ADVOCACY in ACTION

Quarterly Highlights from the Southern Environmental Law Center • FALL 2014

Southern Environmental Law Center

A Major Victory for Georgia's Coast and Wetlands

In mid-July, SELC secured a major victory when a Georgia court ruled the state must enforce a 25-foot buffer zone to keep sediment and other pollutants out of all state waters. It was a triumph with far-reaching implications, reinstating important protections for both Georgia's iconic coastal marsh and millions of acres of freshwater wetlands.

Georgia is home to one-third of all the remaining salt marsh on the Eastern seaboard—378,000 acres—as well as more than 4,500,000 acres of freshwater wetlands. But after refusing to enforce the buffer for freshwater wetlands for several years, the state's Environmental Protection Division chose Earth Day this year to announce they would withdraw buffer protection from the coastal marsh as well.

SELC's defense of this critical safeguard began not on the coast but in Grady County in Southwest Georgia, where the state had ignored buffer requirements during the construction of a local reservoir. With the Earth Day announcement, our case took on even greater importance.

Defining and defending wetlands and marsh

By law all of Georgia's waters, with some specific exceptions, require a buffer to protect them from the effects of construction. To encroach on that buffer, projects must receive a variance and compensate for any negative effects.

The text of the statute also provides one way to measure the buffer. Couched in technical language, this line is really just a place on the bank where vegetation ends and water begins. In the case of freshwater wetlands, salt marsh, and some streams, however, there is no clear line on the bank where vegetation ends. Officials at EPD used this as an excuse to simply ignore the buffer on these waters altogether.

With millions of vital acres at stake, SELC stepped in with a challenge. The U.S. Army Corps of Engineers and other government agencies have defined the boundaries of wetlands and marsh using other techniques. In fact, before the Earth Day memorandum Georgia enforced a buffer on the coast with great success for years. And the law was unambiguous on one point: all state waters get a protective buffer.

> With millions of wetland acres at stake, SELC stepped in to enforce the law

The law prevails, but the work continues

After several legal twists and turns, the Georgia Court of Appeals agreed with SELC, restoring the buffer both to the coast and to freshwater wetlands, but the protection is still at risk.

The state has appealed the decision to the Georgia Supreme Court. Even more disturbing is the latest pronouncement from EPD, which has said it will simply apply its old buffer rules until the appeal is heard. In light of the state's position, SELC is working with a host of partner groups to clarify the language in the law to provide protection for our freshwater wetlands and the Georgia marsh, one of the nation's incomparable treasures.

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While State Falls Short, SELC Pushes Coal Ash Cleanup in North Carolina

Six months after a spill on the Dan River, the North Carolina General Assembly has passed its promised coal ash legislation. Unfortunately, the measure fails to protect most of the state's citizens, requiring cleanup at only 4 of 14 leaking, unlined coal ash sites. As for the other 10, the bill leaves the fate of those communities to the North Carolina Department of Environment and Natural Resources—which has failed to protect the state from coal ash and is being investigated by a grand jury—and a new commission of political appointees. The bill tries to weaken existing protections while allowing DENR to give Duke Energy amnesty for its leaking coal ash dams.


NANCY PIERCE

In contrast, SELC is pushing ahead with its own enforcement actions statewide. In early September we filed suit in federal court on behalf of several partners to force Duke Energy to clean up coal ash pits on the Cape Fear, Neuse, and Yadkin Rivers under the federal Clean Water Act. This follows previous Clean Water Act notices for sites near Charlotte, Asheville, and Wilmington, three of the sites now included in the cleanup plan. Meanwhile, our legal team has intervened in pending state-level enforcement actions for all coal ash sites throughout North Carolina.

Coal Ash Initiative Moves to Virginia

Dominion Virginia converted its Possum Point Power Station to natural gas in 2003, but the toxic ash generated by nearly 50 previous years of burning coal remains. As part of our regional coal ash cleanup campaign, SELC launched an extensive investigation and uncovered multiple problems at the site, located near the Potomac River 30 miles south of Washington, D.C.

First we found records from the Virginia Department of Environmental Quality showing that two coal ash lagoons have been polluting groundwater for at least the last 10 years in violation of their permits, but the agency took no enforcement action. Perhaps even more disturbing, DEQ records revealed the existence of three additional unpermitted and "unaccounted for" coal ash ponds covered with overgrowth and leaking contaminants directly into Quantico Creek. The utility notified DEQ about the existence of these ponds in April 2014, following a coal ash spill on the Dan River. After independently confirming the high levels of toxic chemicals in the water, we issued a 60-day notice of our intent to sue to stop the contamination.

Curbing Runaway Growth North of Charleston

With a victory in a South Carolina court, SELC has prevented an aggressive attempt by the town of Awendaw, 25 miles north of Charleston, to push substantial commercial and residential development into the heart of the Francis Marion National Forest.

The town attempted to illegally annex the 350-acre Nebo Tract to build hundreds of residential units as well as office and commercial space, but the privately owned tract is virtually surrounded by the Francis Marion. To connect the Nebo Tract with the existing town boundary, Awendaw attempted to annex a ten-foot-wide, roughly one-mile-long strip of the national forest itself, falsely claiming that the U.S. Forest Service had asked for the annexation—then saying it was too late for local citizens and conservation groups to prevent it. SELC, along with Charleston lawyer Jeff Leath, stepped in with a challenge, and its victory, on behalf of the South Carolina Coastal Conservation League and local residents, will limit sprawl and congestion in this ecologically valuable region, protecting one of the state's true natural treasures.


ALAN CRESSLER

Speaking Out against Destructive North Georgia Logging Proposal

Along with our partners, SELC is challenging Forest Service plans for its proposed Cooper Creek timber sale in the Chattahoochee National Forest. The size of the project is massive—more than 2,300 acres of commercial logging, more than half of which targets stands at least 100 years old.

The proposed sale is also located in a rugged area with extremely steep slopes, which raises the risk of erosion and muddy runoff into Cooper Creek and other nearby sensitive trout streams. Finally, with logging on both sides of the Duncan Ridge Trail between Cooper Creek Scenic Area and the Coosa Bald National Scenic Area, it would degrade the area's recreational and scenic values.

In fact, one-third of the logging is proposed in an area the Forest Service previously designated as "unsuitable" for timber production for these very reasons. SELC, Georgia ForestWatch, and our partners will continue to press the agency to return to the drawing board with this flawed proposal.

SELC Supports Largest Critical Habitat Designation Ever

Thirty-five years after it was listed as a threatened species, the loggerhead sea turtle is finally receiving habitat protection guaranteed by federal law. SELC weighed in with support for the "critical habitat" designation, which covers important nesting beaches and marine areas stretching from North Carolina around Florida and onto the Gulf Coast. Although the loggerhead, the most common sea turtle in the Southeast, was listed as threatened in 1978, its habitat received no official protection. Now federal agencies must ensure that their actions will not adversely modify or destroy the turtles' habitat; the ruling does not affect private activities. SELC's regional expertise was critical in development of the final measure, the largest such federal designation ever.


BRANDON COLE

WHAT'S HAPPENING IN YOUR STATE?

ALABAMA

1 Highway Widening Threatens Eufaula. An Alabama plan to widen U.S. Route 431 threatens the historic character of Eufaula by skirting federal laws. The city's downtown district features tall, century-old oak trees and stately antebellum mansions and is listed on the National Register of Historic Places. Widening the road to four lanes would disrupt the character of the area and likely kill several of the trees. The state's Department of Transportation is also attempting to avoid federal environmental rules by treating this .75-mile section of the road as a state-only project, even though the rest of the road is maintained using federal funding. SELC is working with a coalition of local and state leaders to promote design improvements as a better solution.

2 Strip Mining of Oil Sands. SELC is reviewing proposed strip mining in northwest Alabama. The proposed new mines are the first step in a plan to extract some 7.5 billion barrels of oil sands locked in the state's sandstone and limestone rock formations. MS Industries has purchased more than 2,000 acres and drilled roughly 1,200 core samples in preparation for mining, but the company must wait until the state's Oil and Gas Board drafts appropriate regulations. SELC will work to ensure that threats to land, water, and the environment are properly accounted for in these regulations before a massive new industrial operation overwhelms this unique area.

GEORGIA

3 A First Step for Wind Power. SELC's push to increase use of renewable energy in Georgia received a major boost when the state Public Service Commission unanimously approved Georgia Power's plan to purchase 250 megawatts of wind energy from wind farms in southwest Oklahoma. The agreements—the state's first foray into wind power—will supply electricity over a 20-year period beginning in 2016 and will provide enough energy at peak demand to power more than 50,000 homes. SELC's participation in hearings on behalf of the Southern Alliance for Clean Energy helped ensure the purchase was properly valued, an important step to making renewables like wind and solar an increasing part of Georgia's energy mix.


ROBERT LLEWELLYN

NORTH CAROLINA

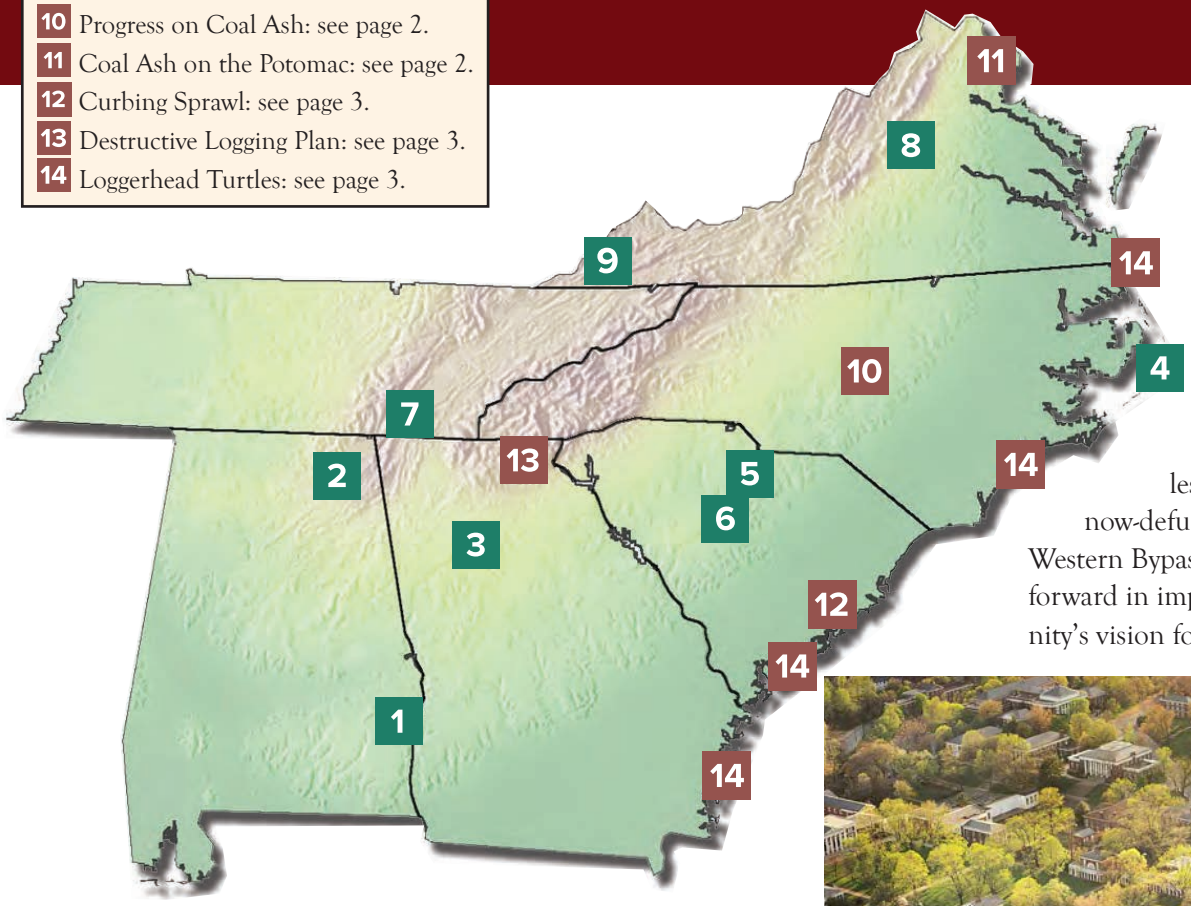
4 Balance Upheld on Hatteras Island. A federal court agreed with SELC and upheld National Park Service management of off-road vehicles at Cape Hatteras National Seashore. The Park Service management plan keeps some parts of the beach open for driving but allows others to remain vehicle-free for pedestrians, families, and wildlife, resulting in record-setting tourism proceeds and wildlife breeding success. According to the Park Service, 254 sea turtle nests were recorded in 2013, by far the most ever at Cape Hatteras. At the same time, visitor occupancy proceeds on Hatteras Island for 2013 were also the highest on record, according to the Outer Banks Visitors Bureau.

SOUTH CAROLINA

5 Agreement on the Catawba, Wateree Rivers. Working with American Rivers, SELC has reached an agreement with Duke Energy and the state of South Carolina to protect endangered fish and wildlife on the Catawba and Wateree Rivers. The agreement obliges Duke to provide special water releases from the Wateree Dam to benefit endangered sturgeon and other species, and to provide seasonal inundation of the Wateree River floodplain, a natural area without homes or businesses. Overall, the plan will ensure that dam operations more closely reflect natural conditions and protect the area's wildlife, important safeguards for two rivers threatened by years of outdated management practices.

6 Coal Ash Removal Under Way. Two utilities have begun the removal of coal ash from the banks of South Carolina waterways under agreements reached with SELC. Santee Cooper has removed 42,000 tons of ash from its Grainger facility on the banks of the Waccamaw River, including 20,000 tons in June. At the current rate the cleanup will be complete in six years—four years ahead of schedule. SCE&G has removed almost 500,000 tons of ash from the banks of the

10 Progress on Coal Ash: see page 2.
11 Coal Ash on the Potomac: see page 2.
12 Curbing Sprawl: see page 3.
13 Destructive Logging Plan: see page 3.
14 Loggerhead Turtles: see page 3.



Catawba-Wateree River near Columbia, much more than the 240,000 tons required by January 2015. Both agreements came following legal action by SELC, and we are encouraged by this progress, which stands in stark contrast to neighboring North Carolina. *(See story, page 2)*

TENNESSEE

7 Protecting Chattanooga's Downtown. SELC is working to improve a Tennessee Department of Transportation plan to widen and rebuild US 27/I-124 through Chattanooga. Work on the project north of the Tennessee River generated public outcry over hillside removal and the construction of massive retaining walls. Implementation of the current plan for downtown would alter prominent physical features, divide neighborhoods, and provide limited pedestrian accessibility at key points. Modifications we are promoting would help preserve the character of downtown, better connect the community, encourage revitalization, and provide cleaner transportation choices.


RON LOWERY

VIRGINIA

8 U.S. Route 29 Improvements Funded, Approved. SELC's longstanding effort to improve transportation policy in the Charlottesville-Albemarle area reached a major milestone when both the Commonwealth Transportation Board and the local Metropolitan Planning Organization approved and funded a package of improvements to U.S. Route 29 north of Charlottesville. The new plan is smarter, more effective, and far less destructive than the now-defunct and decades-old Western Bypass proposal—a huge step forward in implementing the community's vision for a better Route 29.


ROBERT LLEWELLYN

9 Environmental Review for Coalfields Expressway. The Federal Highway Administration has agreed with SELC and will now require VDOT to conduct a full environmental review of a controversial 26-mile section of the proposed Coalfields Expressway in southwest Virginia. VDOT fundamentally changed the project when it partnered with coal companies to reroute the road and allow for mountaintop removal mining, but it failed to adequately consider impacts on surrounding communities and the environment. Now that FHWA has required the proper review, SELC will participate in this process to ensure VDOT thoroughly examines the effects of mountaintop removal and other impacts from the altered route.

Giving Virginians the Power to Control Fracking

Since 2010, a Texas-based drilling company, Shore Exploration, has acquired over 85,000 acres of drilling leases in rural eastern Virginia in order to extract natural gas from an ancient lakebed known as the Taylorsville Basin. Horizontal drilling combined with high-pressure hydraulic fracturing, commonly known as fracking, will likely be required to recover the gas.


LYNDA RICHARDSON

The Taylorsville shale formation stretches about 100 miles from Richmond into Southeastern Maryland, passing beneath not only the Potomac River, but also parts of the Chesapeake Bay itself.

For nearly 30 years, SELC's work in Virginia has helped to protect the Bay. Now we are stepping in to provide leadership and legal guidance to a coalition of state and local groups seeking to shield the Bay and the surrounding area from the well-documented problems with fracking that have plagued other parts of the country

Educating the public and local officials

First, we are educating local citizens and elected officials about the potential effects of fracking. Shale gas drilling has been conclusively linked to polluted water wells, and spills of fracking fluids and wastewater can also damage streams and groundwater. Specific examples of problems abound: A recent rig blowout at a Pennsylvania drilling site spilled more than 200,000 gallons of fracking fluids and prompted the evacuation of nearby homes. Other spills have caused fish kills and contaminated the Susquehanna River.

We also know that shale gas drilling causes local air pollution, including large emissions of methane and known carcinogens like benzene.

Fracking is exempt, however, from important parts of the federal Safe Water Drinking Act. State regulations were written before the shale gas boom, so they don't address important things, like siting restrictions for wells or wastewater pits. They also allow practices such as letting drillers spray fracking wastewater directly onto the ground.

Helping local communities take charge

SELC is helping officials understand how local land use ordinances can fill in many of these gaps and answer important questions. How close can drilling occur to schools, churches, playgrounds, parks, or rivers? Can tanker trucks use rural roads or go through residential or business districts at any time of night or day? Will localities impose requirements to ensure that damage is restored if an accident occurs?

At the state level, we are pushing for smarter regulation—forcing industry to disclose chemicals in advance of drilling, for example. And we are asking state agencies for a comprehensive study of fracking to understand the true risks it poses to Virginians and resources such as the Bay.

Finally, we are requesting Virginia's new McAuliffe administration to revisit a legal opinion by the Commonwealth's former Attorney General suggesting that localities have only limited powers to regulate fracking in their area. Though it runs counter to the Virginia Gas and Oil Act, this opinion has had a chilling effect on localities that seek to control fracking.

Why I Do What I Do: Blan Holman

The South Is Poised for Real Change on Global Warming

In Charleston we live amidst water—rivers and marshes, sounds, and sea. The options for enjoying them are myriad. I've always loved sailing, fishing, and swimming, but these days my favorite pastime is to surf.

Surfing is a complete environmental engagement. There is the ocean itself and its denizens—dolphins, rays, jellyfish—but also the larger climate models that crunch data from weather stations, buoys, and satellites to predict local swell.

Similar climate models can predict storm tracks and sea level rise. Both are huge risks for oceanside Charleston.

Working at SELC gives me the chance to help protect the natural resources and special places that make our region an amazing place to live. For many decades the South thought locally and acted globally—we burned so much coal we greatly contributed to climate change.


ROBERT LLEWELLYN

Now we are poised to do just the opposite: to make real changes—right here in our southern cities and states—to keep global warming to a minimum. But those changes don't just happen naturally. We have to make them happen with hard work and serious commitment.

With its ramped-up climate and energy initiative, and several successes already under our belt, SELC is a great and exciting place to do that work.

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British Science Agency Agrees with SELC: Burning Southern U.S. Forests for Fuel Is Bad Policy

For years, well-intentioned but misguided European energy policies have led to the loss of thousands of acres of native southern forests. Subsidies for renewable fuels led some EU nations, especially the United Kingdom, to turn to biomass—plant matter burned to create energy—as a replacement for burning coal. But unless it is sourced properly, biomass isn't sustainable and can actually be worse for greenhouse gas emissions than coal.

With economic incentives in place, several biomass production facilities sprang up in the South, many cutting down whole trees and turning them into wood pellets to ship off to Europe. In North Carolina and Virginia, clear-cutting to feed pellet mills destroyed precious bottomland hardwoods, some more than a century old. And with European demand increasing, the biomass industry proposed several new plants.

SELC stepped in to defend these precious resources. We investigated the pellet mills and detailed the problems in a 2013 report. We met with EU agencies, hosted site visits with British officials and European media, and contributed to a BBC documentary. Now, the scientific arm of the United Kingdom energy agency agrees with SELC. As a result, the wood pellet boom, and its devastating effect on the South, may be nearing an end.

Beginning next year, the U.K.—75 percent of the total European biomass market—may no longer offer generous subsidies to biomass fuels unless they meet a true carbon-reduction target. Most native southern forests won't qualify, and turning them into wood pellets won't be a viable business anymore.

More work remains to fully incorporate the science into policy, but it is significant progress in the quest to protect one of the South's most vulnerable resources.