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ADVOCACY in ACTION

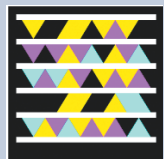
Quarterly Protection Highlights from the Southern Environmental Law Center • WINTER 2010



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Ending the Tragedy of Mountaintop Removal Mining

The tragedy of mountaintop removal coal mining is playing out across the central Appalachians and has claimed as many as 500 mountain peaks and destroyed or damaged more than 1,500 miles of streams in Tennessee, Virginia, and neighboring states.

The process is efficient and devastating: First they take away the forest, stripping the ridgeline of trees and topsoil. Then the blasting begins, continuing night and day to remove the “overburden” covering the dark seam of coal. And where does all the rock and rubble go? Into the valleys below, burying headwater streams and sending pollution into rivers that support some of the rarest aquatic creatures in the world.

SELC is committed to stopping the unconscionable practice of mountaintop removal mining and is tackling the problem with state, federal, and on-the-ground strategies.

A State's Innovative Petition. On the coal-rich Cumberland Plateau in Tennessee, state parklands and wildlife preserves are vulnerable to mountaintop removal because other owners—including mining corporations and the Tennessee Valley Authority—hold the underlying mineral rights.

Five years ago, SELC petitioned the federal government to use its legal authority to place the most sensitive of these landscapes off-limits to surface mining. Our request was denied, but it laid the groundwork for a new petition filed in October by Tennessee Governor Phil Bredesen to save these public lands. This bold move marks the first time a governor has filed such a petition, which falls in line with Tennessee's long-term conservation strategy to protect habitat for

wildlife and recreational opportunities for the public.

SELC and its allies are supporting the state's petition, which would preserve 67,000 acres along 500 miles of ridge tops on the Plateau—an ecosystem globally renowned for its rich biological diversity and abundance of rare species. It will also prevent further degradation of coalfield streams that have long fed pollution into Tennessee's major waterways, such as the Big South Fork of the Cumberland River.

Ensuring Tough Federal Safeguards. SELC has taken legal action to reverse roll-backs in federal mining regulations that have eased the way for more mountaintop removal projects. Early in 2009, we challenged a rule that gave mining companies virtually free rein to bury streams under debris. The U.S. Office of Surface Mining is now developing new stream protections, and we are weighing in to advocate thorough safeguards for water quality and aquatic species.

Taking On-the-Ground Action. In Southwest Virginia, a groundswell of opposition has arisen against the Ison Rock Ridge mine, a massive mountaintop removal project that would fill nine separate valleys with debris and destroy or damage nearly three miles of streams. Despite objections from the U.S. Environmental Protection Agency and the U.S. Fish and Wildlife Service, state mining regulators appear determined to approve this proposal. Working with groups such as the Sierra Club and Southern Appalachian Mountain Stewards, SELC will use its legal skills to help local citizens and partner groups seeking to block this project.

REGIONAL HIGHLIGHTS

Regionwide Initiative Puts Longleaf Pine Ecosystem on Long Road to Recovery

Longleaf pine forests once blanketed much of the South, stretching over 90 million acres of our region's coastal plain. Only a tiny fraction of this vast ecosystem survives today, but it remains one of the most biologically rich environments outside the tropics. And thanks to SELC and its partners, it's making a comeback.

SELC senior attorney Lark Hayes is playing a leadership role in the America's Longleaf Restoration Initiative, a collaboration that has grown to include government agencies, conservation organizations, state foresters, and stakeholder groups committed to the ecosystem's recovery. Lark was instrumental in developing the initiative's ambitious conservation plan, which calls for expanding longleaf forests from about 3.4 million acres today to 8 million acres within 15 years.

Over the past two years, longleaf restoration has attracted tens of



JACK CULPEPPER/USEWS

millions of dollars in federal funding, including \$12 million in a new round of support to help private landowners take part in longleaf's recovery. The effort received a further boost this past June when the U.S. Departments of the Interior, Agriculture, and Defense (which holds large tracts of longleaf pines on southern

military installations) made a formal commitment to fulfill the conservation plan's goals.

Lark's current focus includes coordinating the work of the North Carolina Longleaf Coalition, one of the first state-level teams set up to guide on-the-ground implementation of the conservation plan.

With a New Office in Alabama, SELC Launches Wetlands Protection Project



BETH YOUNG

Over the years, Alabama has lost nearly half of its wetlands. SELC has launched a new project to preserve those that remain, which are threatened by intense development pressures, failures to enforce environmental laws, and confusion created by the U.S. Supreme Court over the scope of Clean Water Act protections.

Drawing on nearly 25 years of results, SELC will deploy strategies in Alabama that have proven successful elsewhere in our region.

These include

- making certain the Army Corps of Engineers fulfills its duty to defend all federally protected wetlands from unpermitted destruction,
- preventing developers from destroying wetlands by abusing loopholes in the Clean Water Act, and
- working with local governments to adopt wetland-protection ordinances that can provide models for other communities.

This project is an example of how the enhanced capacity and on-the-ground presence provided by SELC's new Birmingham office allows us to take a more comprehensive, in-depth approach to protecting Alabama's precious resources.

SELC Files First Suit Against BP for Damage To Endangered Species and Their Habitat

In October, six months after the *Deepwater Horizon* explosion, SELC and its partners filed the first lawsuit against BP under the Endangered Species Act, seeking to address the spill's impacts on at-risk wildlife species and their habitat and to ensure the Gulf region's long-term recovery.

"An entire ecosystem has been damaged, and it's time to focus on its future and on fixing its problems," said Catherine Wannamaker, lead attorney in this litigation and in SELC's strategic lawsuits aimed at strengthening federal oversight of offshore drilling. "Our goal is to advance restoration of the Gulf so that imperiled species can recover."

According to experts, more than half the crude discharged by the BP blowout

is still in the Gulf, putting at least 27 endangered and threatened species in jeopardy. In addition to exposure to oil and chemical dispersants, long-term concerns include animal reproduction, the health of future generations, and potential domino effects through the food chain.



Coalition Applauds Move To Shelve Coal Plant Near Chesapeake Bay

Over the past two years, SELC and its partners have battled a proposal to build the largest coal-burning power plant in Virginia on a site just 30 miles from the Chesapeake Bay. The plant suffered a major setback in September, when the Old Dominion Electric Cooperative announced it was suspending its application for air pollution permits for the project for up to two years.

Nonetheless, ODEC continues to pursue other governmental approvals for the facility, which would emit 11.7 million tons of carbon dioxide per year, increase pollution in the Bay, and make it harder for nearby metro areas to meet healthy air standards. SELC and its partners in the Wise Energy for Virginia coalition are urging the co-op to pull the plug on this project once and for all.

Although the proposal is by no means defeated, the delay provides SELC with the opportunity to press for cleaner alternatives to the coal plant, including investments in robust energy efficiency programs.

SELC Defends Needed Controls on Biomass Energy

Last May, when EPA issued new regulations on global warming pollution from power plants and other large industrial facilities, the controls covered greenhouse gas emissions not only from fossil fuels but also from the combustion of wood and other biomass. SELC is now in court to defend the agency's action, which industry interests are challenging in a lawsuit.

Wood biomass can be a promising source of renewable energy, but when burned, it releases the heat-trapping

carbon dioxide that trees naturally store. Our energy experts have provided EPA with extensive information on why it should continue to reject the idea that all biomass is inherently "carbon-neutral" (as claimed by plaintiffs in the suit) and why guidelines are needed to ensure that biomass is harvested, transported, burned, and replanted in ways that are sustainable and that prevent a net increase in CO₂.

In related work, our attorneys appeared before the North Carolina

Utilities Commission in July to oppose Duke Energy's request to receive renewable energy credits for burning wood from whole trees. We pressed the point that, under state law, wood biomass qualifying for such credits should be limited to waste wood left over from construction, timber harvesting, and other sources. The commission later granted Duke's request, and we are now appealing that ruling in the North Carolina Court of Appeals.

WHAT'S HAPPENING IN YOUR STATE?

ALABAMA

1 Polluted Runoff Controls. With encouragement from SELC and its partners, EPA sent Alabama back to the drawing board on a new permit for regulating polluted runoff from streets, parking lots, sidewalks, and construction sites in towns and small cities. Under pressure from developers, the Alabama Department of Environmental Management weakened its initial draft of the permit, removing clear, enforceable standards and inserting fuzzy language that makes it easy to avoid compliance. Echoing many of the objections we raised, EPA demanded that ADEM toughen up the permit to meet the requirements of the Clean Water Act. ADEM has now submitted a new draft for EPA's review.

GEORGIA

2 "Farm" Ponds. The Clean Water Act allows farmers to dam streams and wetlands without a permit to create ponds for watering crops and livestock. On the Georgia coast, developers are exploiting this permit exemption by claiming they are impounding waterways for farming purposes when in fact they are creating artificial ponds for high-end residential and commercial projects. These ponds typically destroy entire wetland ecosystems and cut off headwaters from downstream areas. SELC challenged one such project and, as a result, we are working out an agreement that will help curb abuse of the farm pond exemption and future attempts to sidestep federal water protections.



CRAIG TANNER/TMELIVE.COM

3 Cypress Forests. Cypress forests are icons of the southern wetland landscape and perform essential ecological functions, from capturing and storing floodwaters to providing habitat for endangered species. SELC has found that they are also suffering a decline, brought on in large part by an explosion in demand for cypress mulch. In an EPA-supported study of cypress forests in Georgia, we determined that harvested cypress stands often fail to regrow; once they are cut, the trees and the habitat they provide are lost forever. SELC will soon release a report on the status of Georgia's cypress forests and how they can be protected. High on our priority list is to educate consumers, retailers, and government officials on the

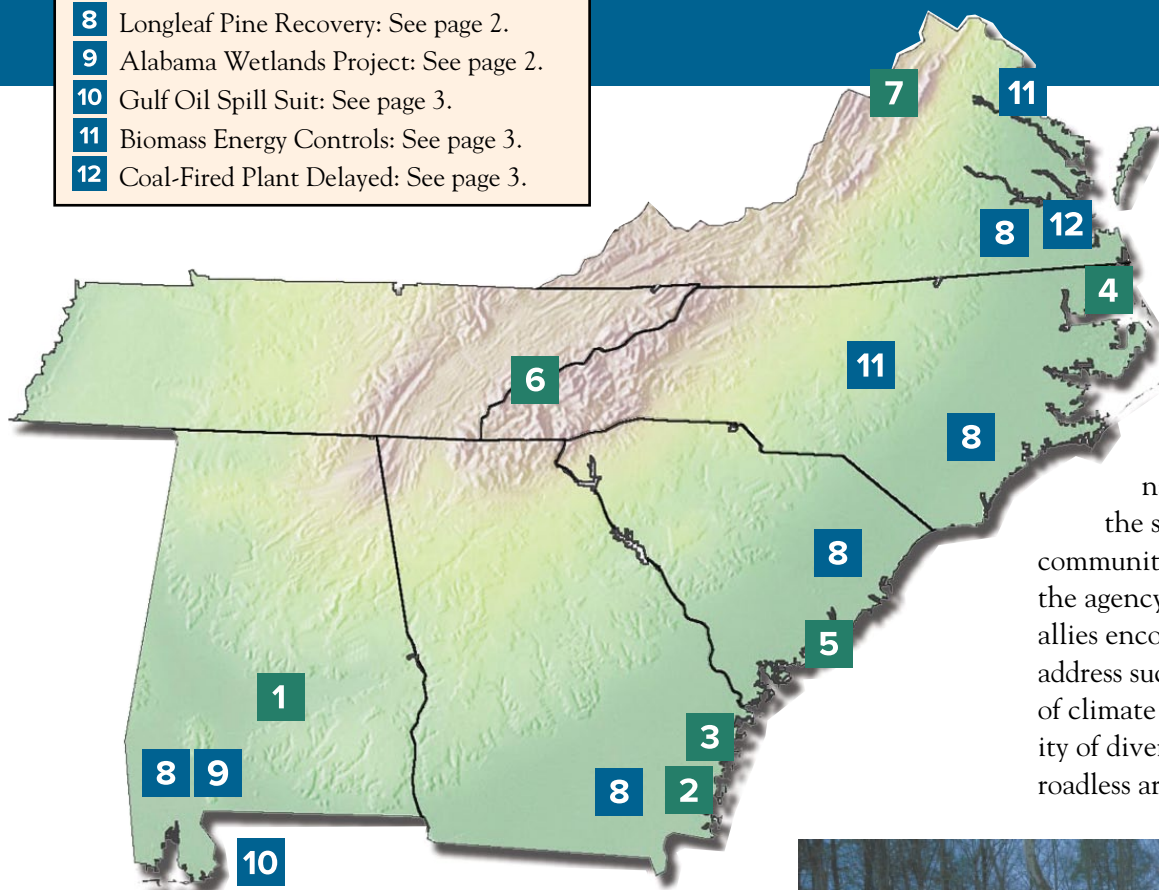
need to ensure that cypress products are harvested in responsible and sustainable ways. Otherwise, we may lose one of the South's most valuable ecological gems.

NORTH CAROLINA

4 Limits on Landfills. SELC has helped defend a law it championed that prevents oversized landfills from threatening North Carolina's coasts, wetlands, and other ecological treasures. Waste Industries USA, which wants to build a mega-landfill in coastal Camden County, filed a lawsuit challenging the constitutionality of the Solid Waste Management Act of 2007, a statute that limits the size of new landfills and prohibits their construction near state parks and national wildlife refuges. SELC entered the suit this past



- 8** Longleaf Pine Recovery: See page 2.
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- 11** Biomass Energy Controls: See page 3.
- 12** Coal-Fired Plant Delayed: See page 3.



VIRGINIA

7 National Forest Plan.

The Forest Service is revising the long-range management plan for the George Washington National Forest, the largest national forest in the East and the source of clean water for many communities. This fall, in a critique of the agency's work thus far, SELC and its allies encouraged the Forest Service to address such issues as the likely impacts of climate change, ensuring the viability of diverse species, and safeguarding roadless areas and headwater streams.

spring and secured a court ruling in September that upholds the law and its protections. We are now preparing to continue to defend this law in the appeals process.

SOUTH CAROLINA

5 **Charleston Cruise Ships.** The State Ports Authority is embarking on an expansion of cruise ship traffic in Charleston, seeking to double the number of calls and embarkations at an existing terminal and proposing a new terminal to expand cruise ship activity further still. More than six stories tall and carrying more than 2,000 passengers, cruise ships make huge impacts on port cities and the marine environment. They dump more than 15,000 gallons of treated sewage per day and three times that amount in graywater from sinks, kitchens, laundries, and shipboard cleaning. SELC and the Coastal Conservation League favor limits on cruise ship traffic to protect Charleston's natural and historical environment. We are also calling for a ban on dis-

charges into area waters.

TENNESSEE

6 Big Creek Timber Sale.

SELC and its partners are opposing a U.S. Forest Service timber sale that would require logging in a steep, erosion-prone area in the watershed of Big Creek, a largely intact habitat connection for black bear and other wildlife between the Great Smoky Mountains National Park and the Cherokee and Pisgah National Forests. Fragmentation of such habitat impairs the ability of wildlife to adjust to the effects of climate change. The Forest Service withdrew the proposal last year in response to our challenge, but has reissued the plan without addressing its pitfalls.



DWIGHT DYKE

We particularly emphasized the need to protect water and other resources from expected pressure to introduce hydraulic fracturing (or "fracking") in the national forest. The gas-extraction technique has been widely linked to groundwater and surface water pollution. Much of the forest overlies the Marcellus Shale formation, which is producing natural gas in the Northeast but has not been tapped in Virginia.

SELC's Campaign: Help Us Cross the Finish Line!

Three years ago, we at the Southern Environmental Law Center asked ourselves how one organization could maximize its impact and provide an effective counter-balance to growing pressures that threaten our environment. SELC developed a new strategic action plan and launched the *Power of the Law Campaign* to build on our core strengths and to accelerate our defense of the Southeast.

With support from foundations, families, and individuals, we have enhanced SELC's local impact by opening new offices. We are serving as a strong voice for the South in Congress through a new office in Washington, D.C. We have hired top-notch new attorneys to strengthen our litigation capacity. And we have undertaken powerful new initiatives that intensify SELC's focus on the biggest threats and most imperiled eco-zones. As a result, we have been able to keep environmental protection moving forward in our six states despite what is happening on Capitol Hill or which way the political winds are blowing.

We have come a long way, but there are still big challenges. Most immediately: we are in the very final days of our *Power of the Law Campaign*, and we are seeking to raise less than \$500,000 before December 31. I hope you will help put us over the finish line.

With your help, SELC can con-

POWER OF THE LAW CAMPAIGN



**The fact is, we cannot
accomplish our mission
without you.**

— Rick Middleton
Founder & Executive Director

tinue to go head to head with the most imposing companies and government agencies, as we are doing with our offshore drilling work. We can help to create strong new environmental safeguards—like our effort to ensure that burning biomass does not increase carbon emissions and endanger our southern forests. We can enforce the laws of the land when they are abused or ignored, as we are doing in Virginia and Tennessee by battling the destructive practice of mountaintop removal coal mining. And we can promote forward-looking, sustainable alterna-

tives—such as energy efficiency and high-speed rail—that enable our region to prosper while remaining healthy and beautiful for future generations.

The fact is, we cannot accomplish our mission without you. SELC is a nonprofit organization that depends on your tax-deductible gifts to fund our nationwide programs and our place-based work. I hope you will keep SELC at the top of your list as you make your year-end giving decisions—and that you will make our mission your mission. I can promise you great results.

SELC Welcomes Three Distinguished New Members to Its Board of Trustees



Marcia Angle, of Durham, North Carolina. Dr. Angle uses her background in preventive medicine and international health to teach environmental epidemiology at Duke University as an adjunct professor in the Nicholas School of the Environment. She is a former clinical officer for the Chapel Hill-based International Training in Health Program and served for 15 years as medical director of the Orange County, North Carolina, Department of Health.



Cathy Brown of Nashville, Tennessee. Ms. Brown is involved in Stewart Home School, her family's school in Kentucky for adults with special needs. She is an avid conservationist and equestrian and is active in a number of organizations in the Nashville community, including Vanderbilt Children's Hospital, Saddle Up! Therapeutic Riding Program, the Friends of Warner Parks, the Land Trust for Tennessee, and the Vanderbilt Kennedy Center for Research on Human Development.



Lynnette Young of Atlanta, Georgia. Ms. Young is chief executive officer of Damespointe, a strategic consulting firm, and the founder and former executive director of Sustainable Atlanta, working with leaders from all segments of the community to make Atlanta more efficient, environmentally responsible, and competitive when attracting employers. She is a former chief operating officer for the City of Atlanta and was also chief administrative and operating officer for the City of Baltimore.

Ann Timberlake Receives SELC's Leadership Award

Ann Timberlake, executive director of Conservation Voters of South Carolina, has received SELC's James S. Dockery, Jr., Southern Environmental Leadership Award for 2010. Ms. Timberlake was instrumental in the creation of Congaree National Monument (now Congaree National Park) in South Carolina. She also helped organize the Sierra Club of the Carolinas in the 1970s and successfully championed designation of the Joyce Kilmer-Slickrock Wilderness Area and the Chattooga National Wild and Scenic River.



*Conserving the South's wild places,
clean air, clean water, and livable
communities for future generations*

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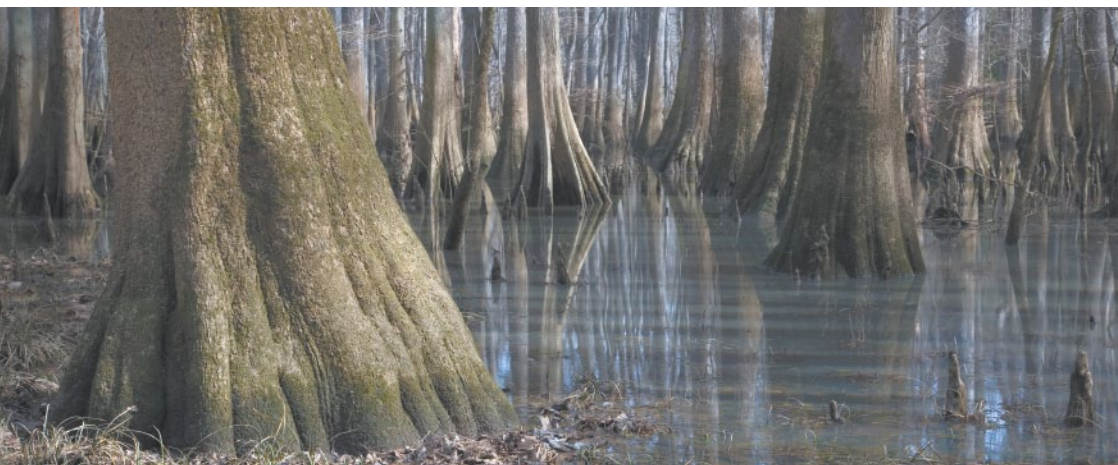
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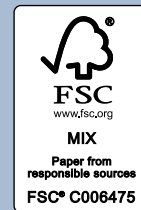
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HOT TOPICS

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- ✓ Battling mountaintop removal coal mining
- ✓ Restoring the Gulf ecosystem to protect wildlife in the future
- ✓ Launching a new project to save Alabama's wetlands
- ✓ Bringing back the South's longleaf pine forests
- ✓ Establishing adequate regulations for emissions from biomass
- ✓ Plans delayed for a coal plant near the Chesapeake Bay

Read more inside or visit SouthernEnvironment.org.