



# SOUTHERN ENVIRONMENTAL LAW CENTER



# POWER OF THE LAW QUARTERLY

Summer 2016

## SELC Celebrates Back-to-Back Wins Protecting Our Coast

This spring, SELC's coastal team tallied two major victories within a week of each other. First, cement producer Titan America ended its determined efforts to build a massive new plant north of Wilmington, North Carolina. Then, only five days later, the Department of the Interior announced it would not open up the Southeastern coast to offshore oil and gas drilling. In both cases, SELC played a critical role connecting concerned community members to key decision makers while implementing the legal strategy on behalf of a broad coalition of partners.

### Titan Falls

Eight years ago was the first public mention of Titan America's plan to increase capacity and production at its cement plant near the Northeast Cape Fear River. When the project came up at the county commissioner's meeting, it was presented as an all-but-done deal. Concerned, area residents started researching and quickly realized just how devastating the associated air pollution and watershed impacts would be. As the Stop Titan coalition began to organize, it turned to SELC for legal expertise. Soon our attorneys were leading the push for a complete environmental review of the project, and then challenging the state's weak air permits. Locals held rallies, gathered signatures, and testified at public hearings. Our coordinated opposition went on, year after year.

SELC's latest legal challenge to Titan's air permit was days from being heard in court when the company announced, on March 10, that it was dropping plans for the new plant.

With the threat of the cement plant now gone, the community has turned its attention to revising the local special use permit, which gives the county a voice when it comes to industrial development. The revision process has sparked a constructive dialogue about what residents want for the region's future—and how to create that vision.

### Drilling Dropped

Coastal residents and visitors up and down the Southeast seaboard were facing the possibility of new offshore oil and gas drilling under a draft five-year leasing plan released in early 2015. The governors of Georgia, South Carolina, North Carolina, and Virginia were backing the plan with industry support. But the threat of drilling off the coast galvanized residents who recognized the dangers it posed to the area's economy and environment. SELC sprang into action to build and present to the federal government a strong case, including persuasive scientific and economic data. We used our communications expertise to rally supporters and to connect citizens to their representatives at the local and federal levels. Businesses, trade associations, and local officials joined the opposition effort. More than 100 anti-drilling resolutions were passed by municipalities up and down the coast.

On March 15, the call came: Virginia, North Carolina, South Carolina, and Georgia had all been excluded. Sums up SELC founder and executive director Rick Middleton, "By working together to give voice to the beaches and coastline we all love, SELC and its many partners practically achieved the impossible."

“Our community is celebrating—I’ve never seen anything like it! Clearly without Geoff Gisler and SELC, we might well have had a different outcome. Thank you a thousand times.”  
—Kemp Burdette, Cape Fear Riverkeeper

# REGIONAL HIGHLIGHTS

## Landmark Settlement To Protect Tennessee's Harpeth River

After a sometimes bitter two-year legal battle, SELC and the City of Franklin announced a settlement

this May over discharges from a sewage treatment plant into the Harpeth River. Acting on behalf of the Harpeth

River Watershed Association, we are pleased to have secured new protections for the river—a drinking water source for many in Middle Tennessee—as well as a new monitoring plan to collect regular data on the discharges in place.

What's more, the settlement includes plans for a comprehensive study looking at the entire Harpeth River watershed. It's the first study of its kind in Tennessee and will assess the health of, and risks to, the river and its tributaries. Going forward, this landmark undertaking will provide shared information to all of us concerned about restoring and maintaining the river's quality for years to come.



TOM THOMPSON  
HARPETH WATERSHED ASSOCIATION

## Green Diamond Deal Drowned

This spring, the U.S. Supreme Court declined to hear an appeal claiming developers lost millions because floodplain restrictions thwarted a speculative land deal along South Carolina's Congaree River. The Supreme Court's decision was the final nail in the coffin for a project SELC has opposed for more than 15 years. During that time, we played a lead role to ensure that any development near the river takes into account the area's serious and ongoing flood hazards—made abundantly clear

during massive flooding in the fall of 2015 (pictured below).

Columbia Venture LLC had proposed to construct a “city within a city” (Green Diamond) in the river's floodplain. As envisioned, the development would have placed thousands of people in an area that has experienced repeated and violent flooding. Through successful legal action, SELC attorneys rebuffed attempts to weaken flood hazard mapping on the site. After the development plan came

to a halt, the company sued Richland County for millions of taxpayer dollars, arguing that the floodplain restrictions amounted to a government “take” of their land. The U.S. Supreme Court's rejection finally puts this to rest.



CONGAREE RIVERKEEPER

## SELC Helps to Shed Daylight on Transportation Project Selection

Given the push-pull of growing transportation needs and tight budgets, states often face the tough task of choosing which road and transportation projects to fund. Too often, this selection process takes place outside the public eye—heavily influenced by political pressure.

SELC supports more open, objective, and data-driven processes to evaluate transportation projects based on a set of consistent criteria. We are also working to get environmental factors high on the list and to give fair consideration to alternatives beyond building new roads.

In recent years, the states of North Carolina and Virginia have adopted project prioritization, and SELC is continuing to improve these processes as they are implemented. These models provide helpful examples as we encourage other states to become more transparent in their use of taxpayer dollars for massive investments that can have an enormous impact on our environment.

## Alabama Discontinues Development of Tar Sands Regulations

The Alabama Oil and Gas Board has halted three years of attempts to develop regulations for tar sand development in the state—and that’s a good thing.

MS Industries, based in Northwest Alabama’s Wolf Springs, has acquired thousands of acres with plans to develop tar sands by surface mining the sandstone then extracting the bitumen, a compound used to make tar, asphalt, and other oil-based products. The mining and extraction process throws off an alarming amount of carbon.

The company could not move ahead until the Alabama Oil and Gas Board drafted regulations for extracting and processing tar sands. The anticipated mining plans

set off intense public opposition from residents and grassroots organizations over potential harm to the air, water, and landscape of the area, as well as to the local agricultural economy. SELC, working with local partner groups, submitted multiple sets of written arguments and testified in proceedings before the Alabama Department of Environmental Management for various permits the company has sought. While plans to develop these mining standards



are stalled for now, thanks in part to rising local opposition and waning industry interest, an upward shift in those prices is likely to renew pressure to issue state guidelines. SELC will be prepared if and when the possibility of tar sands mining arises again.

## Helping Communities in Virginia and Georgia Confront Fracking



SELC is helping communities understand their options as the fracking industry looks to claim new territory in our region. Portions of eastern Virginia and northwest Georgia sit on top of shale formations that are drawing attention from extraction companies. With recent advances in fracking technology, deposits that were previously viewed as inaccessible are now potentially viable.

A Houston-based company has

obtained oil and gas rights to lands in eastern Virginia overlying the Taylorsville Basin, mere miles from the Chesapeake Bay and its tributaries. Working at the state and local level, we have been a strong advocate for state oversight and public access to fracking information, while also affirming that Virginia’s local governments have the authority to determine if and where gas drilling and fracking are allowed. Now SELC is helping with review of local

ordinances and zoning plans.

In Georgia, companies are just beginning to show interest in gas leasing. Faced with more questions than answers, local residents and officials have turned to SELC for information on the latest in fracking policies, technology, and impacts. By sharing our expertise we are empowering citizens to shape their energy future and protect their communities.

### SELC’s Coal Ash Campaign Marches Forward

Looking beyond North Carolina (p. 8), SELC’s hard-working coal ash team is:

- Preparing for its first coal ash trial in Virginia in June
- Continuing federal and state litigation in Tennessee
- Fighting attempts in South Carolina to restrict citizen rights to enforce state anti-pollution laws
- Exploring potential problems in Georgia and Alabama.

# Launching SELC's 30th Anniversary Celebration

## Reflections on SELC's Past, Present, and Future by SELC Founder and Executive Director

It was exactly 30 years ago last month that we opened the Southern Environmental Law Center's first office. We had two employees: yours truly and my first secretary, Gloria Elder, whose previous job was head secretary at the Supreme Court of the United States. We knew we were off

to a great start! From those humble but promising beginnings, SELC is now a regional powerhouse with nine offices and 130 employees—including 68 of the most talented legal advocates in the country. I could not be more proud of what we—including our supporters and friends—have built together.

Here's my story. I'm from Birmingham. I went to the University of Virginia and then to Yale Law School where I graduated in 1971. There was a lot going on at that time: the tail end of the Civil Rights Movement, protests over the Vietnam War—and passage of our country's first environmental laws such as the Endangered Species Act and Clean Air Act.

So I became one of the first environmental lawyers in the United States. I moved back home to Alabama and began working for the state. My first assignment was to enforce the new Clean Air Act against U.S. Steel, the largest polluter in Birmingham. My second case was against the Tennessee Valley Authority, the largest polluter in the country. Those were important tests for the new environmental laws, and we prevailed, leading to a massive cleanup of air pollution in Alabama and throughout the Southeast. I saw firsthand the absolute necessity and power of the law for environmental protection.

I then went to Washington, D.C., to work for a national organization. I learned a lot about government agencies and the roles they played. I learned about different groups and what they did—and did not do—well. I learned about Congress and how policy was created. It was a great experience, but also eye-opening. I became frustrated by the lack of interest in, or concern about, the southern U.S. The national groups didn't know and love our extraordinary resources, and, quite frankly, had written our region off.

But I cared—a lot. That's what gave me the determination to start the Southern Environmental Law Center. I believed then—and I believe now—that an organization that's grounded in place is vitally important. You have to be involved in the communities where you live. You have to understand the people, the land, the culture, and the politics if

### Celebrating 30 Years of SELC Results

- Unanimous ruling from the U.S. Supreme Court that led to widespread cleanup of the oldest, dirtiest power plants
- Commitments to retire one-third of the capacity of the South's coal-burning plants—and a 30% drop in carbon dioxide
- One to three gigawatts of new solar power—toward a goal of seven gigawatts by 2017
- Commercial logging permanently off-limits in 700,000+ acres of roadless area throughout the Southern Appalachians
- Virginia, North Carolina, South Carolina, and Georgia excluded from offshore drilling
- 53 million tons of coal ash to be removed from the South's riverbanks—with more to come
- Widespread clearcutting in our region's national forests eliminated
- Dozens of destructive and wasteful highway projects stopped
- Millions of acres of high-quality southern wetlands protected
- A stronger environmental community through SELC partnerships with hundreds of national, regional, state, and local groups



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Passionate and effective people working together to achieve a bold vision—there are many of these success stories over our 30 years. We are collecting and sharing a “My SELC Story” series as part of our 30th Anniversary celebration.

## Director Rick Middleton

you're going to be effective. It's a powerful recipe, the blending of law and place. And look what it's accomplished. SELC has played a central role in every major issue from the mountains to the coast.

I'm often asked whether I envisioned the SELC of today, and I readily confess it is beyond my wildest imaginings. Thanks to our loyal, generous supporters, SELC is now able to defend an entire region and to help shape its future. If you want an example, consider our clean energy work.

Thirty years ago, my wife Chita and I went to hear a lecture at UVA about the greenhouse gas effect. Evidence was beginning to come in, and people were beginning to talk, but more as intellectual food for thought. We were all focused on cleaning up the basics like smog and acid rain.

Contrast that with today: we devote 40% of SELC's resources to addressing climate change. We are leading efforts to reduce the South's outsized carbon emissions from smokestacks and tailpipes, and to embrace cleaner alternative energy sources. SELC is helping to achieve game-changing results, like a 30% drop in carbon dioxide from coal-fired power plants since 2005.

As we turn to the next chapter, we are thinking a lot about the future—about the next 30 years and the environment our children and our grandchildren will inherit.

The fact is, we can't totally predict what's coming. We can start planning for it, but you don't really know. We are moving forward, though, with confidence that we have created a special organization that is strong, smart, and flexible enough to take on whatever big issues emerge in a thoughtful, strategic, results-oriented way. So there's one thing I know when I look in the crystal ball: with your partnership, SELC will be there, championing this region that we love—and getting great results—30 years from today.

*Rick Middleton*



## Moving into the next 30 years of protecting the South's air, water, and special places

If you want to celebrate the high-leverage protection work being done today and ensure SELC's strong advocacy going forward, here are some ways you can help:

- Pledge your annual support for 2016 and 2017,
- Make an extra gift in honor of SELC's 30th Anniversary,
- Tell your friends about SELC and invite them to learn more,
- Put the Southern Environmental Law Center in your will or make other planned giving arrangements during our two-year 30th Anniversary celebration,
- Introduce us to someone else who would be interested in supporting SELC's protection work.



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# WHAT'S HAPPENING IN YOUR STATE?



BETH YOUNG

## ALABAMA

### 1 Spared from sewage.

Inadequately treated outflow from aging municipal sewage treatment systems is a pervasive threat to water quality in Alabama. Under pressure from SELC and others, the Alabama Department of Environmental Management pulled back a draft permit that would have allowed the Pell City wastewater treatment plant to release dramatically higher levels of *E. coli* into Logan Martin Lake, which is a popular recreation spot. The lake sits on Alabama's Coosa River, one of the most biologically diverse rivers in the country, which added to public outcry over the plan.

## GEORGIA

### 2 MARTA expansion moves forward.

Thanks to legislation SELC strongly supported in the 2016 Georgia General Assembly, City of Atlanta residents have the opportunity to vote on an additional half-cent sales tax to fund the largest expansion of MARTA service in decades. If approved, it could provide as much as \$2.5 billion in transit funding for the city alone. Under pressure from anti-transit constituents, lawmakers removed Fulton and DeKalb Counties from the original bill, and Fulton County is instead pursuing a

five-year sales tax for transportation projects more generally. SELC is coordinating outreach to mayors in Fulton County, encouraging them to use this tax for maintenance and other transportation improvements rather than construction of more roads, and to look to the City of Atlanta's example for a future long-term investment in transit.

### 3 Site protections codified.

Apprehensions around a developer's plans for a 700-acre industrial site in St. Marys prompted SELC to push for protections for the quaint coastal town. To defend St. Marys' historic and ecological value from the manufacturing and barge facilities contemplated, SELC and partners developed special conditions for the property that limit building heights, barge traffic, and offshore fossil fuel exploration. The special conditions also protect a wood stork rookery and wetlands located on the property. Against considerable public opposition, the City Council approved the rezoning, but also adopted all but a few of our conditions.

## NORTH CAROLINA

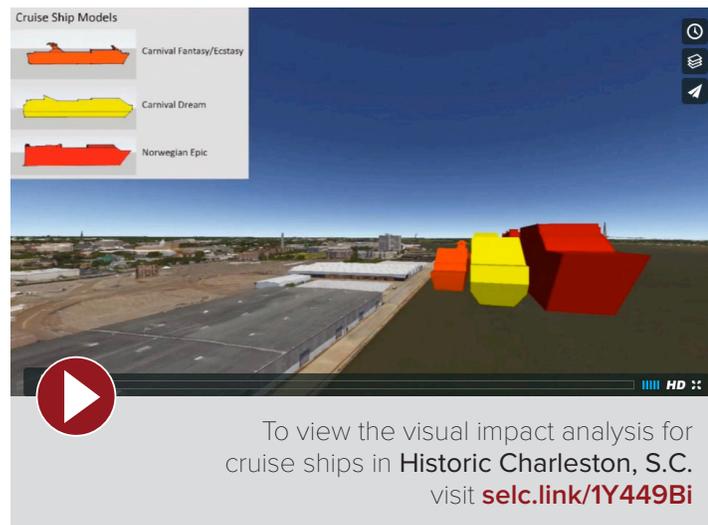
### 4 Open records case advances.

State agencies in North Carolina have persistently hindered SELC's access to public records with illegal delays, unreasonable charges, and outright failure to provide documents. As one example, we were required to wait for over two years to get material requested from the governor's office. In collaboration with a wide array of North Carolina news media outlets that have encountered similar obstructions, SELC is engaged in a lawsuit to ensure public access to government documents. Recently the judge ruled in our favor and refused a state motion to dismiss the case, so our litigation can proceed.

## SOUTH CAROLINA

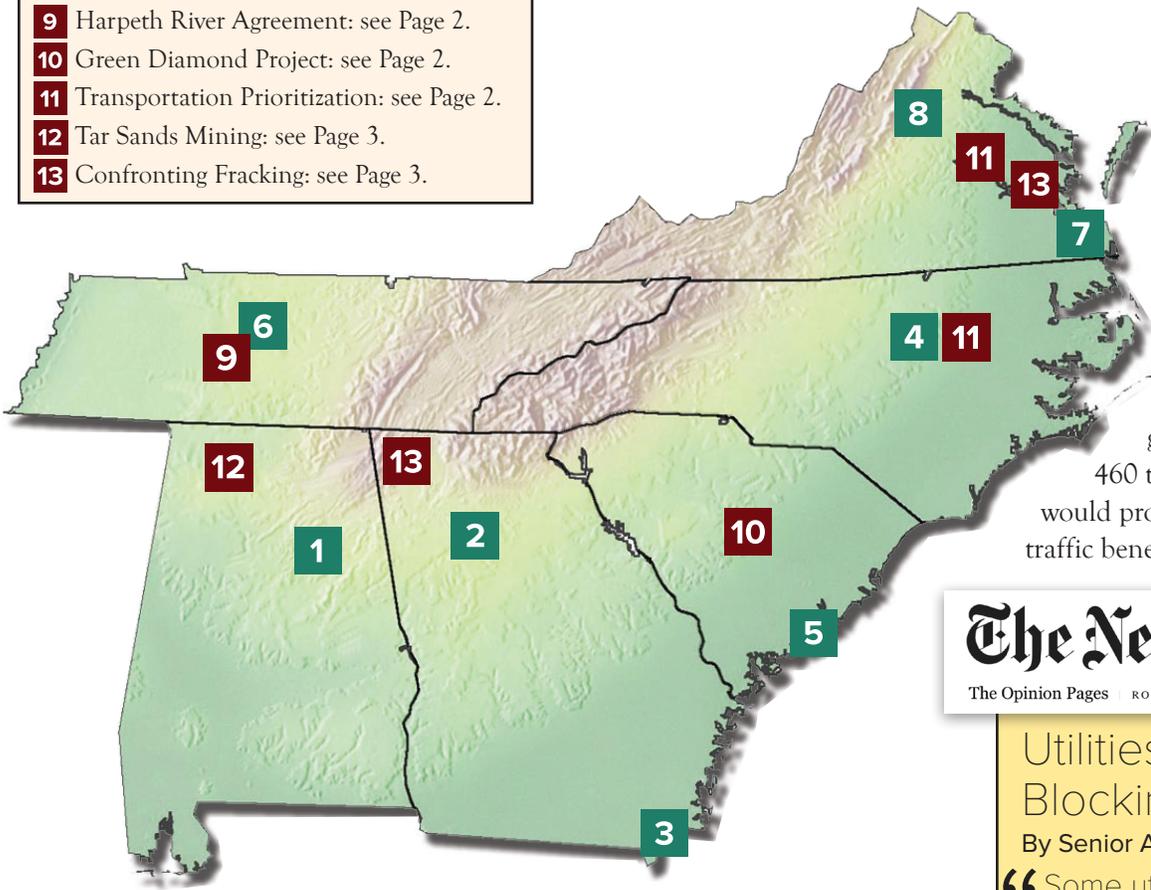
### 5 Cruise case continues.

Local citizens continue to look to SELC to defend Charleston's historic downtown from expanded cruise ship operations and the traffic and pollution they generate. With a federal court victory, we tossed out a slapdash permit the U.S. Army Corps of Engineers issued for a \$35 million cruise ship terminal on the downtown waterfront. The Corps is now evaluating a revised plan, and we are making certain it considers



To view the visual impact analysis for cruise ships in Historic Charleston, S.C. visit [selc.link/1Y449Bi](http://selc.link/1Y449Bi)

- 9** Harpeth River Agreement: see Page 2.
- 10** Green Diamond Project: see Page 2.
- 11** Transportation Prioritization: see Page 2.
- 12** Tar Sands Mining: see Page 3.
- 13** Confronting Fracking: see Page 3.



proposal that would still result in considerable harm to wetlands and other resources. We are vigorously advocating the far less damaging and less costly alternative of upgrading the existing Route 460 to current standards, which would produce significant safety and traffic benefits.

options to maintain balance such as alternative locations, limits on the size and number of ships, and access to onshore power to avoid the need to idle soot-belching engines.

#### TENNESSEE

**6 Stormwater protections needed.** At a time when surging development has increased the problem of polluted runoff from roofs, pavement, and other built surfaces, SELC is objecting to efforts by special interest groups to press the state’s environmental agency to scale back the requirements of a general permit governing stormwater discharges from small municipalities. We also opposed legislation pushed this year by a homebuilders group that would severely weaken the state’s permitting program for limiting polluted runoff and burden localities seeking to implement the controls.

#### VIRGINIA

**7 Scaling down overbuilt roads.** SELC led a successful long-term battle against a plan to build a new 55-mile highway parallel to the lightly traveled Route 460 in rural Tidewater Virginia. The proposed route would have caused the greatest loss of wetlands by a single project in Virginia since passage of the Clean Water Act in 1972. The state has since introduced a scaled-down, 16-mile



## The New York Times

The Opinion Pages ROOM for DEBATE

### Utilities Must Stop Blocking Solar Growth

By Senior Attorney Katie Ottenweller

“Some utilities take advantage of outdated laws to prevent solar companies from offering customers options to lower or eliminate upfront costs of installing solar panels.”



Read the entire op-ed at [SouthernEnvironment.org](http://SouthernEnvironment.org).

**8 Balancing history, development.** SELC helped shape and then successfully championed a set of zoning changes for Charlottesville’s West Main Street that strike an effective balance between protecting the character of a historic downtown corridor and promoting its redevelopment. The revised standards will result in a more compatible and consistent scale for new buildings, ensuring that they do not overshadow the area’s distinctive identity. This is an important goal in many historic and rapidly growing cities throughout the Southeast.

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### Things Stay Really Weird in the Battle over North Carolina's Coal Ash

The North Carolina Department of Environmental Quality issued its safety rankings of Duke Energy's coal ash sites on May 18. DEQ gave all the sites a "high" or "intermediate" ranking. This was a big win for our side, as it would require the utility to clean up all of those ranked sites—including seven sites Duke has not yet agreed to excavate.

"But it was like *Alice Through the Looking Glass*," says SELC's coal ash team leader Frank Holleman. At the same time the agency handed down its rankings that all the sites are toxic and harmful, it requested the option to downgrade those rankings in 18 months—after the upcoming election.

Immediately, Duke Energy began intensive lobbying in the legislature. On May 31, the state General Assembly approved a bail-out bill that gives

Duke Energy two more years to "study" its coal ash problem before taking action.

On a different front, SELC attorneys have taken the depositions of North Carolina government officials to

shed light on this public health issue.

In early 2015, North Carolina's Department of Health and Human Services (DHHS) sent letters to more than 200 families living near coal ash sites stating that they should not drink their well water due to the levels of hexavalent chromium and vanadium.

This past March, without warning, DHHS rescinded that recommendation and told the well owners they could drink their water—even though neither the level of contamination nor the health screening levels had changed. In a deposition led by SELC, the state epidemiologist testified that she objected to this about-face in the agency's recommendation and that it was not consistent with the agency's mission to protect public health.



For the latest updates, check out our website, [SouthernEnvironment.org](http://SouthernEnvironment.org).