



POWER OF THE LAW QUARTERLY

Fall 2019

U.S. Supreme Court Upholds Virginia Uranium Mining Ban

Capping 10 Years of Effort

In June, the United States Supreme Court issued a highly anticipated decision upholding Virginia's 37-year-old ban on uranium mining against a challenge by Virginia Uranium, a private company created to mine a large uranium deposit in southern Virginia. SELC filed a "friend of the court" brief supporting the ban, and we are celebrating a significant victory for healthy communities in Virginia.

A Decade of Advocacy

For ten years, SELC has played a key role in blocking attempts to repeal the ban, which Virginia's legislature enacted in 1982 after the discovery of the nation's largest uranium deposit beneath Coles Hill and additional deposits along the northern Piedmont. In the late 2000's, with global uranium prices spiking, Virginia Uranium proposed to mine the Coles Hill deposit and lobbied Virginia's legislature to end the ban. Between 2009 and 2013, SELC led a broad coalition that successfully rebuffed the repeal efforts. SELC has also opposed efforts to remove county-level protections against uranium mining.

When Virginia Uranium turned to the courts, filing a federal lawsuit against Virginia in 2015, SELC filed friend of the court briefs on behalf of local conservation groups at each stage of the litigation to highlight the importance of allowing states to protect their communities from the environmental and economic risks of uranium mining. Before the Supreme Court, the mining company, backed by the Trump administra-

tion, argued that Virginia's ban intruded on an area that only the federal government can regulate: the processing of nuclear materials. But the Court, by a 6-3 margin, disagreed, finding that the states retained the power to regulate uranium mining—or to ban it entirely, as Virginia has done.

A Dangerous Idea

Pittsylvania County is a rural county that is home to 60,000 residents and more than 1,300 working farms; it also is the heart of the Dan and Roanoke River watershed that supplies drinking water for the coastal cities of Norfolk and Virginia Beach. It is one of the worst possible places for a massive industrial mine—particularly one that would generate huge amounts of radioactive waste and unacceptable risks from radiation releases along with surface water and groundwater contamination.

Historically, uranium mining in the U.S. has been confined to the sparsely populated desert Southwest. Even in this open, arid landscape, it has left a toxic legacy of water pollution and serious health hazards. The perils of mining uranium and storing mountains of mine waste are magnified in Virginia, which is more densely populated and prone to frequent storms, more than its share of powerful hurricanes, and the looming threat of catastrophic flooding.

This Supreme Court victory reaffirms the state's historic authority to protect its communities and its environment from the inherent and unavoidable dangers of uranium mining.

“For the past ten years, we have supported Virginia's decision to protect its communities from the environmental and economic risks of uranium mining.”

**—Mark Sabath,
SELC senior attorney**

REGIONAL HIGHLIGHTS



Another Court Victory Blocks Atlantic Coast Pipeline

The U.S. Fourth Circuit Court of Appeals issued a decision in July striking down the Atlantic Coast Pipeline's endangered species permit for the second time. With this ruling, the pipeline developer, a consortium headed by Dominion Energy and Duke Energy, will once again have to go back to the drawing board with this destructive, unnecessary 600-mile interstate gas pipeline.

SELC's litigation has now invalidated five key federal permits for the project. Our legal challenges have also highlighted a common theme behind many of these decisions: these energy giants have utter disregard for the people, property, and natural resources that lie in the pipeline's path. As planned, the pipeline would cause serious harm to rural communities,

including the African-American community of Union Hill, two national forests, the Appalachian Trail, hundreds of streams, and endangered species like the rusty patched bumblebee—all to build a pipeline that is not needed to meet current or future electricity demand.

In mid-October, SELC will argue a case against the Federal Energy Regulatory Commission for authorizing the Atlantic Coast Pipeline without establishing the fundamental need for the project. Then at the end of the month, we will be in court to challenge the air pollution permit for the compressor station at Union Hill. With less than six percent of the pipeline in the ground, and construction halted since December 2018, we continue to press forward to hold this project to the letter and spirit of the law.

SELC Tackles Georgia's Coal Ash Pollution

After helping secure excavation of over 250 million tons of coal ash across the Southeast, SELC is applying our enforcement expertise to Georgia. The state's largest utility, Georgia Power, recently asked for authorization to cap-in-place nearly 50 million tons of coal ash stored in unlined, leaking pits across the state. The utility's plans disclose alarming new details about serious hazards at these sites, which SELC has highlighted for the public and state regulators.

Georgia's Power's applications show that coal ash at most of these sites is

submerged in groundwater—in some places up to 80 feet deep—and Georgia Power plans to keep it that way. At Plant Wansley on the Chattahoochee River, our investigation found buried streams flowing through the coal ash dump, carrying toxic mercury and other heavy metals into surrounding groundwater and surface waters.

In metro Atlanta, Plant McDonough holds nearly 5 million tons of coal ash on the banks of the Chattahoochee in a risky situation reminiscent of North Carolina's 2014 Dan River spill, which released 39,000 tons of toxic coal ash

and polluted a reservoir 80 miles downstream.

Georgia Power wants to leave the ash in place and simply put a cover on top of these leaking pits. We are raising awareness of Georgia Power's dangerous plans in media reports and at public hearings. And in a formal comment letter, we warned state regulators that cap-in-place is unlawful and brings serious health and environmental risks. Instead we are urging them to order the utility to excavate the ash and move it to safe, modern storage or recycle into useful materials like concrete.



The Solar Revolution is Here to Stay in South Carolina

The South Carolina General Assembly in June unanimously passed groundbreaking legislation that accelerates progress toward a clean energy future. The Energy Freedom Act eliminates arbitrary barriers to customers' ability to lease rooftop solar equipment and earn fair value for excess energy they generate at home and provide back to the grid.

The bill also supports solar access for customers of modest means, makes

it easier for corporate customers to take advantage of renewable energy, and reforms the state's long-term energy planning process, which will create more opportunities for clean energy advocacy in the near future.

SELC helped lay the groundwork for this comprehensive legislation through a 2014 bill that resulted in over 10,000 installations and created 3,000 new solar jobs in the state. Over two years, we worked with a broad

coalition to propose, negotiate, and build bi-partisan support for a package of policies that will keep the solar revolution going.

Now our focus shifts to the state Public Service Commission, where we will make sure these policies really make solar more accessible for all in South Carolina, and we will keep pushing other states in our region to take similar steps to lower barriers to solar.



Right-Sizing Corridor K in Western North Carolina

At a time when the very idea of government accountability is under threat, SELC and our partners demonstrated the power of public input by steering plans away from a destructive, unnecessary road project in western North Carolina.

For over a decade, the state Department of Transportation pushed for a new four-lane highway through the remote forests and pristine streams of the Snowbird Mountains in the Nantahala National Forest. The over-sized road would have damaged the region's greatest assets—its unspoiled vistas, clear running trout waters, and backcountry recreation areas.

SELC defeated the last iteration of the project in 2011 and continued to work with local communities and government agencies to bring better ideas to the table. In August, the Department of Transportation officially abandoned the old four-lane proposal, cementing plans to move forward with a “right-sized” alternative based on our ideas.

The new road will follow existing paved areas where possible and will not cut a new route through the backcountry of the Snowbirds. SELC will ensure these upgrades meet local communities' needs while protecting public lands, clean waters, farmland, and private homes.

Unprecedented Victory in North Carolina Transportation Case

SELC has reached a settlement with the North Carolina Department of Transportation that signals a major shift in the state's willingness to address climate change. The agreement secures crucial new protections for clean air and clean water, as well as endangered species and their habitats, and sets SELC and the environmental community on a path to collaborate with the department in the years to come on many important issues, including climate change.

For years, the Department of Trans-

portation sought to complete an outer loop around Raleigh by building a \$2.2 billion expansion of Interstate 540 through environmentally sensitive areas in Wake County. SELC challenged the proposal in state and federal court over the agency's refusal to consider less damaging alternatives and protect air and water quality as well as endangered species along the proposed route.

The settlement resolves SELC's legal challenges, sets in place critical protections for the Neuse River watershed,

and preserves beautiful open space in Wake County—providing a lifeline for some of North Carolina's rarest and most endangered water-dwelling species.

Just as important, state officials are taking more seriously the significance of transportation reform for addressing climate change—by taking action to factor greenhouse gas emissions into major project planning, expand public transit in the Triangle region, and develop strategies to reduce emissions from vehicles across the state.

WHAT'S HAPPENING IN YOUR STATE?

ALABAMA

SELC Steps in to Protect Health of North Birmingham Neighborhoods

SELC is addressing long-term air pollution harming a disadvantaged community in northern Birmingham. For at least eight years, Drummond's ABC Coke Plant in Tarrant has released dangerous levels of benzene, a known carcinogen, into the nearby community. Residents of the predominantly African-American neighborhood suffer from high rates of cancer, asthma, and lung disease. Drummond's attempt to escape liability for cleaning up the contamination resulted in felony convictions and the resignation of high-level EPA and Alabama officials. After years of corruption and neglect, EPA and the local health department recently proposed an inadequate settlement to address the toxic pollution. SELC is stepping up to demand greater protections for public health and the environment, as well as more transparency from companies and agencies that have lost the public's trust.



NORTH CAROLINA

Protecting the North Toe from Quartz Mining

Near Spruce Pine in the western North Carolina mountains, mining operations are threatening the North Toe River, a clear mountain river that supports a thriving recreation economy and is a popular destination for paddlers, anglers, and swimmers. The mountains around Spruce Pine also contain the world's purest supply of naturally occurring quartz, a mineral essential for making computer chips. Concentrated along the North Toe are decades-old industrial facilities that process the mineral ore and degrade the river through toxic discharges. The state is proposing to issue new permits that would perpetuate existing pollution problems, and SELC is advocating for standards that will improve water quality in the North Toe River and meet the Clean Water Act's goal to restore the nation's waters.

GEORGIA

Defending the Okefenokee Swamp

The Okefenokee Swamp is a national treasure, home to one of North America's largest complexes of freshwater wetlands. It contains a National Wildlife Refuge and a federally designated Wilderness Area. Unfortunately, a private mining company is seeking approval to open a titanium dioxide mine immediately adjacent to the swamp, where excavation could jeopardize the fragile integrity of the Okefenokee, harm the many plant and animal species that live there, and give the mining industry a toehold in the area. SELC is leading a coalition of concerned groups raising public awareness and collaborating to protect the Okefenokee from this threat. We recently submitted written comments to the U.S. Army Corps of Engineers pressing the agency to require extensive environmental impact studies before it contemplates granting a permit to the mining company.



Sun Shines on Georgia Solar

More solar power is on the way in Georgia, thanks to SELC's advocacy before the state's Public Service Commission. The Commission in July approved a long-range energy plan for Georgia Power that will add 2,210 megawatts of renewable energy, likely all solar, to the state's energy mix. This is enough energy to power nearly a quarter of a million homes. The plan also includes a 15-percent increase

in energy efficiency programs—a promising sign the Commission is ready to get serious about this cleanest, cheapest of renewable energy resources. SELC's intervention was also crucial in shaping initiatives that will make solar more readily available to small businesses and launch a pilot program bringing energy efficiency upgrades to customers of modest means through on-bill financing.

Settlement Brings Justice for West Badin



Alcoa's shuttered aluminum smelting facility in Badin will no longer be able to discharge unsafe levels of cyanide and other harmful pollutants into the local water supply thanks to a settlement negotiated by SELC. When Alcoa—a \$12 billion global company—refused to address the environmental and public health risks posed by contaminated stormwater flowing from their closed facility into Little Mountain Creek and Badin Lake, SELC filed a lawsuit to stop unchecked pollution on behalf of a community group with historic ties to the majority African-American neighborhood adjacent to the plant. The settlement requires Alcoa to install a new stormwater system to halt contamination of local waterways and drastically reduce cyanide discharges to levels acceptable for human health and aquatic life.

TENNESSEE

Hazardous Waste Dump Proposed for Oak Ridge

In east Tennessee, SELC is defending communities downstream from a proposed hazardous waste landfill on the Oak Ridge Reservation. The U.S. Department of Energy wants to dispose of radioactive and hazardous waste in the pristine Bear Creek Valley, where it will risk contaminating groundwater and the nearby Bear Creek, which flows into the Clinch River. The agency floated its proposal to the community without disclosing key information about the site and the types of waste to be stored in the landfill, so SELC has stepped in to demand the Department of Energy make its plans transparent to the public so nearby residents can weigh in on the risk to their water quality.

VIRGINIA

Growing Solar Power in Coal Country

New proposed solar investments promise to spur economic growth and lower customers' power bills in the coalfields of Virginia. SELC has been providing legal background and expertise to the Solar Workgroup of Southwest Virginia, a group of

non-profits, colleges, state and local government officials, and community leaders. Recently, we helped this group secure bids from solar developers for 12 new projects that could bring two megawatts of solar capacity. The

projects will prioritize local workers and feature high-visibility sites, raising the profile of renewable energy. In this part of the state, we will continue working to expand upon this important first step in attracting solar to this region.

SOUTH CAROLINA

SELC at Supreme Court for Third Time in a Year

As a leading defender of South Carolina's natural resources, SELC has argued before the state's Supreme Court three times within the past year. In the only case decided so far, the high court handed SELC a victory in our decade-long effort to protect the Francis Marion National Forest from attempts to annex strips of public land for commercial and residential development. In an effort to connect the town of Awendaw to a large private inholding nearly encircled by the

National Forest, the town falsely claimed the U.S. Forest Service had asked it to annex a 1.5-mile strip of the National Forest. The Supreme Court's ruling not only protects the Francis Marion but also affirms the right of citizens to hold governments accountable for underhanded conduct.



ROBERT LUEWELN

INSIDE STORIES

Trump Administration Plays Politics with Endangered Species

SELC is stepping up to defend essential Endangered Species Act protections against an all-out attack by the Trump administration.

In August, the U.S. Fish and Wildlife Service finalized a proposal that will drastically alter the way decisions are made about whether and how threatened and endangered species are protected. Instead of relying on the best available science, politically motivated changes would significantly roll back longstanding environmental safeguards and will lead to the destruction of essential habitat and imperil the recovery of dozens of threatened and endangered species.

We have recently learned that the U.S. Fish and Wildlife Service's regional office for the Southeast has established a quota to weaken protections for at least 30 species per year—denying protections the species need to survive. The red-cockaded woodpecker is on their target list. These iconic birds were once abundant across the Southeast, but mass destruction of long-leaf pine forests drove the woodpecker to near-extinction, and the species was listed for federal protection in 1970.

Thanks to careful management, remnant forest habitats have been preserved, and isolated populations of the bird are rebounding in remaining long-leaf pine pockets in the South. Still, the red-cockaded woodpecker's status remains precarious. The Fish and Wildlife Service's most recent assessment to support plans to remove federal protections for the woodpecker lacks any factual or scientific basis.

These plans are especially concerning because the agency already is coordinating behind closed doors with the Department of Defense and the timber industry about its designs.

If the agency continues to ignore science and the law and moves forward with delisting the woodpecker, SELC will fight to preserve legal protections for the woodpecker and its habitat.



“These rules remove long-standing protections for endangered and threatened wildlife that are central to our natural heritage.”

—Ramona McGee, SELC staff attorney

SELC Defends Public Participation in National Forest Decisions

In another troubling move by the Trump administration, the U.S. Forest Service in June proposed radical changes that would exclude the American public from essentially every decision affecting our national forest lands. For 50 years, the National Environmental Policy Act has enshrined the right of citizens to weigh in on major proposals that would harm old growth forests, backcountry recreation areas, pristine streams, and rare species and their habitats.

Under political pressure from the administration, the Forest Service now wants to change that. The agency has proposed to cut the public out of almost every timber sale in the country—stripping away the most important legal safeguard for protecting our national forests. While the proposal aims to increase logging and road-building on national forests across the country, our Southern Appalachian mountain forests would suffer the most.

SELC is leading opposition to these proposed changes. Anticipating this assault, we have spent the past year collecting data on the important role public transparency and review play

in protecting our region's national forests. We used these data points as well as legal analysis to prepare written comments, supported by 177 national and regional partners, detailing the legal and scientific errors in the proposed rollbacks. We also raised public awareness through a media and public outreach campaign focused on defending the public's right to have a voice in decision-making about our public lands.

We already are making a difference. An op-ed written by SELC's National Forests and Parks Program Leader, Sam Evans, appeared in the *New York Times* on August 7, and *Outside Magazine* ran an online feature on the proposal to eliminate public participation, with quotes from Evans explaining the damage that could result. Our communications team raised the profile of this issue by coordinating media coverage in national outlets, like CNN and the *Washington Post*, as well as regional and local publications throughout the South.

SELC also has developed tools to educate the public and help them submit comments. We created OurForestsOurVoice.org, a web portal that guides users to submit individualized comments opposing the Forest Service's proposal to eliminate transparency and public participation. Our outreach generated more than 21,000 comments, about half of the total received by the Forest Service. Following this media coverage and public pressure, the agency granted our request to extend the public comment period.

Though our data and analysis conclusively show that the Forest Service cannot cut the public out of its decision-making without irreparably harming our public forests, these are not ordinary times. We already are preparing to challenge the rule in federal court if and when it is finalized.

“The Forest Service’s proposal is an attack on the very idea of public lands—that America’s unfenced lands belong as much to a single hunter or hiker as to powerful industry interests.”

—Sam Evans, SELC senior attorney
New York Times Op-Ed,
August 7, 2019

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Maxine Ruling Could Mean Cleanup for Abandoned Mines across Alabama

SELC delivered a significant victory for water quality in Alabama when a federal court in May ruled that toxic pollution from an abandoned coal mine outside Birmingham violates the Clean Water Act. The Drummond Company will now be held accountable for millions of cubic yards of acid mine drainage polluting the Locust Fork of the Black Warrior River at the company's defunct Maxine Mine.

Alabama has hundreds of shuttered coal mines like this one, where companies just closed up shop and walked away from active sources of pollution. In 2016, SELC filed a federal lawsuit to address Maxine. Central to our case was demonstrating clearly the underground flow of toxic contamination from this mine, which

extended 13 miles beneath the Locust Fork. Our team took seven days to survey the site with advanced geophysical sensing and remote imaging equipment to map groundwater pollution plumes and surface water contamination.

These innovative efforts paid off—Drummond will now have to stop its

illegal pollution. As we press forward to ensure full cleanup at Maxine, this court victory also sets an important precedent for other abandoned mine sites in Alabama, for the first time bringing them under the jurisdiction of the Clean Water Act.

