



ADVOCACY in ACTION

ROBERT LLEWELLYN

Quarterly Protection Highlights from the Southern Environmental Law Center • SPRING 2008



Southern Environmental Law Center

SELC Helps Win a Victory for Children's Health And Tougher Controls on Mercury Pollution

As many as 600,000 American children are born each year with mercury levels that put them at risk for a range of neurological impairments—from cognitive delays to mental retardation. Yet, in 2005, the U.S. Environmental Protection Agency ignored the advice of its own health experts and exempted mercury emissions from power plants from the strict controls required for hazardous pollutants.

To challenge this dangerous move, SELC joined a lawsuit against EPA, representing some 300,000 health professionals in the American Academy of Pediatrics, the American Public Health Association, the American Nurses Association, and Physicians for Social Responsibility. Standing with us in the case were 14 state attorneys general, a dozen national environmental organizations, and several Indian tribes, all seeking to overturn EPA's weak mercury rule.

The result: a "clear and complete victory for human health and the environment," according to SELC attorney John Suttles. On February 8, a federal court ruled that EPA violated the Clean Air Act when it failed to require the most stringent curbs on mercury from power plants, the largest source of the airborne pollutant. The court was pointed in its criticism of the agency's justification for its action, stating that it "deploys the logic of the Queen of Hearts, substituting EPA's desires for the plain text" of the law.

From Smokestacks to Our Bodies

The decision invalidates the Clean Air Mercury Rule, a cap-and-trade scheme instituted

by EPA that allows power plants to continue emitting mercury if they buy credits from cleaner facilities elsewhere, creating the danger of pollution "hot spots." This lax policy posed an especially grave threat to the Southeast, which has a high concentration of coal-burning power plants and an abundance of wetlands and blackwater streams where mercury falling from the air undergoes a conversion into methylmercury, a potent neurotoxin.

The contaminant enters the human food chain by becoming concentrated in fish. When pregnant women and nursing mothers eat just a small amount of the compound, their unborn children and infants can face permanent damage to the central nervous system. Dr. Renée Jenkins, president of the American Academy of Pediatrics, spoke for many of her colleagues when she declared the court's decision "an important victory for children, families, and communities."

A Deadline for Cleanup

The ruling gives EPA two years to impose the strongest possible mercury controls on existing power plants and requires the same tough standards for new generating facilities now under consideration in the Southeast and across the country. This means utilities in our region will have to go back to the drawing board for proposed coal-fired plants SELC is challenging, including Duke Energy's expansion of its Cliffside plant in North Carolina, Santee Cooper's Great Pee Dee River plant in South Carolina, and Dominion's Wise County plant in Virginia.

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Virginia Legislature Kills Proposal To Launch Uranium Mining Study

In the closing days of this year's Virginia General Assembly, lawmakers killed a bill that many saw as the first step toward lifting the state's 25-year-old ban on uranium mining. The legislation, which would have launched a study of whether uranium can be mined safely in the Commonwealth,

was introduced by supporters of Virginia Uranium Inc. The company is seeking to mine an area north of Danville holding what is believed to be the largest untapped uranium deposit in the United States.

SELC and other conservation groups opposed the bill, which left

many questions about how a study would be funded and conducted, and how the state would respond to its findings. "We owe a real debt to the delegates who wisely recognized that we shouldn't rush into this decision," says SELC attorney Kay Slaughter. "Now we have time to help the legislature and the public gain a fuller understanding of the potential risks to our air and water and to human health."

Uranium has never been mined in the eastern U.S., where our higher rainfall increases the threat of radioactive and toxic seepage into rivers, streams, and groundwater. Air contamination from radioactive dust is also a hazard. "This is not just a worry for Danville and Pittsylvania County," Kay noted. "The ore deposit is in a watershed that feeds drinking supplies for many communities, including Virginia Beach, the state's largest city."

Georgia Supreme Court Takes Case That Could Shape the Future of State Coastal Protections

Georgia's 100-mile coastline remains one of the most unspoiled stretches of the eastern seaboard, but it faces enormous growth pressures. The Georgia Supreme Court has agreed to hear an SELC case that could help determine the future of the Georgia coast and the power of a state law to defend its extensive marshlands.

The case is our challenge of Cumberland Harbour, a proposed marina and residential resort near Cumberland Island National Seashore that could open the door to Myrtle Beach-scale development all along the Georgia coast. SELC has won a series of legal



KATHRYN KOLB

decisions under Georgia's Coastal Marshlands Protection Act that require the state to safeguard coastal

marshes from the damaging effects of development. Last summer, after the Court of Appeals issued an adverse ruling in our Cumberland Harbour suit, we turned to the Georgia Supreme Court to restore our victories.

In an unusual show of support, seven former members of Georgia's Board of Natural Resources filed a friend-of-the-court brief in favor of SELC's petition for Supreme Court review. Much is at stake in the case, which is the Georgia Supreme Court's first opportunity to interpret the Coastal Marshlands Protection Act since it became law nearly 40 years ago.

Under Pressure from SELC, Forest Service Closes ORV Trails That Threaten Trout Streams

Since the beginning of the year, the natural sounds of the forest have replaced the roar of monster trucks and other off-road vehicles in the mountains of southwest North Carolina.

The U.S. Forest Service, responding to legal pressure from SELC, has taken the first steps toward cleaning up the Upper Tellico ORV area in the Nantahala National Forest—one of the largest and most heavily used off-roading areas on public lands in the Southeast. Heavily eroded trails, some more than seven feet deep, have long been a source of muddy runoff in the headwaters of the Tellico River and have contributed to declines in native brook trout populations in the river system

as it crosses into Tennessee.

The Forest Service closed the entire 40-mile trail network from January through March—typically the wettest months of the year. It also agreed to close four of the worst trail segments for the entire year as it develops a longer-term plan to address the problem.



In Charleston, SELC Fights Port Project That Would Heighten Traffic Woes and Dirty Air

A proposed port expansion that includes a 300-acre shipping terminal and related road projects would bring a host of problems to the Charleston area, including snarled traffic and dangerous increases in air pollution. SELC has filed a federal lawsuit to overturn approval of the plan by the U.S. Army Corps of Engineers.

Truck traffic generated by the facility would add a crushing 10,000 vehicle trips a day to Charleston's already strained transportation system and would overwhelm Interstate 26—the backbone of the region's road network. Moreover, the increased diesel exhaust from trucks and ships would elevate the city's airborne soot levels to 30 percent above the federal

healthy air standard, putting people at greater risk for asthma, lung cancer, and cardiovascular disease.

In its lawsuit, SELC cites the Corps's failure to reveal the full extent of the project's threats to health and safety. The Corps also failed to give full consideration to alternative locations for the project and better transportation options, such as increased use of rail rather than roads to move cargo.



SELC Pushes Agencies To Protect Wildlife From Mining Impacts

For more than a decade, the U.S. Fish and Wildlife Service and the Office of Surface Mining have taken the misguided view that coal mining poses no danger to threatened or endangered species so long as federal mining regulations are followed. In the Southeast's coal country, this lax policy has contributed to significant declines in sensitive aquatic species due to impacts from mountaintop removal mining.

SELC has filed a petition calling for the agencies to abandon this position and to fulfill their legal obligation to assess threats to federally protected wildlife whenever a mining venture is proposed and to take measures to prevent harm to these species. While the policy applies nationwide, SELC is particularly concerned about the effects of mining in the Clinch and Powell rivers in Virginia and Tennessee and the Big South Fork of the Cumberland River in Tennessee, where dozens of fish and mussel species are suffering.

WHAT'S HAPPENING IN YOUR STATE?

ALABAMA

1 Shepherd Bend Strip Mine.

The Black Warrior River, which has long suffered from the effects of coal mining in its watershed, is facing a new threat: a strip mine proposed by Shepherd Bend LLC in Walker County northwest of Birmingham. The coal mine would release runoff just 800 feet from a pumping station for the Birmingham Water Works, and there is concern that mine discharges would be pulled virtually undiluted into one of the city's largest sources of drinking water. SELC will ensure that the mining company is not allowed to endanger Birmingham's water resources and the health of the river.



ROBERT LEWELLYN

GEORGIA

2 Washington County Power Plant.

Despite growing concerns about global warming, a consortium of electrical cooperatives known as Power4Georgians is applying for state approval of an 850-megawatt coal-fired power plant east of Macon. The facility would have no capacity for capturing heat-trapping carbon dioxide emissions and would require a huge daily transfer of water from the Oconee River. In collaboration with the Georgia Air Coalition, SELC is weighing in on the review process early to ensure that

state regulators consider the facility's vast potential impacts on air and water quality and how the plant would worsen our region's output of greenhouse gas emissions.

NORTH CAROLINA

3 Coastal Stormwater Controls.

Thanks largely to SELC's advocacy, North Carolina lawmakers will soon have the opportunity to remedy the state's ineffective controls on polluted runoff in coastal areas, a critical step in protecting ecologically sensitive and economically important shellfishing waters. Weaknesses in the state's current stormwater program have contributed to the closure of almost 20 percent of the state's shellfish beds—more than 441,000 acres. North Carolina's Environmental Management Commission has approved new science-based regulations we have championed that require developers to take effective measures to keep runoff from further jeopardizing shellfish grounds. As the rule clears its last hurdle in the General Assembly later this year, SELC will continue to promote its merits and will counter attempts to weaken its controls.

4 Cape Hatteras Beach Driving.



beach driving on the Cape Hatteras National Seashore has caused steep declines in populations of shorebirds that nest near the water's edge. In March, just after SELC filed an injunction to scale back this practice, the National Park Service conceded it had not prepared a plan to manage beach driving as legally required. We are working with the agency to put a



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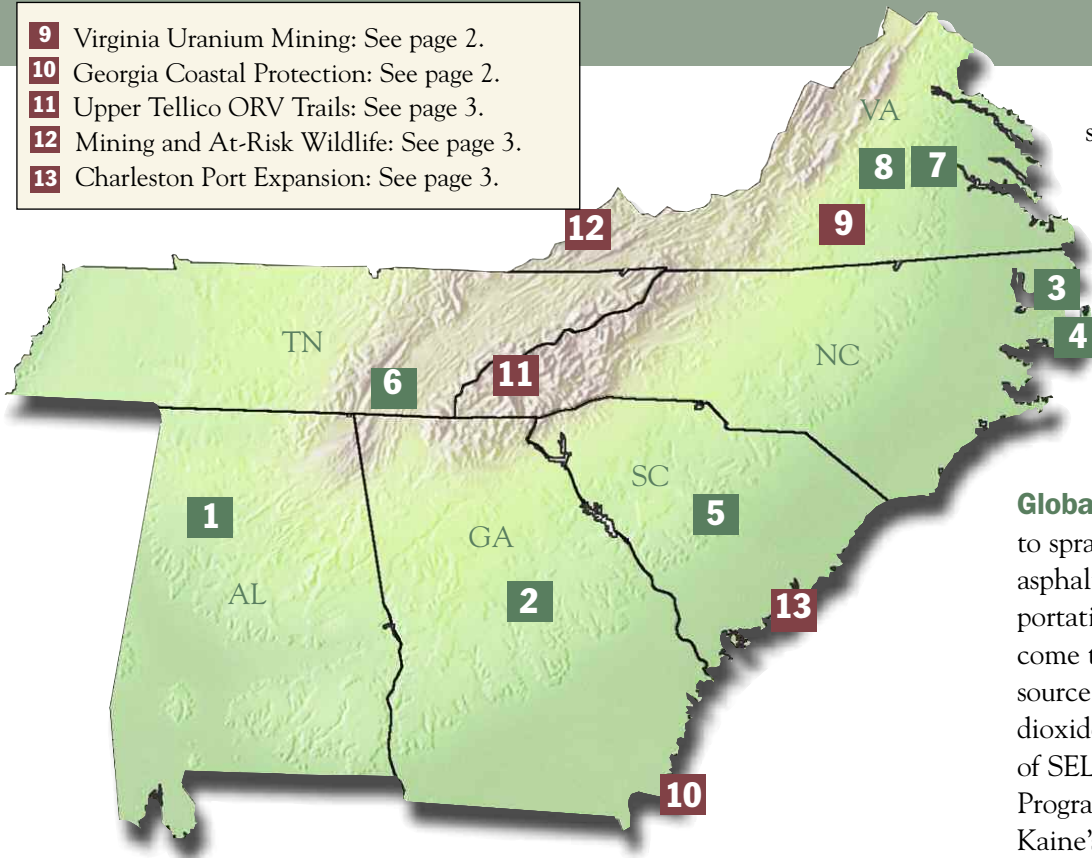
plan in place to prevent harm to birds such as the threatened piping plover, the common tern, and the American oystercatcher during their upcoming breeding seasons.

SOUTH CAROLINA

5 Transportation Reform.

Last year, SELC and its partners won a major victory when state legislators passed fundamental reforms in the way South Carolina selects its transportation projects. Too often in the past, the state's Department of Transportation bowed to political pressure to build unnecessary roads and bridges that fragment natural areas and open the door to sprawling development. In recent months, SELC has worked with SCDOT to help craft regulations to implement the new law and to ensure that environmental issues are fully considered when the state sets its transportation priorities. As a result, the

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strip the boards of their ability to grant and deny environmental permits and instead passed a measure solidifying their critical role in approving or blocking projects that have an impact on our air and water.

8 Transportation and Global Warming. Due in large part to sprawling growth patterns and asphalt-centered approaches to transportation, cars and trucks have become the largest and fastest growing source of heat-trapping carbon dioxide in Virginia. Trip Pollard, head of SELC's Land and Community Program and a member of Gov. Tim Kaine's new Commission on Climate Change, has taken a fresh look at this trend in a report titled *New Directions: Land Use, Transportation, and Climate Change in Virginia*. The report offers practical ways to address the

state now has a clear and objective set of criteria for ranking projects and determining where to invest transportation dollars. State lawmakers are expected to approve the implementing regulations this spring.

TENNESSEE

6 Cumberland Trail Park. SELC has joined a coalition of conservation groups opposing a court ruling that could lead to degradation of tens of thousands of acres on the Cumberland Plateau. Over the past 10 years, the state has been developing the Justin P. Wilson Cumberland Trail State Park, which will eventually run 300 miles across the plateau. Last year, a company that owns subsurface mining rights to the Deep Creek Gorge section of the park used earth-movers to plow up sandstone rocks on the surface for sale to builders and landscapers. The extraction gouged out the mountainside, exposed streams to muddy runoff, and buried about 100 yards of the trail. A judge

has ruled that the company's action was legally within its mining rights. SELC, the Cumberland Trail Conference, and other conservation groups are supporting efforts to reverse this decision and to pass state legislation to impose controls on surface rock removal.

VIRGINIA

7 State Citizen Boards. SELC and its partners have successfully fought off industry efforts to gut the authority of three citizen boards that handle major regulatory and permitting decisions affecting water quality, air quality, and waste management in Virginia. Because their deliberations and votes on controversial matters occur in open sessions, the three boards ensure full public participation in environmental decision making. Following recommendations from SELC and other stakeholders, this year's General Assembly shot down a proposal to



CHARLES SHOEFNER

problem, such as increased funding for transit, freight rail, and other alternatives to driving. Other recommendations include promoting more compact neighborhoods and town centers, maximizing the efficiency of existing roads, and providing incentives for more fuel-efficient, cleaner vehicles. To see the full report, visit www.SouthernEnvironment.org/publications.

In Two Victories, SELC Shows What It Takes to Protect Treasured Places

What does it take to save a special place in the South? When powerful forces are bent on environmental destruction, it can take flexibility, tenacity, and every law and advocacy tool we have—from convincing local officials to make the right decision to taking a federal agency to court. And sometimes it takes an act of Congress. SELC employed all these strategies and more when it eliminated threats that have loomed for years over two of our region’s natural treasures.

■ Navy Jets vs. Migratory Waterfowl

In September 2003, the U.S. Navy revealed its plan to build a practice runway for jet fighters in the croplands of North Carolina’s Albemarle-Pamlico Peninsula—a place described erroneously by one admiral as “essentially in the middle of nowhere.” In fact, the proposed site for the Outlying Landing Field, or OLF, was perilously close to the Pocosin Lakes National Wildlife Refuge, wintering grounds for more than 100,000 snow geese, tundra swans, and other migratory waterfowl.

When the Navy swooped in to acquire property, SELC moved quickly to obtain a federal injunction. “That put everything on hold,” explains Derb Carter, director of SELC’s North Carolina/South Carolina Office. “It allowed time for our legal challenge to be fully heard, which eventually allowed us to stop the project.”

SELC kept the proposal at bay with two more court victories, but the Navy still refused to acknowledge what anyone who had set foot on the site could clearly see: the refuge and a jet runway would be fundamentally incompatible. The fight then moved to the political arena, where we helped members of Congress recognize the damage the landing field would inflict on wildlife and family



JUAN A. PONS

farms. This past January, after Congress passed bills that denied authorization and funding for the project, the Navy finally announced it was abandoning its plan for the OLF.

■ Dead End for the “Road to Nowhere”

In the 1940s, the federal government promised it would compensate Swain County, N.C., for a road inundated by the creation of Fontana Lake. A proposed new highway lay dormant for decades, but it resurfaced eight years

ago when a local congressman (now out of office) secured federal funding to jumpstart the North Shore Road—better known as the “Road to Nowhere.” In its 34-mile path were some of the wildest reaches of the Great Smoky Mountains National Park.

We countered with what SELC attorney DJ Gerken describes as a “carrot and stick” approach. The stick was the threat of legal action. To supply the carrot, SELC commissioned an economic study showing that a cash settlement with the county of \$52 million (the cost of the original road adjusted for inflation) would do much more for the community than a destructive highway project with a price

tag of more than \$600 million.

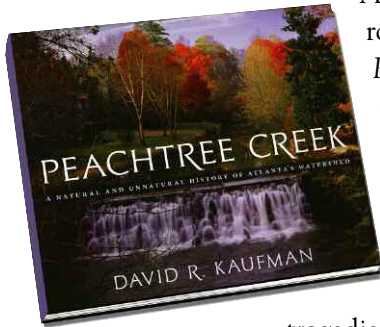
As in the OLF case, SELC and its allies turned to Congress, which has effectively put the proposal to rest by providing \$6 million to begin funding a Swain County settlement. Negotiations between the county and the National Park Service are under way, and we are proud to say that the economic data SELC provided will inform the discussions. Most important, a part of the Smokies set aside for wildlife and backcountry recreation remains unspoiled.



BILL LEA

SELC Writing Award Honors Works on An Atlanta Waterway and Destructive Mining

Atlanta writer and photographer David Kaufman and Roanoke, Virginia, reporter Tim Thornton have received SELC's 2008 Phillip D. Reed Memorial Award for Outstanding Writing on the Southern Environment. Kaufman won in the book category for *Peachtree Creek*, a richly illustrated exploration of a distressed waterway that runs through the heart of Atlanta and is in dire need of sustainable stewardship. Thornton, a reporter for the *Roanoke Times*, received the journalism award for a series of articles on the environmental costs of mountaintop removal mining and how it has left a trail of human tragedies and wrecked landscapes across the Appalachians. SELC honored the writers as part of this year's Virginia Festival of the Book. To learn more, visit SouthernEnvironment.org/philreed.



Trip Pollard Named to Virginia Climate Change Commission

Virginia Gov. Tim Kaine has appointed Trip Pollard, director of SELC's Land and Community Program, to the Commonwealth's new Commission on Climate Change. A leading expert on growth and transportation issues, Trip is the author of a new report on land use, transportation, and climate change in Virginia. The 32-member panel will formulate an action plan for reducing the state's greenhouse gas emissions by 30 percent by 2025 and is expected to issue its recommendations in December.



JACKSON SMITH

New SELC Attorney Sarah Rispin to Focus On Air, Energy, and Global Warming



BILL SUBLETTE

SELC is pleased to welcome Sarah Rispin to our Charlottesville office as a new attorney in our regional Healthy Air and Clean Energy Program. Sarah will play a key role in our expanded efforts to promote energy efficiency programs as alternatives to traditional power plants in the Southeast. Sarah is a graduate of Williams College and the University of Chicago Law School, where she was an editor of the *Law Review*. She has been an attorney in the Environment and Natural Resources Division of the U.S. Department of Justice and was a law clerk for judges in the U.S.

Court of Appeals for the D.C. Circuit and the U.S. Court of Appeals for the 10th Circuit. Sarah comes to SELC from the Washington, D.C., office of Akin, Gump, Strauss, Hauer & Feld, where she was an associate in the firm's Supreme Court and appellate practice.



Conserving the South's wild places, clean air, clean water, and livable communities for future generations

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Grants Enhance Program on Healthy Air, Global Warming, and Energy Efficiency

For two decades, SELC has been at the forefront in addressing the South's air and energy challenges. Today our leadership and expertise are needed more than ever. Rapid growth, rising demand for electricity, and heightened concern about the world's climate bring new urgency to our work in this complex area.

SELC has received generous funding to expand its Healthy Air and Clean Energy Program and its efforts to reduce power plant pollution, curtail greenhouse gas emissions, and spur investment in energy efficiency and conservation. With these resources, we are challenging a string of proposals for more coal-fired power plants across the Southeast that will diminish our region's air quality and

boost our contribution to global warming. At the same time, we have increased our capacity to advocate robust energy efficiency programs that can offset the need for more power plants—and at a fraction of the cost.

In these programs, power companies educate customers on energy-saving building improvements and appliances and provide financial incentives to invest in these technologies. For example, a more energy-efficient refrigerator will save money over the life of the appliance, but its higher price tag may cause many consumers to hold back from making such a purchase. Utility

incentives can help customers overcome this barrier. Energy efficiency programs also require new approaches to ratemaking so that power companies are not penalized for helping customers use less electricity.

To join those supporting SELC's Healthy Air and Clean Energy Program, visit SouthernEnvironment.org.



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