place, and why we want to live here and raise our families here. Having healthy air, clean water, and beautiful landscapes around us is critically important.

In dozens of our current cases and projects, SELC is proving that we do not have to choose between a clean environment, a strong economy, and thriving communities; the three can—and should—go hand in hand. But it takes hard work, good judgment, and vigilant oversight to make it happen. You must both prevent the bad actions and actively promote the good.

Please visit [SouthernEnvironment.org/vision](http://SouthernEnvironment.org/vision) to learn more and to join SELC in working toward a more balanced, sustainable future.

Rick Middleton  
SELC Founder & Executive Director



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