



JERRY GREER

ADVOCACY in ACTION

Quarterly Protection Highlights from the Southern Environmental Law Center • WINTER 2009



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Charleston Office Boosts Results in South Carolina

Local presence, local impact. That's the concept behind SELC's goal of having an office in each of the six states that we serve. It's proving to be a winning strategy in South Carolina, where, working with local partner groups and other members of SELC's regional legal team, our new Charleston office has been instrumental in a string of recent victories:

- Defeating a new, conventional coal-fired power plant proposed by Santee Cooper, the state-owned utility. The two-unit plant would have pumped out some 10 million tons of global warming emissions each year, as well as toxic mercury.
- Upholding federal flood-risk maps that prevented a developer from turning 4,000 acres of forest and farmlands in the Congaree River floodplain into a city behind levees outside Columbia.
- Protecting aquatic habitat and in-stream flows in the Catawba-Wateree River, which had been threatened by a deal struck by Duke Energy and state regulators allowing destructively low flows from the company's hydroelectric dams.

Building on 20+ Years of Experience

With attorneys working in South Carolina from our Chapel Hill office, SELC was able to be a central force in protecting this state's air, water, and natural treasures for almost 25 years. "But there's no substitute for being there, as a permanent presence in the community, in constant collaboration with local partner groups," says SELC founder and executive director Rick Middleton.

SELC opened the Charleston office in the fall of 2007 with early leadership support from our *Power of the Law Campaign*.

Now we have three attorneys based there: Chris DeScherer, leader of our Coast and Wetlands Program; Blan Holman, a South Carolina native; and Lisa Saltzburg.

Asset to the Conservation Community

"Being close to the Coastal Conservation League and our other partners, as well as to the agencies we deal with on a day-to-day basis, has really enhanced our capacity to get things done and to respond quickly to issues as they arise," Chris says. It's also increased SELC's influence with decision makers.

Charleston banker Hugh Lane, a longtime pillar of South Carolina's conservation community and a member of SELC's President's Council, also views our office in the Lowcountry as a tremendous asset. "SELC has always had an enormous presence in South Carolina, but now it has visibility," he says, which in turn has raised public awareness of the issues we are addressing. He also emphasizes the value of having a powerful law and policy advocate on the scene. "The law is the most powerful arrow in our quiver," he points out. "That's why it's so important that we have SELC working here with us."

Through the Power of the Law Campaign, SELC is enhancing the capacity of our core offices (Charlottesville, Chapel Hill, and Atlanta); maintaining satellite offices in Asheville, Charleston, and Richmond as well as a Capitol Hill office in Washington, D.C.; and opening new offices in Birmingham and Nashville.

View our new video interview with Blan Holman, a senior attorney in our Charleston office, at SouthernEnvironment.org/multimedia.

REGIONAL HIGHLIGHTS

SELC Brings the Birmingham Area's Air Quality Challenges into Focus

Metro Birmingham has evolved from a steel town into a thriving center of health care, research, and financial services, but it continues to suffer from dirty air. In fact, the area ranks 5th in the country for soot pollution, outstripping metro Atlanta and even industrial hubs such as Detroit for these dangerous airborne particles. Ozone pollution also reaches unsafe levels in the region, and mercury from smokestacks is falling into local waters and accumulating as a toxin in fish.



SELC has released a new report that for the first time provides in lay terms a comprehensive picture of the amount of pollution in the air in the metro area, the impacts of these emissions on people's health and the economy, and what local citizens and their leaders can do to control them. Titled *Clean Air for the Birmingham Area*, our report also zeroes in on the region's main pollution sources, chiefly three aging coal-fired power plants (including the dirtiest plant in the country for mercury emissions),

as well as vehicle exhaust made worse by sprawling development patterns.

To restore healthy air in Birmingham, SELC offers these and other recommendations:

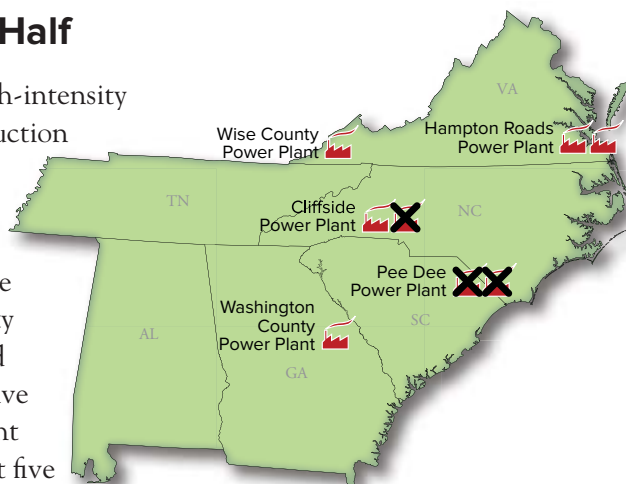
- ensure that Alabama Power installs pollution controls on its three coal-fired power plants and operates these controls at full capacity;
- pass state laws to supplement federal standards for controlling power plant emissions;
- develop a long-range transportation plan that boosts mass transit and reduces dependence on cars and trucks; and
- make energy efficiency and renewable energy sources a top priority.

Read or download *Clean Air for the Birmingham Area* at SouthernEnvironment.org/publications.

By Knocking Out Coal Plants, SELC Cuts Potential CO₂ Emissions by Half

SELC is engaged in a high-intensity effort to prevent construction of more coal-burning power plants in the Southeast that have no capacity to control heat-trapping carbon dioxide emissions. In dozens of utility commission proceedings and ongoing court battles, we have challenged proposals for eight coal-fired generating units at five plants that, as originally proposed, would have pumped out a total of 50 million more tons of CO₂ each year.

The scorecard to date? Three of the eight proposed units have been scrapped—one of two units proposed for Duke Energy's Cliffside power station west of Charlotte, and a two-unit plant recently shelved on the Pee Dee River in South Carolina. In addition, regulators in Virginia and North Caro-



lina are requiring the retirement of old coal plants or their conversion to cleaner fuels, such as natural gas. All told, we and our partners already have prevented 25 million more tons a year of harmful carbon dioxide emissions. At the same time, we are advancing energy efficiency as a practical and cost-effective alternative to building new generating capacity.

Challenge Defends North Carolina Forest

SELC's forest protection team has successfully challenged the Thunderstruck timber sale, a plan to cut 330 acres of mature hardwoods in North Carolina's Tusquitee Mountains, about halfway between Chattanooga and Asheville. The proposed logging sites, part of the Nantahala National Forest, include stands of cove forest more than 100 years old.

The Forest Service agreed with our argument that it failed to give full consideration to the environmental impacts and long-term costs of the four miles of new and restored roads needed for the project. Among other points, our appeal emphasized that the roads would send polluted runoff into mountain streams, fragment wildlife habitat, and disrupt forest ecosystems.

Settlement Compels EPA to Clamp Down Quickly on Power Plant Toxins

Oil- and coal-burning power plants spew out some 70 different pollutants that are hazardous to human health, including mercury, arsenic, lead, nickel, and dioxins. Under a settlement secured this fall by SELC and other groups, the U.S. Environmental Protection Agency must set strict new standards for controlling all of these toxic emissions, with a legally binding deadline of November 2011. SELC represented the American Nurses Association and Physicians for Social Responsibility in this legal action.

The agreement reaps the full benefits of a February 2008 federal court ruling that overturned EPA's Clean Air Mercury Rule. SELC was part of the legal team that won the decision, which stuck down a dangerously weak regulation that allowed power plants



NELSON BROOKE

to continue emitting mercury if they could buy credits from cleaner plants elsewhere. Moreover, the rule addressed only mercury and none of

the dozens of other hazardous pollutants from coal-burning power plants, and it did not regulate emissions from oil-burning plants at all.

Forest Service Closes Tellico Area to Off-Road Vehicles to Protect Trout Waters

After years of pressure from SELC and its partners, the U.S. Forest Service has permanently halted off-road vehicle use on a network of deeply eroded trails in the Nantahala

National Forest. Monster trucks and other ORVs have transformed the trails into massive ditches—some up to seven feet deep—that have funneled an estimated 25,000 tons of

mud over the years into the headwaters of the Tellico River on the North Carolina-Tennessee line. These streams are some of the last and best native brook trout waters in our region.

Facing an SELC lawsuit in the fall of 2007, the Forest Service agreed to limited closures of the trails as it undertook an in-depth study of the problem. In October of this year, the agency issued a final environmental assessment and announced it would close most of the trails and convert those that remain into low-impact forest access roads for hikers and anglers. It will also undertake a major restoration of the upper Tellico area.

“We support the agency’s decision to do what is necessary—and what is required by law—to protect this critical watershed,” says SELC senior attorney DJ Gerken. “We’ll stand by them to defend this decision if necessary.”



SELC

WHAT'S HAPPENING IN YOUR STATE?



BETH YOUNG

ALABAMA

1 Birmingham Water Quality.

In the metro Birmingham area, SELC has helped stave off an attempt by development and industry interests to use a lawsuit to undermine effective regulation of polluted runoff, the greatest threat to clean water in the Southeast. The Business Alliance for Responsible Development, or BARD, filed suit against the local Storm Water Management Authority in 2005, alleging that it had overstepped its bounds by exceeding the requirements of the Clean Water Act. SELC entered the suit to defend the agency and to uphold water-quality protection in the Birmingham area. The case has been long delayed, and when it finally began to move forward in October, BARD backed away from its groundless suit, thanks in large part to our participation.

GEORGIA

2 Watergauge Project.

In the Chattahoochee National Forest, SELC and Georgia ForestWatch have worked diligently to ensure that forest restoration projects are ecologically legitimate and avoid harming mature forests, rivers and streams,

and the natural communities they support. Thanks to an administrative appeal we filed in September, the U.S. Forest Service has agreed not to fast-track a “restoration” project that would entail intensive cutting on 500 acres and burn-

ing on 1,000 acres in the Chattooga River watershed. The agency will now go back and conduct an environmental assessment of the controversial portions of the proposal, a required step it had tried to bypass.

3 Farm Pond Challenge.

Developers on the Georgia coast have been misusing the farm pond exemption in the Clean Water Act to convert federally protected wetlands into amenity lakes for subdivisions. To halt this abuse, we have filed suit against the Army Corps of Engineers, the U.S. Natural Resources Conservation Service, and a developer who was allowed by the agencies to destroy a wetland without a permit to create what was purported to be a three-acre farm pond.

NORTH CAROLINA

4 Hatteras Wildlife.

Limits on beach driving yielded another successful year for nesting birds and sea turtles on the Cape Hatteras National Seashore. In the second breeding season under an agreement we reached with the National Park Service

to shield nesting wildlife from off-road vehicles, nests laid by colonial waterbirds (a group of species that nest together on the shore) more than doubled in 2009 as compared with 2007. Black skimmers nested on the park’s beaches for the first time in three years, and the two seasons under the agreement produced the two highest nest counts for sea turtles ever officially recorded at the seashore. Park visitation has seen a general uptick as well, despite the nationwide economic downturn.

5 Mountain Resources Act.

This year the North Carolina legislature passed a measure SELC championed that creates a permanent Mountain Resources Commission to coordinate regional planning in mountain areas. This is a major step forward in our effort to advance environmental and land use policies in mountain communities facing explosive growth pressures.

SOUTH CAROLINA

6 Charleston Harbor Expansion.

The South Carolina Supreme Court has agreed to hear our lawsuit challenging state approval of a new

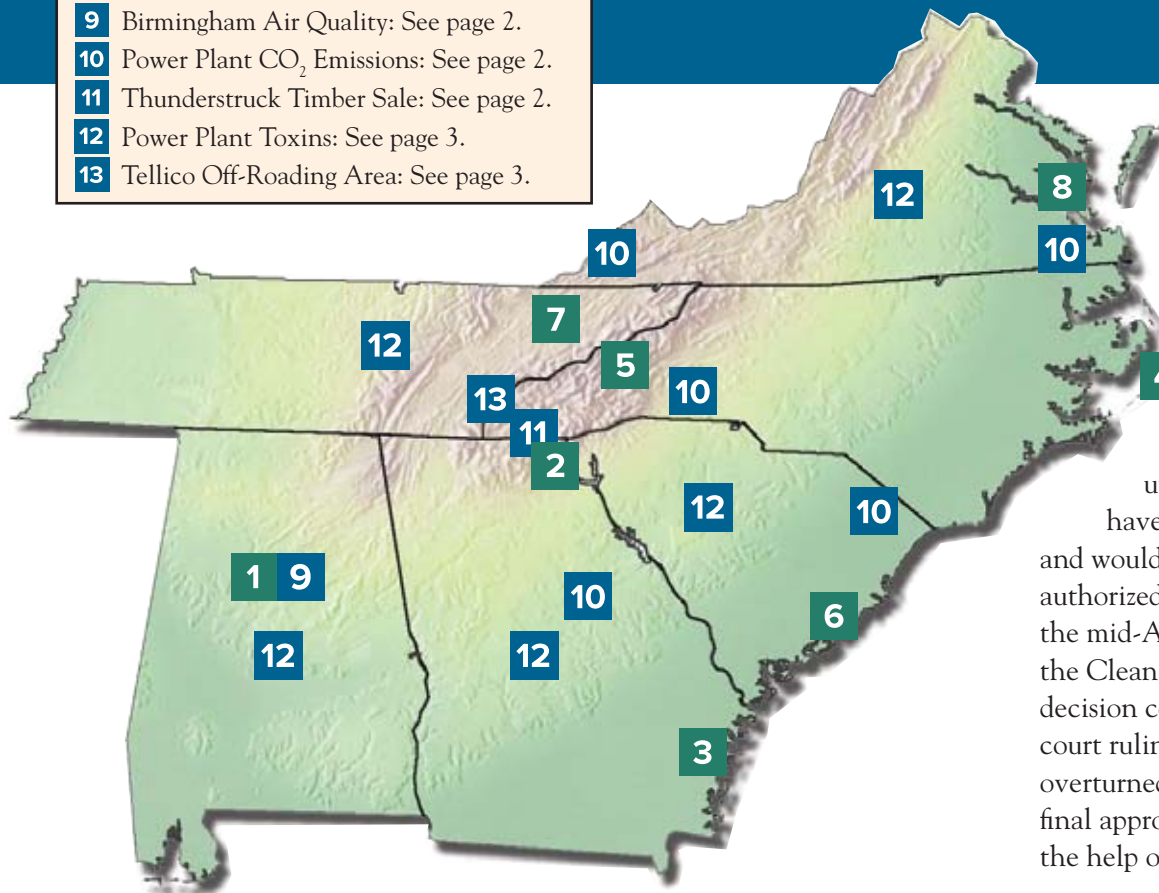


NATIONAL AUDUBON SOCIETY, INC.



LYNDA RICHARDSON

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VIRGINIA

8 King William Reservoir.

Ending a battle SELC and its partners have waged for 15 years, the City of Newport News has abandoned its plan to build the King William Reservoir—an unnecessary project that would have inundated 21 miles of streams and would have resulted in the largest authorized destruction of wetlands in the mid-Atlantic since Congress passed the Clean Water Act in 1972. The city's decision comes in the wake of a federal court ruling SELC won in March that overturned the Army Corps of Engineers' final approval of the impoundment. With the help of independent experts, we have

shipping terminal and connecting highway in Charleston—a project that would push the city's air pollution to unsafe levels and overwhelm the main transportation artery, Interstate 26, with a huge increase in daily truck traffic. We're asking the high court to overturn lower court rulings that severely limit the window of opportunity citizens have for challenging state approval of such projects in South Carolina. Attorneys in our Charleston office are arguing that state regulators failed to consider alternatives for the port expansion that would take better advantage of rail connections to move cargo, rather than subjecting the city to gridlock and more diesel fumes.

TENNESSEE

7 Tennessee Valley Authority.

TVA, the nation's largest public power provider and one of our region's largest sources of power plant pollution, is developing an

integrated resource plan that will map out how it will meet electricity needs over the next 20 years.

As this process gets under way, SELC has weighed in to make sure TVA gives full and fair consideration to the benefits of energy efficiency and other strategies for reducing reliance on traditional power generation; that it factors in all the financial and societal costs of its energy sources, such as the public health and environmental impacts of coal; and that it lives up to its promise to make reducing global warming emissions a priority in the plan's development. A draft of the resource plan is expected to be completed by February.



DWIGHT DYKE

shown all along that the plan to build the 1,500-acre reservoir in King William County was based on inflated projections of water needs and that the Newport News area could meet its water requirements in far less destructive ways.

The Political Landscape May Change, but the Need for an Effective Environmental Champion Is Always There

With a new administration in the White House and a change in leadership in Congress, common opinion was that political tides would run in favor of stronger environmental protection. How does that affect the need for a powerful law and policy advocate?

“Strong advocacy and effective enforcement of the law are always needed to get results, no matter who’s in charge,” says Jeff Gleason, SELC’s deputy director and director of regional programs. “Since SELC was founded in 1986, we have worked under five administrations and through major shifts in Congress. Environmental policies have fluctuated wildly. Regardless of the political climate, we have always had an important role to play—and that’s never been truer than it is today.”

The key is to stay nimble. When conditions in D.C. are hostile, SELC has to play a strong defense to counter attempts to roll back hard-won safeguards. When conditions are more favorable, we have to be ready to take advantage of opportunities to advance the ball and to use legal action, if necessary, to put it over the goal line. “Even when an agency wants to do the right thing, we can be certain that special interests and members of Congress on the other side of our issues will be putting their own pressure on policy makers,” Jeff explains. “It is often the case that litigation can keep an important environmental issue

on the front burner and provide an agency with the mandate needed to overcome political opposition.”

A prime example is a recent legal settlement that puts the U.S. Environmental Protection Agency on a hard deadline for developing strict new standards for controlling mercury and other hazardous emissions

be further delayed by political pressure from the electric utilities and the coal industry.

We have heard positive statements from the new administration on other important issues, such as protecting roadless areas in national forests, restoring the Chesapeake Bay, and tightening regulations on the disposal of coal

combustion waste—the kind of waste that spilled from TVA’s Kingston power plant in Tennessee last December. It’s up to organizations like ours to make sure these words translate into action.

“There is a long, pothole-laden road between positive statements and strong policy,” Jeff observes. “Strong and effective advocacy by SELC and other groups is needed every step of the way.

“It is also the case that strong environmental policy has little meaning if it’s not implemented properly by state and federal agencies,” he adds, noting that citizen lawsuits have always played a critical role in ensuring faithful

implementation of environmental policy and oftentimes serve as the only meaningful enforcement of environmental laws. This is especially true in tough economic times, when dwindling budgets constrain the ability of agencies to do their jobs.

“Our tactics may change from one administration to the next,” Jeff concludes. “What doesn’t change is the need for sustained advocacy and for our ability to go to court, when it’s called for, to achieve our protection goals.”



“Strong environmental policy has little meaning if it’s not implemented properly by state and federal agencies.”

from power plants (see page 3). The agreement results from a follow-up lawsuit to a 2008 court victory SELC and other groups helped secure that blocked an attempt by the Bush administration to exempt coal-burning plants from stringent health protections for approximately 70 of the most toxic air pollutants covered under the Clean Air Act. The new settlement ensures that the Obama EPA moves forward quickly to develop these critical controls, which could otherwise

SELC Receives Challenge Gift to Help Open a Birmingham Office

One important lesson I've learned over the past 25 years is that there is no substitute for local presence, so one of the central goals of our *Power of the Law Campaign* is to have an office in each of our six states. Thanks to the generosity of our friends and supporters, we have already been able to open new SELC offices in Charleston (see page 1) and Washington, D.C., and now Birmingham—my hometown—is next on the priority list.

I'm pleased to report that we have received a generous challenge gift that will make SELC's Alabama office a reality—but we must raise \$100,000 in matching funds from new or increased gifts by December 31, 2009.

If you are concerned about protecting the environment and health of Alabama, a state of remarkable natural diversity and beauty, please make a special matching gift by visiting our website at SouthernEnvironment.org or by calling our Alabama development officer, Penny Cox, at 404-521-9900. Thank you for helping us realize this unique opportunity.

—From Rick Middleton,
SELC's Founder and Executive Director



Scenic Virginia Names SELC a “Scenic Hero”

Scenic Virginia, an organization dedicated to the preservation, protection, and enhancement of Virginia's scenic beauty and community character, has named SELC the winner of its 2009 Scenic Hero Award, its highest honor. Scenic Virginia recognized SELC for opposing unsightly billboards and mountaintop removal coal mining, for successfully challenging the King William Reservoir (see page 5), and for championing legislation passed by Congress this year that protects 53,000 acres as wilderness and national scenic areas in southwest Virginia.

Wilderness Advocate Wins SELC's Annual Environmental Leadership Award

Wilderness advocate James J. Murray, Jr., of Charlottesville has received SELC's 2009 James S. Dockery, Jr., Award for Environmental Leadership. A professor emeritus of biology at the University of Virginia, Jim twice served as president of the Virginia Wilderness Committee and has played a leading role in campaigns to secure congressional designation of wilderness areas in Virginia since 1969. Over the past ten years he has worked closely with SELC and our allies to win passage of two bills that have increased permanently protected wilderness in Virginia to nearly 150,000 acres.



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

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Help SELC Champion the South's Health and Environment with a Year-End Gift

As the date approaches to flip this year's final calendar page, many of us are considering end-of-year charitable gifts. Also for many of us, there may be less money to give away than there was in the past—but no fewer worthy causes.

We hope that as you make your choices and decisions for 2009, you will keep the environment at the top of your priority list. Vigilant, consistent action is required at the federal, regional, state, and local levels to ensure that strong and effective laws and policies are in place—and enforced—to protect our health and environment.

The Southern Environmental Law Center is serving as your champion, throughout six states, to protect the air you breathe, the water you drink, and the mountains, rivers, forests, coast, and countryside that make the



BILL LEA

South a uniquely diverse and beautiful region. Please support SELC with a year-end gift. You may send a check in the enclosed envelope, or give online at our secure website at SouthernEnvironment.org/donate.

If you hold securities that have appreciated in value over time, a gift of stock may be an attractive end-of-year giving option that allows you to

take a charitable tax deduction for the fair market value of the shares and to avoid capital gains tax. To make a stock gift, please visit our website or call our broker, Sandy von Thelen of Scott & Stringfellow, at 434-971-8557 or 800-868-7726.

Thank you for your support and partnership.