

# THIS IS NOT MY STATE

SELC's **Derb Carter**  
addresses the assault  
on North Carolina's  
Environment

Delivered at Duke University  
*April 15, 2015*



Derb Carter

including many present here, have worked for decades to protect what is special about North Carolina: our coast and mountains, streams and rivers, water quality and air

**Y**ou have given me a difficult challenge: discuss the damage the North Carolina General Assembly and current state administration have inflicted on protection of our environment and natural resources, in only ten minutes. Many of us,

quality, and natural areas. It is hard to even imagine this has happened in North Carolina, in our state. The Philistines have come over the walls. It is not the North Carolina I know, and I want it back.

In 1999, Governor Hunt called for preserving an additional one million acres of land. Just a few years ago, we were a national leader in land and water conservation, spending \$289 million in FY 2007-08 to conserve natural areas and parks and farmland and protect water quality. The legislature has raided trust funds; spending for land and water preservation is only \$30 million in FY 2014-15, nearly 90% less, while we continue to lose 100,000 acres a year of forests, farmland, and open space to development.



**This is not my state.**

This year is the 100th anniversary of our state parks. Visitation to state parks increased by 1.5 million over the past three years to over 15.5 million visitors last year. In 2011, the state identified \$1.4 billion in unmet needs for facility development and parkland acquisition. But the legislature has cut funding for state parks by 25%, and Governor McCrory has now proposed an additional 25% cut over the next two years.

**This is not my state.**

The legislature repealed the long-standing prohibition on hardened structures to allow construction of terminal groins that destroy our public beaches in a misguided attempt to protect private property. The legislature was embarrassed nationally when it tried to enact a bill prohibiting state agencies and local governments from planning for sea level rise. Stephen Colbert told the nation North Carolina had solved the problem of sea level rise by outlawing it.

Instead, the legislature issued a moratorium on sea level rise until a science panel reported back. The science panel has now reported again—that sea level is still rising, and accelerating. But the chairman of the Coastal Resources Commission said last week the state should have no role under the Coastal Area Management Act in planning for sea level rise.

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The legislature cut funding to the Department of Environment and Natural Resources (DENR) by 40% and prohibited state environmental commissions and agencies from adopting any environmental regulation more stringent than minimal federal regulation, even if we have particular or unique needs.

In addition, the legislature targeted all water quality and air quality regulations for review and either repeal



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or reissuance, with a process to open rules to objections by polluters, then allow objections by the legislature. This process is underway.

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DENR, under the new administration, changed its primary mission from protecting our air and water quality to “customer service”—where the customers are the polluters and not the public. We learned this quickly when the new leadership of DENR, within days of taking office, filed paper enforcement actions to enter a sweetheart deal with Duke Energy and shield Duke from our legal actions to clean up their polluting coal ash pits. The public learned about this a few weeks later when Duke’s coal ash lagoon on the Dan River blew up in DENR’s face.

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Failure to enforce environmental laws and permits is the ultimate in customer service to polluters. Enforcement actions for water quality permit violations have dropped from an average of 567 a year under Governors

Easley and Perdue to only 268 a year under Governor McCrory—less than half. Failure to enforce water quality laws pollutes our waters, harms the public, and punishes responsible companies that comply with the law.

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The General Assembly legislated abandonment of a plan it took years to develop to restore and protect the water quality of Jordan Lake, the Triangle’s main water supply. It instead spent \$2 million on unproven machines to stir up the water and hope it gets cleaner. Abandoning the plan will result in more pollution into the lake, jeopardize the Triangle’s drinking water, and cost millions of dollars more down the road to clean up the reservoir.

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In 1989, I served on a committee set up by former Governor Martin to evaluate oil drilling off the shore of North Carolina, and the state opposed Mobil’s plan to drill off the Outer Banks. Former Congressman Walter Jones Sr. passed legislation in Congress to protect North Carolina from drilling, without better information on potential impacts. Protection of North Carolina’s invaluable coastal resources from the impacts of oil drilling and development was a bipartisan effort. Governor McCrory was in Washington this morning testifying before Congress to demand that the federal government allow drilling only 30 miles from our beaches, rather than the minimum 50-mile buffer now under consideration.

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Three weeks ago we received a decision from a new administrative judge dismissing our challenge to a water quality permit allowing a mining company to

discharge 12 million gallons a day into Blounts Creek in Beaufort County. We filed the petition to challenge the permit on behalf of organizations representing hundreds of local citizens who use and enjoy the creek.

He ruled these organizations and their members have no right to challenge the permit to pollute, and went even further to make the far-reaching ruling that no citizen has the right under state law to seek enforcement of water quality protections.

**This is not my state. And we are appealing.**

The zeal of the legislature in repealing environmental protections is equaled by their overreach. The General Assembly has created or reconstituted several environmental commissions, then appointed a majority of commissioners to execute the legislature’s will. This includes the Mining and Energy (or Fracking) Commission, Mining Commission, Oil and Gas Commission, and Coal Ash Commission.

Governor Hunt joined Governor McCrory and former Governor Martin to challenge this legislative overreach. Last month, the court ruled these legislative appointments are an unconstitutional intrusion by the legislature into the executive branch and a violation of separation of powers. The case is on appeal to the Supreme Court.

So the Philistines have scaled the walls. You probably recall the most famous battle involving the Philistines: when they put up Goliath to fight a crafty young boy named David. And you know the outcome of that fight.

**This is my state. This is our state. We want it back. And we are going to take it back.**

*“The legislature was embarrassed nationally when it tried to enact a bill prohibiting state agencies and local governments from planning for sea level rise.”*

*A version of this speech appeared in the April 15th edition of the Charlotte Observer.*



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MARK VANDYKE

The Southern Environmental Law Center is stepping in to defend and protect the natural riches that we know and love in North Carolina. Wielding powerful law and policy tools, and drawing on deep expertise earned over 30 years, SELC attorneys are providing the crucial environmental oversight and enforcement that should be the duty of our public servants.

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