



JOHN WATHEM

ADVOCACY in ACTION

Quarterly Highlights from the Southern Environmental Law Center • Spring 2015



SELC Seeks to Shield Mid- and South Atlantic Coast From Offshore Drilling

In late January the U.S. Bureau of Ocean Energy Management (BOEM) released its plan to open up most of the Mid- and South Atlantic to oil and gas leasing. This would mark a major shift in federal policy: there has been no leasing in the Atlantic in more than 30 years, nor any oil or gas production off our coast to date.

The proposal simply doesn't add up, say SELC's coastal experts. The coast is one of the South's defining natural features. Nowhere else in the world can you find such a rich assemblage of sandy beaches, barrier islands, maritime forests and swamps, marshes, and estuaries. Local communities rely heavily on clean water and healthy shoreline ecosystems to support thriving tourism and fishing industries.

The risk is far too great for the questionable benefits, given how little oil is estimated to be off the southeastern coast. SELC is now mounting a major initiative to prevent drilling off the coast of Virginia, North Carolina, South Carolina, and Georgia.

A History of Protecting a Sensitive Resource

This organization has been defending coastal resources in our region for nearly three decades. Our history with offshore drilling in particular goes back to the 1980s, when SELC helped defeat a proposed exploratory well off North Carolina's Outer Banks. In recent years we helped prevent a lease sale off Virginia's coast, and our legal team played a lead role in

litigation following BP's Deepwater Horizon spill, bringing to light serious lapses in federal oversight of offshore drilling.

SELC is uniquely well positioned to make the solid scientific, policy, and legal case that our sensitive coastal zone should be kept out of the government's five-year leasing plan—and to work effectively with national, state, and local partners to build the necessary public and political opposition.

High Risks, Low Rewards

By law, BOEM must weigh potential environmental impacts against potential energy benefits. SELC will zero in on the essential fact that—according to the federal government's own assessment—the waters off Virginia, North Carolina, and Georgia rank among the most ecologi-

cally important and sensitive areas on the U.S. outer continental shelf, and that mitigating the harmful impacts of oil and gas operations in these ocean environments would be difficult, if not impossible. Also tipping the scale heavily toward removing the Mid- and South Atlantic from the five-year leasing program are the meager oil and gas resources likely to be found—a small fraction of the nation's recoverable offshore oil and gas.

The public's opportunity to weigh in on the government's formal review process lasts through the end of March, and the next 12 months will be a period of concentrated effort for us and for our partners. SELC is poised to weigh in at every step of the process.

SELC weighs in on offshore drilling in *The New York Times*
Read more at SouthernEnvironment.org/offshore-oped.



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REGIONAL HIGHLIGHTS

Solar Settlement Bodes Well for South Carolina's Energy Future

SELC has helped forge a groundbreaking agreement with South Carolina utilities to allow solar customers to receive full retail credit for any power they provide to the grid. The settlement ensures that those who invest in solar will benefit from all the electricity they generate: if they use it themselves, they reduce the power they purchase; if they generate any excess, they receive full credit on their bill. The agreement also makes sense for the utilities, hastening their rollout of additional utility-run solar programs.

Over the past two years, SELC devoted tremendous effort to getting South Carolina to leapfrog from solar laggard to solar leader. Last spring we helped forge a breakthrough solar bill, the result of compromise with utilities, conservationists, and the solar indus-



try. The net metering settlement puts a major part of the law into practice and provides a strong financial incentive for robust growth of rooftop solar in a

state with the 10th best solar resource in the nation. The deal also sets an important precedent for South Carolina's sister states in the Southeast.

Major Coal Ash Victory in South Carolina

SELC began its coal ash enforcement work in South Carolina in 2012 with legal action to clean up 2.4 million tons of toxic ash from the banks of the Catawba-Wateree River near Columbia. Now, thanks to an agreement in principle that SELC has reached with Duke Energy to remove the ash at its W.S. Lee plant near Greenville and place it into dry, lined storage, we have reached a major milestone: all three South Carolina utilities have committed to clean up every water-filled riverfront coal ash lagoon in the state—more than 16.6 million tons of toxic ash.

What's more, the companies are following through—and faster than expected. Santee-Cooper projects it will complete its cleanup four years ahead of schedule; the company now calls the program a “triple win,” benefiting the environment, the economy, and the company. As of January 2015, SCE&G had removed more than twice the agreed-upon quantity of ash from the Catawba-Wateree site where SELC's actions began.

SELC to Congress: Citizen Enforcement More Essential Than Ever

Frank Holleman, the leader of SELC's coal ash initiative, testified in front of the U.S. House of Representatives Subcommittee on Environment and the Economy on January 22 to defend the right of citizens to seek enforcement under EPA's new coal ash rule. Special interests were attempting to strip out

this fundamental safeguard, removing one of the few strong points from what is a tepid, disappointing federal rule (see story, back cover). “Congress should not take away the rights of local communities to protect themselves from this dangerous coal ash storage,” Holleman told the committee. “What we have seen in the Southeast is clear: the state agencies have not effectively enforced the law against these politically powerful entities.”



Watch highlights of Holleman's testimony at SouthernEnvironment.org/coal-ash-testimony.

SELC Working to Keep Logging Out of Pisgah-Nantahala's Backcountry

Together the Pisgah and Nantahala National Forests comprise just over a million acres surrounding Asheville, North Carolina. Offering stunning landscapes and backcountry recreation, these public lands serve as a major driver of the local economy by bringing thousands of visitors to the area every year. Last fall the U.S. Forest Service proposed to put all that in jeopardy with a plan to open roughly 70 percent of the Pisgah-Nantahala to possible industrial-scale logging.

SELC has been pushing back against managing this special landscape for commercial logging. Although the Forest Service's original proposal did not dictate the precise amount of logging or the specific locations where it would take place, it would have increased the amount of logging and, even worse, would have allowed logging to expand into more-remote corners of the landscape.

Identifying which lands can be logged is a critical part of the forest planning process, during which the Forest Service sets policies for each of its forests for 15 years. SELC has been working to ensure that logging is limited to areas that already have roads, some of which have been damaged by past land uses and can benefit from restoration forestry. Recently the Forest Service has indicated it may revisit the logging proposal and work in collaboration with conservation and other stakeholders.

Nearly five million acres of Southern Appalachian national forests stretch from Alabama to Virginia. Protecting them has been at the heart of SELC's mission from the day we opened our doors in 1986.



JERRY GREER

New Coal Ash Action Aims to Protect Chesapeake Bay Watershed

Dominion Virginia Power's Chesapeake Energy Center is leaking arsenic and other pollutants into the groundwater and from there into the Elizabeth River. These harmful pollutants, generated by 60+ years of burning coal at the site, are coming from the toxic ash that sits on the banks of the river in unlined, leaking pits and from a landfill built on top of the old pits. In the past three years, for in-

stance, arsenic in the groundwater has been measured at 30 times the levels deemed safe for human health.

Dominion's records show it has known about the contamination for years, yet as the company prepares to permanently close all its coal-fired units at the plant, it is planning, in essence, to walk away from the problem. Dominion has asked Virginia's environmental regulatory agency to

approve its plan to simply cover the roughly one million cubic yards of coal ash with a plastic liner and dirt—under which it will continue to leach toxins into the groundwater and into the river for decades, if not permanently.

Drawing on our experience in other southern states, SELC has stepped in with an enforcement action under the Clean Water Act to force a real cleanup at the site.



JERRY GREER

WHAT'S HAPPENING IN YOUR STATE?



ALABAMA

1 Court Declines to Stop Eufaula Street Widening. Although the judge agreed that SELC presented a “strong argument that this historic area should not be put in jeopardy,” a federal court has declined to halt the planned widening of North Eufaula Avenue. The project puts the historic character of Eufaula’s downtown, which features century-old oak trees and stately antebellum mansions famously depicted in the movie *Sweet Home Alabama*, at risk. The Alabama Department of Transportation declined to use federal funds on the project, insulating it from some national environmental requirements.

GEORGIA

2 Solar Power Moves Forward. The Georgia Public Service Commission has unanimously approved 10 Power Purchase Agreements for independent solar companies to provide 515 megawatts of solar energy to Georgia Power. SELC pushed for the original requirements and for the final approval of the contracts. The utility once predicted adding solar generating capacity would raise consumer rates, but it has now acknowledged under questioning from SELC that the savings created by these utility-

scale projects will reach “several hundred million dollars.” The new capacity is expected to be online by the end of 2015 or 2016.

NORTH CAROLINA

3 Fracking Oversight in Jeopardy.

SELC has filed suit to question the constitutionality of a North Carolina General

Assembly plan to control the state’s Mining and Energy Commission and institute lax regulations to govern fracking in the state. As part of its systematic rollback of environmental protections, the legislature granted itself the majority of appointments to the commission, which subsequently wrote an egregiously weak set of rules for natural gas extraction, including fracking. The commission structure essentially usurps executive branch functions and violates the separation of powers provision of the North Carolina constitution. The legislature has also given itself the authority to make a majority of appointments to the Coal Ash Management Commission and the Oil and Gas Commission.

4 Protecting Pamlico Wetlands.

SELC has served notice of our intent to sue to overturn the U.S. Army Corps of Engineers’ approval of the conversion of 251 acres of wetland forest in Pamlico County to agriculture. The Corps exempted the projects from Clean Water Act requirements because a previous owner had illegally ditched and drained the area.

Roughly 4,000 additional acres of wetlands, part of the larger “Atlas Tract,” are also in jeopardy because the same company owns them. The wetlands are critical to maintaining water quality, preventing flooding, providing wildlife habitat, and protecting surrounding fish nursery areas and fisheries in eastern North Carolina.

SOUTH CAROLINA

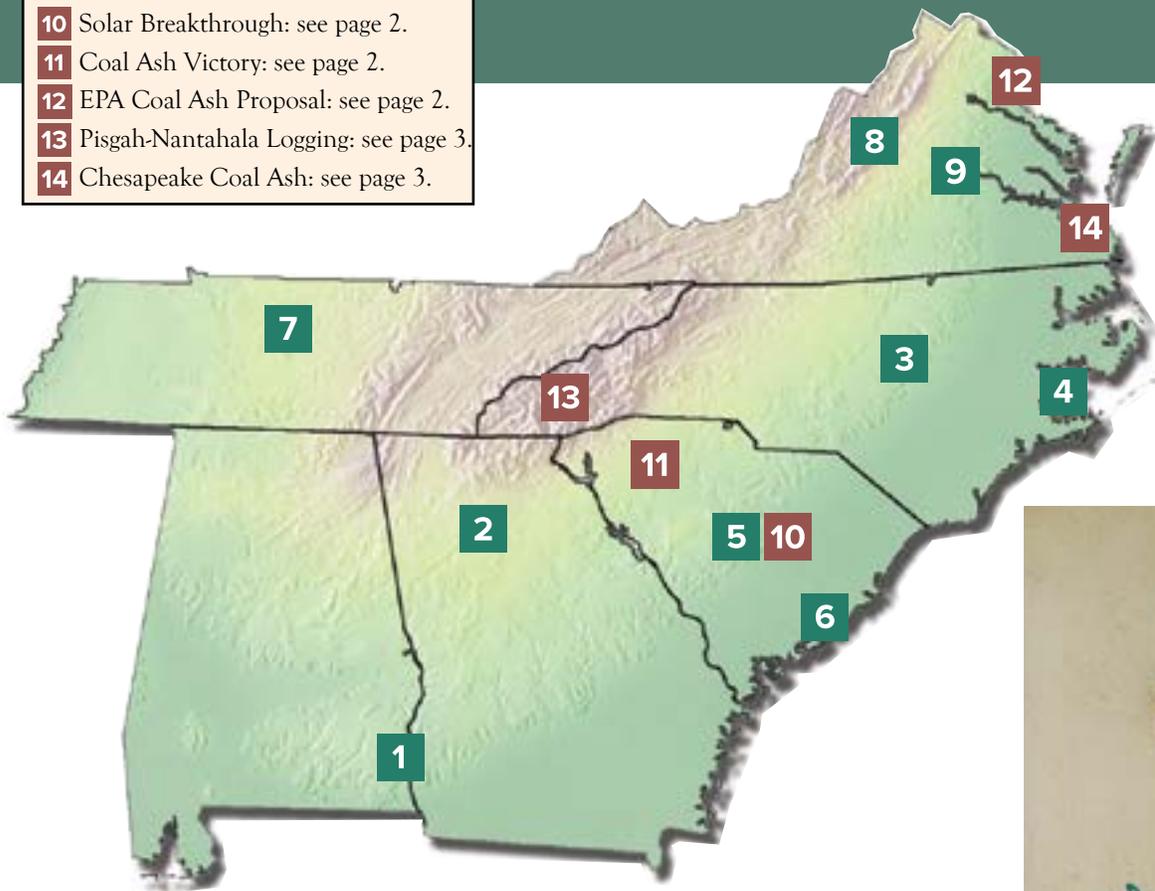
5 SELC Files Suit to Protect the Saluda.

The Saluda River is a popular recreation spot near Columbia, S.C. Unfortunately, this designated scenic river is also the site of many years of unlawful sewage discharges from the Carolina Water Service’s private sewage plant. The I-20 facility was designated as “temporary” in the late 1990s. Well over a decade later, however, it continues to release foaming wastewater into the river, and has failed to connect to a more modern regional treatment system, as it’s been required to do since 1999.

SELC has now filed suit in federal court to stop these ongoing violations. Although state officials have periodically sent warning letters to the company, the agency has not followed through with enforcement. The facility has exceeded its permit limits—including those for fecal coliform bacteria and biochemical oxygen demand—at least 23 times in the past five years.



- 10** Solar Breakthrough: see page 2.
- 11** Coal Ash Victory: see page 2.
- 12** EPA Coal Ash Proposal: see page 2.
- 13** Pisgah-Nantahala Logging: see page 3.
- 14** Chesapeake Coal Ash: see page 3.



Valley Battlefield Foundation and other groups, SELC suggested the state place the replacement span at the site of an existing bridge, a solution that meets transportation, historic preservation, and conservation goals.

6 Charleston Harbor Deepening. On behalf of the Coastal Conservation League, SELC recently negotiated a settlement agreement with the South Carolina State Ports Authority that will increase protection of the Cooper River and its watershed and offset the impacts of deepening Charleston Harbor. The Ports Authority has agreed to establish a \$5 million fund through the Lowcountry Open Land Trust for purchasing conservation tracts to help improve water quality and ensure the preservation of freshwater wetlands. The Ports Authority and the Army Corps of Engineers have proposed increasing the depth of Charleston Harbor to 52 feet, and these mitigation measures will help prevent unacceptable losses of freshwater marshes and habitat for important recreational and commercial fish species.

TENNESSEE

7 State Follows SELC Lead on Gallatin Coal Ash. Less than two months after SELC sent notice of its intent to sue to clean up coal ash pollu-

tion at TVA's Gallatin Fossil Plant on the banks of the Cumberland River near Nashville, state authorities have announced their own suit to address the problem. Six coal ash ponds hold an estimated 2.9 billion gallons of coal combustion waste at the site. SELC's action on behalf of the Tennessee Clean Water Network and the Tennessee Scenic Rivers Association prompted the state's action, and we will remain engaged until a binding commitment to clean up the site is secured.

VIRGINIA

8 Protection for Cedar Creek Battlefield. The Virginia Department of Transportation has agreed with SELC and decided to alter the location of a proposed replacement bridge on Route 11 in the Shenandoah Valley to preserve portions of a major Civil War battlefield. The state's original plan would have paved over core battlefield land and run through an area listed on the National Register of Historic Places. Along with the Shenandoah



9 Advocating Energy Efficiency. Building on past efforts to promote energy efficiency, SELC is working with a robust group of stakeholders to evaluate the ways in which energy efficiency provides benefits to all customers, especially as a low-cost way to meet the state's carbon-reduction targets under EPA's proposed Clean Power Plan. In addition, the two largest utilities in the state, Dominion Virginia Power and Appalachian Power Company, are currently seeking approval for new energy efficiency plans in front of the State Corporation Commission, and SELC formally intervened in the proceedings to ensure that the programs are well designed. For the past seven years, our presence in more than 85 state utility commission proceedings across our region has pushed our largest utilities to roll out the Southeast's first large-scale energy efficiency programs.

Protecting the Shenandoah Valley

by SELC Senior Attorney Sarah Francisco

Five years ago, when the first shale gas well in Virginia was proposed near the George Washington National Forest, SELC engaged many partners to launch a vigorous, multiyear campaign to protect the forest—1.1 million acres of exceptionally wild and beautiful public land—from the damages of gas drilling and fracking.

But just as important, we wanted to speak forcefully to the ways people would be affected. Over a million people use the GW every year, and all around it are farms, private forestlands, rural communities, and towns in the Shenandoah Valley and surrounding mountains. We can list potential harms of drilling in the forest under the categories of drinking water, agriculture, outdoor recreation, and tourism, but that doesn't touch the heart of the matter:

opening the door to drilling in the GW was a threat to an entire way of life.

Of course there have been changes in the Valley over time, but its essential character and farming roots have remained the same for hundreds of years. I grew up on one of those farms, and I still live in the Valley today. I felt a special responsibility to convey exactly what was at stake to agency decision makers, especially faraway officials.

The Voices of the Valley

In 2010 we at SELC were among the first to hear about a proposed Marcellus Shale gas well in Rockingham County,

near but not within the GW. We quickly pointed out that the Forest Service's new management plan for the GW would determine whether to open the forest itself to drilling and, along with the Shenandoah Valley Network and other partners, made this a key issue. I could hardly go anywhere—the library, the grocery store, dinner with friends—without people asking me what was going on.

It was critical to keep the focus on the special character of our region dur-



ing the decision-making process. We arranged field trips to the GW for public officials and media to see firsthand the rugged landscape and surrounding countryside and look out over national forest lands that provide local public drinking water.

Our partners organized field trips to West Virginia and Pennsylvania to better understand fracking. Once people saw the well pads and access roads, the invasion of trucks, noise, and chemical-laden waste, it was obvious that that kind of heavy industrialization didn't belong in the GW.

When folks shared these experiences, it made a deep impression on the community. Our neighbors and local officials immediately grasped that the impacts of drilling couldn't be confined to the forest's borders; it would change our communities in profound ways.

A big part of our job was simply making sure all those voices were heard. One example came in the summer of 2013. Along with members of the Shenandoah Valley Network, we took one of our many journeys to Washington, D.C., to meet with the Forest Service and other officials. With us were two local farmers. Their clear and powerful perspective helped give life to the concerns voiced by so many along the way.

The Forest Service Listens

In the end, the Forest Service responded by deciding not to open any new lands in the GW to gas drilling and fracking. Eleven local governments and more than 75,000 people were ultimately heard, as were many other elected officials and water suppliers from the state and region. We are grateful the agency took a stand not only for the forest but for all those people, too.

SELC Senior Attorney Sarah Francisco is a native of Augusta County, Virginia, and heads our National Forests and Parks program.

Reed Writing Award Winners Look at Inequality and Politics

A community's struggle for environmental justice in Alabama and the money and politics driving current energy policy in North Carolina are the subjects covered by this year's winners of SELC's Reed Environmental Writing Award.

Ellen Griffith Spears, a member of the American Studies faculty at the University of Alabama, won the Reed Award in the book category for *Baptized in PCBs: Race, Pollution, and Justice in an All-American Town*. Focusing on the legal fight against Monsanto over the dumping of PCBs in a historically African-American and white working-class section of Anniston, Alabama, her book sheds light on the broader issue of environmental inequality.

The reporting staff of Environment and Energy Publishing won this year's Reed

Award in the journalism category for *Turning Carolina Red: Reports from the Front of an Energy Culture War*. The series looks at how North Carolina's current political majority and its financial backers have changed environmental and energy policy in the state—from the pullback in enforcement revealed by Duke Energy's coal ash spill to the push by lawmakers to open the state to fracking.

SELC presented the awards during the Virginia Festival of the Book at an event featuring Bland Simpson, a noted writer and musician who received the 2005 North Carolina Award for Fine Arts, the state's highest civilian honor. Author of several books of fiction and nonfiction, Simpson is also a member of the Tony Award-winning string band the Red Clay Ramblers.

For more than 20 years, SELC's Phillip D. Reed Environmental Writing Award has recognized authors and journalists who use the power of the pen to capture the South's natural wonders and to raise our awareness of the forces that would destroy them. Educating and engaging the public is central to the award's mission and to SELC's goal of safeguarding the South's environment.



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SELC's Nashville Team Now Four Attorneys Strong

SELC's Nashville office has doubled its roster of accomplished attorneys with the addition of Beth Alexander and Amanda Garcia. Beth comes to SELC as a Senior Attorney with extensive experience in litigation and a strong background in water issues. Amanda brings a focus on energy issues and will be leading our Tennessee work on solar and energy efficiency as a Staff Attorney.





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EPA's Coal Ash Proposal Is a Step Forward But with Glaring Flaws

Six years after the disastrous coal ash spill in Kingston, Tennessee, dumped more than a billion gallons of toxic waste into the Emory and Clinch Rivers, EPA released its proposed new federal regulations for oversight of coal ash. The rule establishes some badly needed minimum requirements, but the results were disappointing.

- The agency declined to classify coal ash as a hazardous waste; in terms of storage and containment, legacy coal ash lagoons will continue to be held to standards weaker than those now applied to municipal garbage.
- Although EPA's rule sets minimum standards for the monitoring of old pits and the construction of new ones, it requires no federal oversight and enforcement, leaving any meaningful government action

in the hands of state environmental agencies—a continuation of the current situation that has proven so ineffective in the Southeast for the past 50 years.

- Finally, EPA failed to require cleanup of existing and outdated coal ash lagoons, which continue to pollute most major waterways across the Southeast.

The federal government's sidestepping of responsibility underlines the importance of SELC's ongoing enforcement actions at coal ash sites throughout the Southeast—undertaken in partnership with local groups and with the support of local communities. This strong combination of legal action and public pressure has forced otherwise passive state agencies to act—and has led to commitments to clean up 33.8 million tons of ash, and counting.