



Southern
Environmental
Law Center

BRENT MCGUIRT

ADVOCACY in ACTION

Quarterly Highlights from the Southern Environmental Law Center • Winter 2014

Forest Service Protects George Washington National Forest from Gas Drilling and Fracking

After years of hard work, SELC's forest team reached a major milestone in mid-November when the U.S. Forest Service announced its long-anticipated management plan for the George Washington National Forest. The forest is now off-limits to gas drilling of any kind—including “fracking”—except for a small portion subject to preexisting private gas rights.

The decision will protect the vast majority of this 1.1-million-acre national forest, which is essential for water supplies, recreation, and fish and wildlife habitat, and is central to the quality of life in Virginia's Shenandoah Valley and surrounding mountains.

Uniting Local Voices to Preserve A Special Place

The Forest Service's plan reflects the clear, unified voices of the local communities, local governments, Virginia's governor and U.S. senators, other officials around the region, many conservation groups, and tens of thousands of individuals—more than 75,000 comments urged the agency to preserve the essential nature of the forest.

Much was at stake. The George Washington contributes to \$13.6 billion in consumer spending and 138,000 jobs created by outdoor recreation in Virginia. Its rivers and streams are a source of local drinking water for more than 329,000 people and ultimately flow to the water supply of some 4.5 million others downstream.

In addition to the forest itself, the decision will help protect the adjacent farms and rural communities from the industrial impacts of gas drilling. Farming is Virginia's largest industry, and the GW region accounts for more than two-thirds of its value.

SELC and our partners at the Shenandoah Valley Network had a critical role in highlighting these local concerns and persistently keeping the focus on the importance of protecting this special forest during the years that the Forest Service deliberated.

Confusion Follows Announcement

Ironically, headlines in several media outlets led to confusion immediately following the plan's release. But as SELC legal and policy experts began reviewing the details during the predawn hours, it became clear the decision would keep the George Washington as free from industrial gas drilling as possible.

The agency took a different approach than many had anticipated. Three years ago, when the Forest Service released a draft of the plan, it proposed banning horizontal drilling, which effectively would have prevented shale gas drilling and high-volume hydraulic fracturing or “fracking.” When the gas industry protested the ban on a specific drilling method, the agency agreed to reconsider its proposal, leaving many concerned.

In the end, however, the Forest Service focused on the more fundamental question of whether to open the GW lands it controls to gas development. The answer was no.

There has never been any gas drilling in the George Washington National Forest. SELC is proud to be part of such a large, unified group of organizations and individuals committed to the character of this forest and the surrounding Shenandoah Valley. Thank you to the supporters, friends, conservation organizations, and community groups we work with who made this possible.



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REGIONAL HIGHLIGHTS

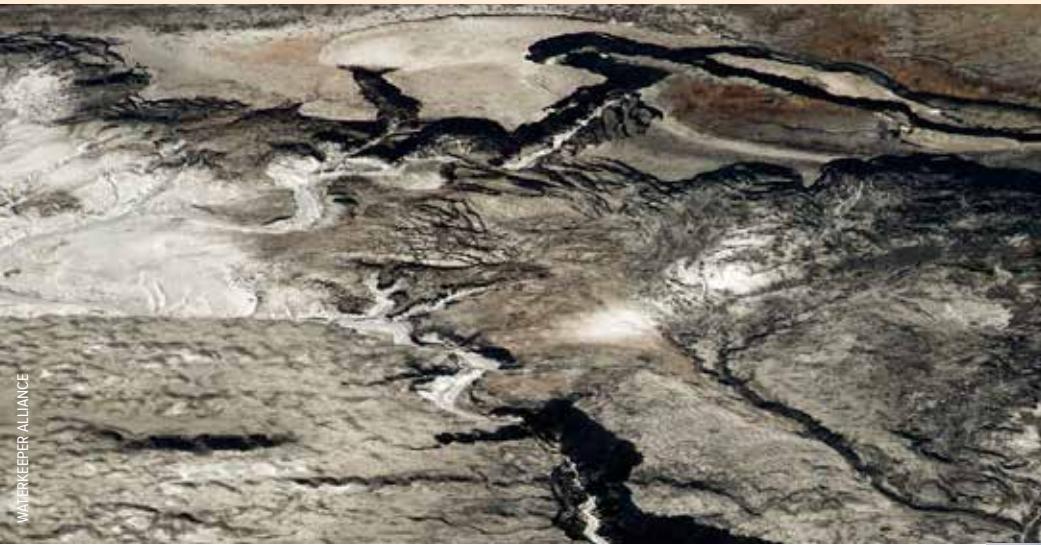
Landmark Coal Ash Agreement in South Carolina

Duke Energy's W. S. Lee Steam Station has been burning coal since 1951. In April 2015 the company plans to cease operating all coal-fired units at the site and convert the one remaining unit to natural gas. Now, after pressure from SELC and our clients Upstate Forever and Save Our Saluda, Duke has agreed to start cleaning up the facility's toxic coal ash, moving it from two lagoons on the banks of the Saluda River into dry, lined storage away from the waterway. The commitment means that, thanks to action by

SELC, all three major South Carolina utilities are at last beginning to clean up their coal ash pollution. Duke is also formulating a plan to address the remaining three impoundments at Lee, and we will remain engaged until a full cleanup is in place.

SELC's work also prompted the state of South Carolina to demand that Duke address serious concerns with the safety of the dams at Lee, substandard structures that hold back more than 1 million tons of ash from the Saluda.

WATERKEEPER ALLIANCE



Closing the Nationwide Permit 13 Loophole

Bulkheads and seawalls are meant to prevent erosion, but their impact on the coast can be devastating. Ironically, these hard structures can accelerate erosion in adjacent areas. And over time they eliminate coastal salt marsh—along with the natural storm buffer and pollution filter it provides. There is serious cause for concern going forward: as landowners increasingly turn to bank stabilization in the face of sea level rise, this will have unintended negative consequences for coastal businesses, recreation, and tourism.

The U.S. Corps of Engineers is only exacerbating the situation. The Corps is effectively rubber stamping

these projects—some as massive as 500 feet long—by authorizing them under a lax general permit process meant to ease through projects with “minimal individual and cumulative adverse effects.” By 2017, an estimated 17,500 structures will have been authorized under this Nationwide Permit 13 loophole.

SELC is taking on this widespread abuse of the law in federal court, seeking to subject these potentially damaging projects to a thorough review under the Clean Water Act.

Coal Ash Initiative Moves to Tennessee

As part of our continuing commitment to clean up the South's coal ash, SELC has taken action to remedy serious violations at TVA's Gallatin Fossil Plant on the Cumberland River near Nashville. Gallatin burns more than 12,000 tons of coal each day, and since the 1950s TVA has operated four coal-fired units there. Six coal ash ponds now cover more than 480 total acres, holding an estimated 2.9 billion gallons of coal waste. According to TVA's own records, contaminants such as cobalt, boron, beryllium, arsenic, and mercury continue to pollute the groundwater beneath the site, which is surrounded on three sides by water. Illegal seepage from the ponds also flows directly into the Cumberland, an important source of drinking water for residents of Nashville. Complicating matters further is a network of crevices and sinkholes beneath the lagoons, making them vulnerable to leakage. SELC has notified TVA of its intent to sue on behalf of the Tennessee Scenic Rivers Association to ensure a cleanup.



Giving the Harpeth a Chance to Heal

The Harpeth River southwest of Nashville suffers from high levels of nutrient pollution, which can lead to oxygen-starved conditions in which fish and other aquatic life can't survive. To give the Harpeth a chance to restore itself, SELC took legal action against three sewage treatment plants that had not complied with their discharge permits, including occasional releases of excess pollutants and spills of untreated sewage.

After action on behalf of the Harpeth River Watershed Association, we reached a settlement with two of the wastewater treatment facilities whereby, in part, they will develop a pollution management plan and expand water quality monitoring of the river. The terms of the settlement address both future permit compliance and environmentally beneficial projects related to the identified violations.

But the city of Franklin has taken a different approach. Its treatment plant, the single largest source of wastewater



pollution on the upper Harpeth, discharges up to 12 million gallons a day. In summer, when natural river flow is lowest and recreational use is highest, the Franklin discharge can account for a significant portion of the

river volume just downstream, highlighting one reason strict compliance with all operational and discharge limits is important. SELC's legal team is proceeding with litigation to address these ongoing problems.

SELC Helps Citizens Weigh In on Poultry Plant on the Cape Fear River

SELC is assisting local citizens concerned about a high-volume chicken processing facility proposed for the Fayetteville area near the banks of the Cape Fear River. In the face of strong public opposition, local officials have now put consideration of the project on indefinite hold.

As planned, the Sanderson Farms plant would process more than a million chickens per week and generate more than a million gallons of wastewater every day. After only minimal treatment, this wastewater would then be sprayed directly on surrounding fields, exposing the Cape Fear to increased nutrient pollution and associated algal blooms. Moreover, hundreds of new poultry farms would likely spring up to supply the processing plant—further

contributing to the area's overall pollution levels. The Cape Fear watershed is home to more than 20 percent of North Carolinians and is also one of the most

concentrated poultry- and swine-production regions in the country.

For more on SELC's water protection work in North Carolina, see back cover.



JUDI HEUmann

RON SHERMAN

WHAT'S HAPPENING IN YOUR STATE?

ALABAMA

See Inside Story, page 6.

GEORGIA

1 Iconic Cypress Wetlands

Restored. A landowner is restoring more than 700 acres of Georgia's iconic cypress wetlands and coastal salt marsh on the Buffalo River following an agreement with SELC and its partners the Satilla and Altamaha Riverkeepers. The restoration represents a complete reversal at the site, which the owner began to carve up with illegal roads and ditches in 2005, falsely claiming they were for forestry activities. Thanks to our intervention, however, the impact of these roads is nearly gone. This fall



6,000 cypress trees will be planted on the site, which will then be placed under a conservation easement.

2 DuPont Mining Plans on Hold.

After SELC filed comments and weighed in at public hearings, DuPont has withdrawn its application

for a surface mining permit in Wayne County. The company has its eyes on deposits of titanium dioxide, zircon, and other heavy metals found in a line of ancient sand dunes and has leased more than 4,000 acres around the county.

As originally planned, however, the mine could siphon away the groundwater feeding local wells, destroy up to 194 acres of wetlands, create pollution, and put scores of heavy dump trucks on local roads. SELC's collaboration with local partners such as the Altamaha and Satilla Riverkeepers and Greenlaw was a key to raising grassroots awareness about the project.

NORTH CAROLINA

3 Preserving Air-Monitoring Capacity.

SELC is pushing back against a North Carolina plan to keep citizens and regulators in the dark about air pollution. In August the Division of Air Quality proposed shutting down a total of 14 air monitors, the majority of which measure ozone and fine-particle pollution especially harmful to human health. Many of the stations sit near major population centers with historically poor air quality, and closing them is likely against federal regulations. Earlier this year we helped defeat a bill that would have removed over half the air monitors in the state. With more-stringent regulations for fine particles already in place, and new standards for ozone on the way, North Carolina should be expanding, not reducing, its air-monitoring capabilities.

4 Agreement Protects Red Wolves.

A settlement between SELC and the North Carolina Wildlife Resources Commission will protect the endangered red wolf from the ravages of nighttime hunting of coyotes in the Red Wolf Recovery Area. Because coyotes look remarkably like red wolves, coyote hunting has led to serious losses in a

population numbering only around 100 animals. The red wolf, once common throughout the Southeast, was driven to near complete disappearance by the mid-20th century and declared



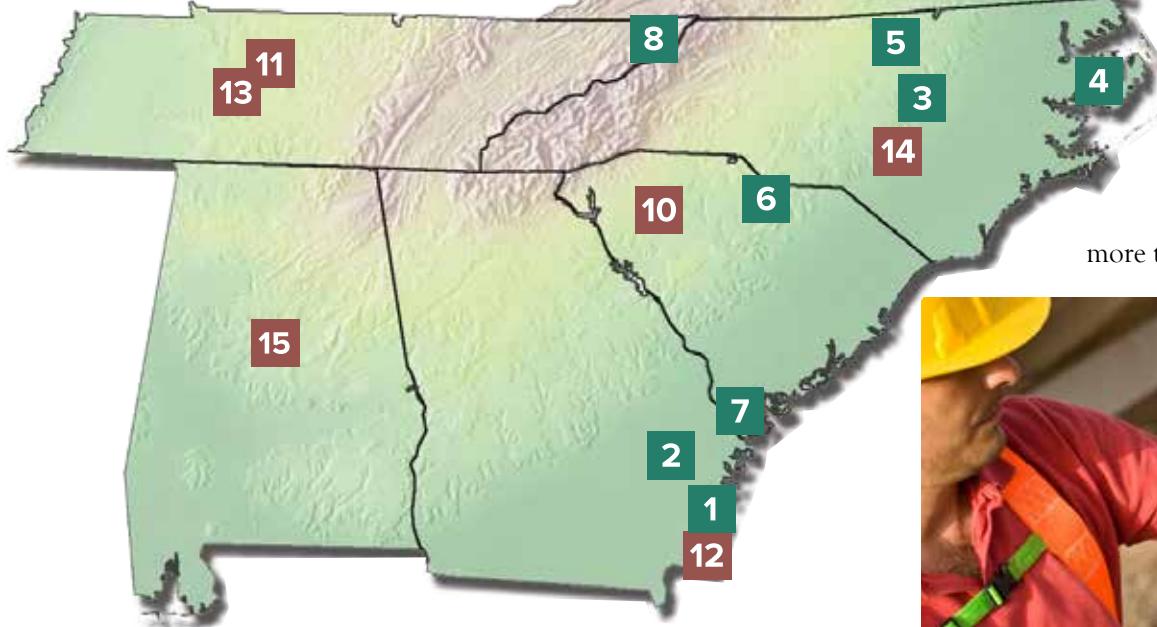
DERB CARTER

extinct in the wild in 1980, but the species began a slow but successful recovery in the wild after reintroduction in 1987. Over the years, SELC attorneys have helped defend the red wolf from a variety of threats. The recent agreement is the first step to making permanent an important provision of a preliminary injunction SELC previously won in court.

5 Coal Ash UPDATE.

SELC has been granted the right to intervene in the state's coal ash enforcement actions at the Roxboro and Mayo Steam Stations on behalf of the Roanoke River Basin Association. The ruling means SELC is now representing citizen groups in all pending coal ash enforcement actions across the state, giving citizens the same rights as Duke Energy and the North Carolina Department of Environment and Natural Resources. The coal ash dams at both Roxboro and Mayo are high hazard dams according to the state; Duke stores 6.9 million tons of coal ash at the Mayo plant and 16.4 million tons

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at Roxboro. DENR brought statewide enforcement actions against the utility in response to our notices of intent to sue Duke Energy for Clean Water Act violations.

SOUTH CAROLINA

6 Settlement Curbs Gold Mine

Impacts. SELC has reached a legally binding agreement to compensate for the threats posed by the reopening of the Haile Gold Mine in Lancaster County. Under the terms of the agreement Haile will contribute 368 acres and an additional \$4 million to fund land acquisition to protect the health of the Lynches River watershed. SELC's intervention also prompted the company to alter its original proposal to reduce wetland impacts by 25 percent and increase its financial commitment to compensate for stream and wetland damage by more than 50 percent. The settlement also provides for ongoing notification of important developments at the mine and preserves the right to legal redress for any unforeseen impacts or future violations.

7 Riverport Develop-

ment. On a 5,000-acre tract bordering the Savannah National Wildlife Refuge in South Carolina, a developer has proposed building a new port-related facility, one of the largest logistics and industrial projects in the Southeast.

SELC is weighing options for defending valuable wetlands and critical wildlife habitat threatened by this project, which could also lead to a significant increase in sprawl in the area.

TENNESSEE

8 50 Years of Saving Wild

Places. This year marks the 50th anniversary of the Wilderness Act, which SELC has used to save some of the wildest places in the Southern Appalachians. Wilderness designation requires an act of Congress and affords the strongest protection possible for federal lands. Working with allies on Capitol Hill, SELC has secured wilderness designations for 53,500 acres and national scenic area status for

10,000 acres in Virginia. Today we're working with the Tennessee Wild coalition to add nearly 20,000 acres to wilderness areas in the Cherokee National Forest. These would be the first additions to congressionally protected wilderness in Tennessee in more than a quarter-century.



VIRGINIA

9 Shaping Virginia's Energy Fu-

ture. SELC holds a position on Governor McAuliffe's Climate Change and Resiliency Update Commission, which allows us to play a lead role in determining how Virginia will reach its allotted carbon-reduction target under EPA's proposed Clean Power Plan. We spearheaded development of an economic analysis of EPA's carbon standards and found that meeting them will actually lower electricity bills in the state due to reduced consumption and add nearly 3,000 efficiency-related jobs. The McAuliffe administration included this analysis in the 2014 Virginia Energy Plan, which we supported with an op-ed in the *Richmond Times-Dispatch*.

THE INSIDE STORY

Southern Exposure Films Highlight Alabama's Riches, Threats

Alabama has a stunning array of natural resources: Southern Appalachian forests, world-class rivers, ancient cypress swamps, white sandy beaches—varied habitats that harbor globally significant biodiversity, offer myriad recreational opportunities, support jobs, and provide economic benefits.

The *Southern Exposure* film fellowship program brings college- and graduate-level filmmakers from across the country to Alabama so they can come to appreciate what this state has to offer and to investigate its problems and threats. The result is a series of short films with fresh, authentic stories about the state's environment and the people who depend on it.

The six 2014 *Southern Exposure* films were screened in Birmingham, Mobile, Fairhope, Fort Payne, Tuscaloosa, and Huntsville. They, along with the films from 2013, are now available for online viewing at SouthernEnvironment.org/SouthernExposure.

Alabama is one of the most water-rich states in America—yet it has remained the only southeastern state without a comprehensive management plan. *In Deep Water* documents the beginnings of a water-planning process in Alabama. Filmmaker Zoe Gieringer talks to Gil Rogers, leader of SELC's Clean Water Program, and takes us down the Coosa River to show how unregulated water withdrawal, unwise development, and agricultural demands put stress on this precious resource.

Hurricane Creek Waterkeeper John Wathen is the hero of Kristine Stolakis's *The Accidental Environmentalist*, which tells a poignant tale of how contact with toxic chemicals



transformed him into an environmental crusader. While dedicating himself to the vigilant care of Hurricane Creek, Wathen adds, "Every river I cross between here and California is mine too."

SELC is engaged in the potential mining of tar sands in northwest Alabama, an issue Chris Jones explores in *Paradise or Profit*. MS Industries has purchased more than 2,000 acres in preparation for strip mining to extract oil from the state's sandstone and limestone formations.

Johanna Obenda's *In Our Nature* explores the magic that can happen when we spend time outdoors. The film documents how Camp McDowell, a nonprofit in Nauvoo, gives children knowledge they might not have otherwise. To the campers, it's as much adventure as it is education: "You get to explore places, experience new places, and conquer fears."

Our overburdened water treatment infrastructure—in Alabama and across the South—is also an important focus of SELC's work. In *Down the Drain*, Carlos Estrada looks at troubling sewage problems in Uniontown, showing what's at stake when people face critical environmental problems. "Instead of building a community," says one resident, "it's really tearing one down."

Mindy Keely's *Invasive in Alabama* explores the legacy of nonnative species and their impacts on Alabama's agriculture, environment, and economy. Using feral hogs as an example, this film shows how invasive species tend to take over the habitats they occupy. The United States spends 120 billion dollars annually battling invasive species.

SOUTHERN EXPOSURE

Envisioning a Vibrant City, Building a Strong Organization: Rick Montague Applauded for Leadership

Rick Montague, one of SELC's most devoted friends, has received our 2014 James S. Dockery Jr. Environmental Leadership Award. Rick has played a pivotal role in making the Southern Environmental Law Center the regional powerhouse it is today. An SELC trustee for the past 25 years, he chaired SELC's Board of Trustees from 1994 to 2004, working side by side with founder Rick Middleton to guide our organization through two transformative strategic planning processes—and the subsequent expansion and implementation of these action plans. All of us on SELC's staff and board cherish and respect Rick Montague for his environmental passion, integrity, strategic vision, and ability to think boldly—and convince others to do likewise.

Rick Montague is also renowned for his profound impact on his hometown of Chattanooga, Tennessee—once known as the dirtiest city in America, but now a model of civic engagement, sustainability, and intentional linkage between urban design and the natural environment. As president of the Lyndhurst Foundation, Rick helped envision and realize a dramatic reinvention of Chattanooga's downtown in the mid-1970s and '80s—the subject of a PBS documentary tribute viewable online at SouthernEnvironment.org/montague.

"I think we're about the sense that man is one piece in a landscape, a part of the landscape, with a stake in its wholeness and its complexity."

—Rick Montague, accepting his award



Montague and Middleton



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SELC Undertakes Water Quality Enforcement in North Carolina

As part of our campaign to protect and improve water quality in North Carolina, SELC has negotiated an agreement with the city of Burlington to repair its aging wastewater treatment infrastructure. Following three spills totaling more than 3.5 million gallons of raw sewage in January 2014, Burlington delayed reporting the spills to the public for several days, with the acquiescence of state regulators. Our notice of intent to sue on behalf of Haw River Assembly and Cape Fear River Watch prompted the talks leading to the settlement. Now Burlington has committed to more aggressive system maintenance, prompt spill notification, and a total of eight priority infrastructure projects valued at more than \$11 million.

The state's inaction in Burlington is only the latest in a disturbing pattern among those entrusted with

protecting our health and natural resources. There have been three years of severe budget cuts, layoffs, and downsizing at the state's Department of Environment and Natural Resources, where \$2 million in funding and 70 positions have been cut from water protection efforts alone. The state also recently rejected a half-million-dollar grant from EPA for water monitoring. And the results are revealing: a 53 percent reduction in annual enforcement actions and a 67 percent reduction in annual fines for discharge violations between 2009 and 2014, with no evident decline in pollution.

In response, the Southern Environmental Law Center is stepping up to serve the essential roles of oversight and enforcement. Visit SouthernEnvironment.org for highlights of our current water protection cases and projects.

