



## SOUTHERN ENVIRONMENTAL LAW CENTER

# POWER OF THE LAW QUARTERLY

Fall 2017

### SELC Defends the Clean Water Act

The Trump administration has unleashed an unprecedented assault on the Clean Water Act, proposing to severely restrict the scope of the law and remove protections from millions of acres of wetlands and nearly 2 million miles of headwater streams. Nowhere is the threat greater than in the South. Southern states are not only water-rich, but also home to some of the weakest and most poorly funded water quality programs in the nation, making our region especially vulnerable to the loss of federal clean water protections.

The Southern Environmental Law Center has launched an initiative to ensure that the plan being pursued by President Trump and his EPA chief, Scott Pruitt, does not succeed. SELC has been a national clean water leader for over 30 years, with a special and deep expertise in wetlands. We were centrally involved in shaping and defending the 2015 Clean Water Rule, which the Pruitt-led EPA now seeks to dismantle and ultimately replace with a “Trump Rule” that would severely limit federal safeguards.

The Obama administration EPA adopted the Clean Water Rule to clear up longstanding confusion over which bodies of water are protected by the Clean Water Act. The confusion grew out of a 2006 U.S. Supreme Court ruling that offered dueling interpretations of what specific waterways constitute the “waters of the United States.” Uncertainty reigned for more than a decade.

Finalized in 2015 after a multi-year process involving more than a million public comments, the Clean Water Rule clarified the scope of the Clean Water Act. It recognizes that

protecting the nation’s mainstream waters from degradation requires protecting upstream waters and wetlands. Built upon a substantial scientific record, the Rule sets guidelines and clear standards for determining which upstream waters have a “significant nexus” with waters downstream.

On June 27, the Trump administration initiated a two-step plan to repeal and replace the Clean Water Rule. Its aim is a sweeping reduction of the protective reach of the Clean Water Act itself. By excluding headwaters, intermittently flowing streams, and wetlands without a continuous surface connection to rivers and lakes, it would eliminate safeguards for more than 50 percent of streams in the lower 48 states—almost 2 million miles of streams—and could end protections for most of the 110 million acres of wetlands in the continental United States.

This retreat would be particularly harmful in the South, which hosts a large array of biologically diverse, relatively isolated wetlands, and which depends on mountain headwater streams as the ultimate source of drinking water for up to 20 million people. Without the Clean Water Rule’s protections, factories, developers, mining operations, sewage treatment plants, and other polluters would be allowed to dump toxic wastewater directly into small streams and wetlands, and in some cases destroy the streams and wetlands entirely, with no consideration of downstream effects.

SELC is determined to prevent the loss of our federal clean water safeguards. We are fully committed both to defending the Clean Water Rule and to enforcing Clean Water Act protections in our six states.

The South is not only water-rich, but also home to some of the weakest and most underfunded state water quality programs in the nation, making our region especially vulnerable to the loss of federal clean water protections.

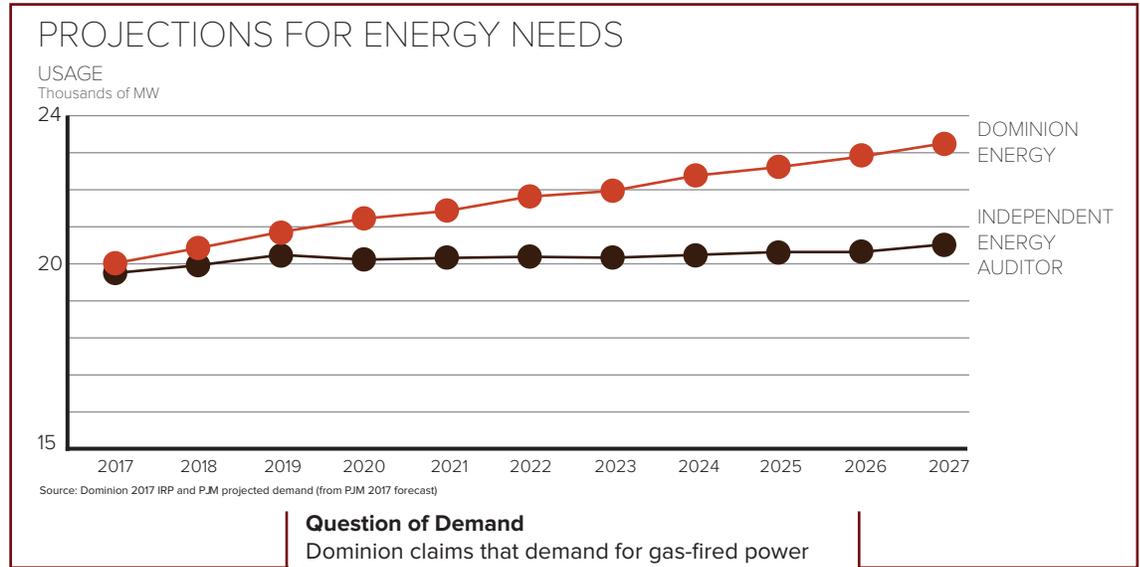
(Continued on Page 5)



## Opposing the Atlantic Coast Pipeline

Independent studies show conclusively that the Atlantic Coast Pipeline is unnecessary. Demand for new gas-fired power plants is flat, and the current infrastructure will meet existing demand through at least 2030.

Gouging a 600-mile path across some of the most beautiful sections of Virginia and North Carolina, the \$5 billion pipeline would harm national forests, rivers and streams, historic resources, and lands covered by conservation easements. It would also lock our region into decades of fossil fuel consumption, and it faces vehement opposition from local citizens and communities.



### Question of Demand

Dominion claims that demand for gas-fired power plants is on the rise, but the operator of the electrical grid for Virginia and 14 other states says otherwise.

So why are Dominion and Duke Energy so determined to build the ACP?

Money. The Federal Energy Regulatory Commission guarantees pipeline developers a 15 percent return on their investment and permits them to pass costs on to utility customers. In Virginia alone, Dominion and Duke will saddle customers with as much as \$2.3 billion in costs.

SELC is battling the ACP on multiple fronts. Currently and in the

coming months our attorneys are preparing for possible legal challenges to four separate permits the project needs to move forward: 1) a permit certifying the ACP is a “public necessity,” from the Federal Energy Regulatory Commission; 2) a special use permit from the U.S. Forest Service allowing the pipeline to pass through national forest lands; and 3 & 4) water quality certifications from the state environmental agencies of Virginia and North Carolina.

To see the stories told by the people who will be affected by the pipeline, visit [InthePath.org](http://InthePath.org)



## Enforcing & Defending Federal Coal Ash Protections

It was a summer of firsts for SELC’s “Coal Ash Warriors.” In addition to the landmark Gallatin ruling (see page 8), we filed the first two citizen enforcement suits brought under the new federal coal ash rule, established thanks in part to SELC’s advocacy.

Initiated by EPA after TVA’s disastrous Kingston spill in 2008, the coal ash protections came into effect in 2015, replacing a patchwork of ineffective state regulations. The standards

outline how utilities must safely dispose of coal ash waste and require them to share closure plans for coal ash dumps. The citizen suit provision, which we endorsed in congressional hearings, allows individuals or advocacy groups to enforce the law.

SELC’s groundbreaking suits challenge Duke Energy’s “cap-in-place” closure plan for leaking lagoons at two plants in the Dan and Roanoke River Basins. Rather than removing and

safely storing the waste, Duke wants to merely drain and cover the lagoons, allowing toxics to contaminate local waters indefinitely.

But just as we have begun to enforce the coal ash rule, the Trump administration’s EPA has granted a petition from Duke, TVA, and other polluters to reconsider provisions of this important federal protection. SELC’s attorneys are preparing for a vigorous defense of the rule as we enforce it.

# REGIONAL HIGHLIGHTS

## Championing Energy Equity in the Sunny South

**R**ecognizing the South's enormous contribution to global climate change, SELC set a goal in 2015 of increasing the solar capacity of our six states from the less than one gigawatt then installed to seven gigawatts by 2018. That's roughly equivalent to the generating capacity of four coal-fired power plants—without the carbon pollution and the coal ash waste.

With our goal in sight, it's clear that the success of our campaign is built not only on growing the South's solar capacity, but also on making sure that the benefits of clean energy are available to every household in our region. To that end, SELC has been working vigorously in state legislatures, before public service commissions, and with local governments and utilities, advocating for programs that advance "solar for all."

In Nashville, from our seat on the Mayor's Livable Nashville Committee, SELC advocacy led the local utility to develop a two-megawatt community solar project, which will enable renters, apartment dwellers, and families of all incomes to benefit from the cost savings of renewable energy. Georgia and South Carolina utilities are also responding, rolling out customer- and community-scale solar programs. In Virginia, the legislature passed a solar bill we supported that requires utilities to consider how to make solar power available to low- and middle-income families. Through these and many other efforts, SELC is tapping the vast potential of solar in the Southeast.

## DOE Concedes: Renewables Make the Grid Stronger

**W**hen U.S. Energy Secretary Rick Perry ordered a Department of Energy study intended to buttress his claim that renewable energy undermines the reliability of the electric grid, SELC wrote a letter to the Secretary to set the record straight.

On behalf of 20 clean air and energy groups, we urged the DOE to conduct a transparent scientific analysis of renewables and the grid, allow public participation in the study, and consider the benefits of our nation's bountiful clean energy resources.

We also provided the facts: solar and wind power, energy efficiency, energy storage, and advanced grid technologies are making the U.S. energy system cleaner and more resilient. Local, renewable energy sources actually increase the reliability of the grid and are less vulnerable than centralized power plants. Clean energy also strengthens the economy; in our six-state region, there are now more than 20,000 people working in the solar industry.

And the facts prevailed. The DOE report released in late August debunked Secretary Perry, finding that the U.S. electric system is eminently capable of making the transition to renewable energy.

Though political appointees tried to skew the results, making false claims to prop up the coal industry, the truth is, the transition to clean, homegrown energy is well underway.

## IS YOUR CONCERN FOR THE ENVIRONMENT AT AN ALL-TIME HIGH—ALONG WITH YOUR PORTFOLIO?

Consider giving appreciated stock to the Southern Environmental Law Center to help fund our law and policy advocacy.

To transfer stock to SELC, contact Sandy von Thelen at Scott and Stringfellow, (800) 868-7726 or [svonthelen@bbtscottstringfellow.com](mailto:svonthelen@bbtscottstringfellow.com). SELC's DTC number is 0702. SELC's account number is 77126014.

Thank you for making SELC's work possible through your generosity.



## A HEALTHY ENVIRONMENT FOR ALL



SELC believes that everyone in the Southeast deserves to breathe clean air, drink clean water, and live in a healthy environment.

Learn more at [SouthernEnvironment.org/healthyenvironment](http://SouthernEnvironment.org/healthyenvironment)

## Cover Story, Continued

Over the summer, our defense focused on formal objections to the repeal of the Clean Water Rule. In addition to submitting voluminous scientific information showing that repeal would cripple the Clean Water Act's capacity to protect the waters of the U.S., we also worked closely with our partners across the South to ensure the broadest possible public participation in the rulemaking process and to get our concerns on the record.

On behalf of several national organizations, SELC attorneys are preparing to challenge the repeal of the Clean Water Rule in court. If the administration moves to replace the rule with a Trump Rule, as proposed, we will fight that as well, challenging in court any new regulation that illegally restricts the scope of the Clean Water Act or weakens federal clean water protections. We

expect that the issue will ultimately be decided by the U.S. Supreme Court.

Meanwhile, SELC is serving the critical role of on-the-ground enforcer. Victories such as the recent TVA Gallatin ruling, in which the nation's largest public utility was ordered to remove all its toxic coal ash from storage pits on the Cumberland River, demonstrate the environmental and civic value of the Clean Water Act. Other cases will highlight what could be lost if the Act is interpreted too narrowly, and will champion the vital resources the Clean Water Rule was designed to protect.

We stand at a critical moment for the waters of the nation and the Southeast. Join SELC in ensuring that the Trump/Pruitt repeal-and-replace plan not be allowed to succeed.

## Enforcing the Clean Water Act to Protect Southern Waterways

Forty-five years ago, Congress recognized that small streams and wetlands need the protection of the Clean Water Act. SELC's recent work demonstrates that strong federal safeguards are still essential today, and we are vigorously enforcing them in our six states. Whether we use the law to compel the clean-up of abandoned mines leaking chemicals into nearby streams, to force utilities to protect drinking water supplies from toxic coal ash, or to save wetlands from unnecessary highways, the Clean Water Act is an essential tool for protecting the water-rich South.

Any weakening of our region's capacity to protect rivers and streams from wastewater laden with toxins and pathogens presents an especially serious hazard. Persistent pollution from aging and inadequate wastewater systems is endemic in the South, and enforcing federal protections is the surest way to guard local communities from heedless polluters.

In South Carolina, for example, SELC won a Clean Water Act lawsuit in March that will force the operator of a private sewage treatment plant—Carolina Water Service Inc.—to halt excessive and poorly treated discharges that have contaminated the Lower Saluda River, one of the area's popular fishing and swimming destinations.

SELC is now in federal court in Alabama to protect a similarly popular destination for tubing, fishing, and swimming. For decades, the city of Oxford's sewage treatment plant has pumped excessive nutrients, E. coli bacteria, and foul-smelling sewage into Choccolocco Creek, a tributary of the Coosa River. High levels of chlorine and unpermitted discharges of formaldehyde are also a problem. In June, the court acknowledged the gravity of our complaint and rejected a motion by the city's water board to dismiss the case, thereby allowing it to proceed with our claims intact. Just since April, six swimmer alerts for E. coli have been issued for an area a mile downstream from the plant.

If the Trump administration succeeds in dismantling the Clean Water Act, many cases such as these would have no remedy. Under the fully empowered Clean Water Act, industrial facilities must have permits to discharge treated wastewater into protected headwater streams. In the South, there are thousands of facilities on headwater streams, many of which discharge more than one million gallons of wastewater a day. Under the "Trump Rule," they would not be required to seek permits or meet basic clean water standards, leaving polluters free to degrade our public waters with impunity.

# WHAT'S HAPPENING IN YOUR STATE?

## ALABAMA

### Scientific analysis aids coal mine remediation

The drainage of toxic runoff from abandoned coal mines is an ongoing threat to Alabama's Black Warrior River Basin. SELC has brought multiple cases to protect the basin's rivers and streams, and last September, on behalf of Black Warrior Riverkeeper, we filed a federal lawsuit to stop the discharge of acidic runoff from the Maxine Mine, which has been polluting the Locust Fork for years. In August, the court granted SELC's request for full access to the site, allowing a team of scientists to conduct a comprehensive inspection. Using electro-magnetic imaging and electrical resistance tomography, geophysicists produced "x-rays" of subsurface geology. The images confirmed both the pathway of contaminated groundwater and the concentration of pollutants leaking into the Locust Fork. The use of this technology at abandoned mine sites in Alabama is new and will help build a scientific basis for fully remediating the legacy of acid drainage in the Black Warrior River Basin.



## NORTH CAROLINA

### Saving old-growth forest

In the wake of the drought-fueled fires in the Nantahala National Forest last fall, the U.S. Forest Service proposed to log several tracts where trees had survived with only minor damage. After surveying the site with a forest ecologist, SELC determined that the accelerated timber sale threatened to cut down rare stands of old growth, including trees more than 200 years old. Moreover, the tracts are near Wayah Bald and Trimont Ridge, an area known for expansive views and

long-distance backpacking trails. SELC succeeded in putting the brakes on the project and secured an agreement from the Forest Service to spare 25 acres of prime old-growth forest and to add new acreage to an old-growth stand that was already protected. In addition, the agency agreed to restore mountain slopes damaged by abandoned and eroding logging roads, a source of muddy runoff in nearby mountain streams.



## GEORGIA

### Preserving Cumberland Island

The commissioners of Camden County, who had proposed to rezone 1,000 acres of private property within the Cumberland Island National

Seashore, voted in June to grant the National Park Service additional time to explore alternative options—a pause SELC strongly favors. Property owners

asked the commissioners to change the island's zoning to permit more residential development, which could allow hundreds of houses to be built within one of the Southeast's most beloved natural treasures. The Park Service is trying to balance private property concerns with its mission to preserve the island's wild character. Although SELC does not want to see any new structures built, we are exploring options that would strictly limit the number of new residences. We commend the commissioners for recognizing the Park Service's important role in the future of Cumberland Island and look forward to continuing the conversation with all parties in the interest of preserving this iconic seaside wilderness within our national park system.

## Protecting the coast from erosion barriers

Since 2011, when the North Carolina state legislature lifted a ban on using hardened structures to control beach erosion, SELC has fought multiple proposals to build terminal groins on North Carolina's barrier islands. Terminal groins—rock walls built across the beach and into the ocean—disrupt the natural movement of sand, trapping it in one place, increasing erosion elsewhere, and ultimately destroying the habitats of shorebirds, sea birds, and sea turtles. The latest proposal, a terminal groin on Ocean Isle Beach, is no different, and SELC is challenging in federal court the U.S. Army Corps of Engineers' approval of the project. The terminal groin would be especially devastating to the undeveloped, unspoiled refuge on the island's east end, which has long been a haven for boaters and beachcombers as well as wildlife. Federal law requires the Corps to choose the least destructive alternative; by approving the terminal groin it chose the most destructive and most costly.

# TENNESSEE

## SELC clean air case inspires citizen action

In Middle Tennessee, SELC is helping communities protect themselves from the health hazards of natural gas compressor stations. Placed along pipelines to accelerate flow, compressor stations release nitrogen oxide, volatile organic compounds, and other harmful pollutants. On behalf of Concerned Citizens for a Safe Environment, we challenged an air pollution permit for a compressor station sited in a rural corner of the city, dramatically reducing harmful emissions. Encouraged by the results of their collective action, and undaunted by hurdles placed in their way by state and federal regulators, CCSE continues to grow its membership and the scope of its community-driven clean air advocacy. With our support, the group is working to ensure that air pollution regulators in Tennessee represent the public interest, not thwart it in favor of the industries they oversee.

# SOUTH CAROLINA

## New life for a heritage park

With help from SELC and the Georgetown Law Center, a Charleston neighborhood has recovered a cherished park. Established by the City in 1981 with a grant from the Land and Water Conservation Fund, DeReef Park was named for two brothers who were African American leaders in 19th century Charleston and provided long-awaited public space for a neighborhood at the center of Charleston's civil rights movement. On its borders are numerous sites of historic significance, including a Reconstruction-era African American church and a motel favored by Martin Luther King. DeReef was supposed to be parkland forever, but the City swapped it with a developer a decade after it was founded. The recent settlement sorted out the land deal, returning a large portion of the original park and adding adjacent parcels to offset the acreage lost. The park's historic praise house will also be restored, creating a place of commemoration for the neighborhood and its remarkable history.

# VIRGINIA

## A transportation victory

An announcement in late June that Virginia transportation officials had scrapped plans to build 12 miles of costly, unnecessary bypasses in the rural Route 460 corridor brought to a close SELC's 12-year effort to halt a proposal that, in its original form, would have harmed thousands of acres of forests and farms and destroyed more wetlands than any highway permitted in Virginia since the Clean Water Act was adopted in 1972. Instead, the Virginia

Department of Transportation will pursue upgrades to the existing Route 460—precisely the approach SELC has long encouraged. VDOT finally pulled the plug on the \$450 million project when its dismal score on the state's new transportation grading system strongly demonstrated that the new bypasses did not address local transportation needs or compare favorably to other transportation projects in Virginia.

**“This type of victory represents what SELC does better than anyone. Who else could analyze the problem, propose better solutions, and then dig in and remain in the trenches for more than a dozen years to pursue such an appropriate resolution?**

**This type of work is vital to the long-term quality of life for our region.”**

— SELC Board Chairman  
Allen McCallie

# SOUTHERN ENVIRONMENTAL LAW CENTER

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## POWER OF THE LAW QUARTERLY SELC'S TRUMP DEFENSE CONTINUES

### A Victory for Clean Water in Landmark TVA Coal Ash Case

In a groundbreaking case brought by SELC, a United States District Court, for the first time, ordered a utility to remove its coal ash from polluting unlined pits to comply with the Clean Water Act. The court took action against the Tennessee Valley Authority, the nation's largest public utility, for extensive coal ash leaks at its Gallatin Fossil Plant on the Cumberland River. The decision is a wake-up call to utilities across the region that store coal ash in leaking pits on nearly every river in the Southeast.

TVA wanted merely to cover the 10+ million tons of coal ash in the unlined pits at Gallatin, from which toxics would continue to seep into local groundwater and the Cumberland River in perpetuity.

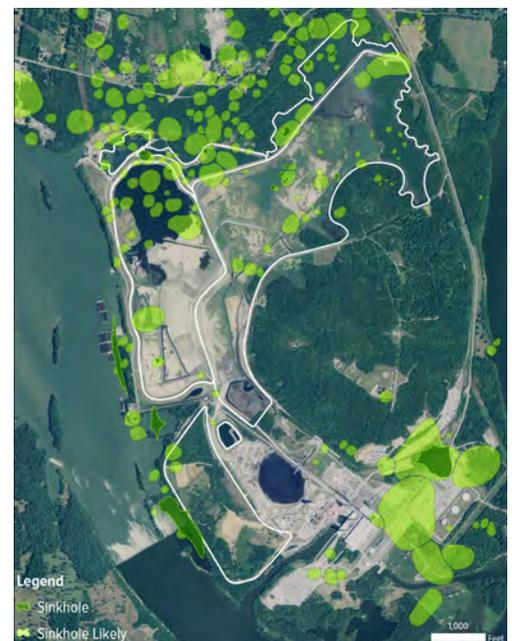
The judge said no, ruling that TVA's closure-in-place plan was like

"rolling the dice" and would result in "decade after decade of the public simply having to hope that whatever unplanned or incidental leakage that was coming from the impoundments was not enough to do them significant harm." Noting that the "untenable situation" at Gallatin had gone on for far too long, the judge ordered TVA to move the coal ash at the plant to safe, lined, dry storage, where it will no longer pose a risk to public waters.

"It is difficult to imagine why anyone would choose to build an unlined ash waste pond in karst terrain immediately adjacent to a river," he wrote. The solution "is not to cover over those decades-old mistakes, but to pull them up by their roots."

The ruling is another milestone in SELC's work to protect clean water and communities from coal ash pollution. We now have won commitments from

utilities to excavate and safely store more than 80 million tons of coal ash.



A map of TVA's coal ash storage at its Gallatin site showing sink holes (in green) beside the Cumberland River.