

POWER OF THE LAW QUARTERLY

Winter 2020/21

With Biden-Harris Administration, SELC Has an Essential Role to Play

In November, American voters turned the page on the most aggressive anti-environmental administration in our lifetime. After witnessing four years of backward movement on the most critical environmental issues when we urgently needed to move forward, SELC welcomes the opportunity to work with a Biden-Harris Administration that cares about the issues we care about—addressing climate change, protecting clean water and clean air, and providing a just and equitable environment for all.

These will not be easy tasks for the new administration. But SELC has spent the past four years holding the line against the worst of the Trump Administration's environmental assaults while delivering important results for clean air, clean water, and clean energy in our six Southern states. Today, we are uniquely positioned to guide and assist the Biden Administration as it faces the Herculean undertaking of rebuilding our environmental protections.

SELC has an essential role to play—but we can't do it without your support.

The transition to the new administration is already underway, and there is an astounding amount of work to be done. In the midst of an ongoing pandemic and economic crisis, President-elect Biden's team is faced with cleaning up a staggering range of environmental messes. The Trump Administration tried to roll back over 100 environmental and public health protections. There are too many issues for the administration to address simultaneously. That's where we come in.

As the transition team establishes priorities while navigating the chaos and destruction they have inherited,

it will need help from experts who have deep experience with our nation's core environmental laws, and SELC's attorneys are ready to answer the call.

On climate change, further reducing emissions in the carbon-heavy South is a critical part of any national strategy, and SELC is pushing to extend our state-level successes in legislatures and public service commissions across our region. Approaches that have worked in our states can also help get us back on track with federal policies to close the fossil fuel era and promote clean energy solutions.

Today, we are uniquely positioned to guide and assist the Biden Administration as it faces the Herculean undertaking of rebuilding our environmental protections.

Next, we need to restore fundamental protections and ensure the basic right to clean water and clean air for all. SELC has a decades-long track record of applying the standards of the Clean Water Act, Clean Air Act, and National Environmental Policy Act to protect Southern resources and communities and establish national precedent. We have the experience and expertise to help shore up these safeguards once again.

Historically, communities of color and lower-income neighborhoods have carried an unfair burden of environmental pollution. We will continue fighting alongside these communities across the South to amplify their perspectives, experiences, and voices.

A key to SELC's success over 34 years has been maintaining the strategic vision, flexibility, and know-how to act when the opportunity presents itself. That window of opportunity is wide open right now. As much as ever, your partnership is crucial as we seize the urgency of this moment. Together, we will lead the way in protecting the environmental health of the South with results that will echo across the nation.

REGIONAL HIGHLIGHTS

Seismic Testing, Offshore Drilling in Atlantic Sidelined for Now

Coastal communities breathed a sigh of relief in late September when federal agencies and private surveying companies told a federal court they were abandoning plans to pursue seismic blasting in Atlantic coastal waters. With permits set to expire and renewals requiring a restart of the lengthy permitting process, proponents of seismic testing had few options. SELC's 2017 federal lawsuit challenging the original permits succeeded in keeping seismic boats out of the water, and now we are celebrating a significant victory for the health of our oceans, beaches, and coastal communities.

The cancellation of seismic testing, a necessary prelude to oil and gas

leasing, brings some rare good news for the critically endangered North Atlantic right whale. Only about 350 of these majestic creatures remain on Earth today, and nonstop air gun blasting in their coastal calving grounds would have been disastrous for the dwindling population.

Offshore drilling in the Atlantic remains deeply unpopular, and that's why—despite a 2018 draft drilling plan that included the South Atlantic—the Trump Administration suddenly signed executive orders in September banning oil and gas leasing off the coasts of North and South Carolina, Georgia, and Florida from July 2022 to 2032.

President Trump's loss at the polls in November means these areas will likely

be free from the threat of dirty drilling for the foreseeable future. While SELC remains vigilant and ready to renew our work to stop testing, leasing, and offshore drilling in all our states, we are also excited to now shift our attention to securing permanent protections for our coast.



Protections for 350 Wetland Acres Vanish: Trump Rollbacks Threaten Okefenokee



As you stride the Florida-Georgia state line lies the one of the “Seven Natural Wonders of Georgia,” a pristine, 700 square mile area of bald cypress, tupelo gum, and longleaf pine that is home to black bears, alligators, rare carnivorous plants, and myriad species of birds, reptiles, and amphibians. It is an area untouched by noise and light pollution, where lucky visitors will

find the premier spot in the Southeast to gaze at constellations on a clear night. The place? The Okefenokee National Wildlife Refuge, comprising the largest black-water swamp and one of the most celebrated networks of freshwater wetlands in North America. It is an internationally beloved destination that welcomes 600,000 visitors per year and a key driver of the local economy.

In an early sign of what the Trump Administration's gutting of Clean Water Act standards will do to Southern wetlands, the Okefenokee is now in danger. Twin Pines Minerals has proposed to mine titanium on 600 acres adjoining to the swamp. Part of a larger 12,000-acre plan, the mine would be 50 feet deep and would drain and permanently damage

a large swath of the swamp.

SELC has vowed to stop the mine. We are spearheading a coalition of more than 42 groups, including the Muscogee Tribe and the Cherokee Nation, that are outraged by the proposal and have urged the Army Corps to deny a permit to drain and fill the Okefenokee. Over 60,000 people—from all 50 states and 36 countries—stood up for the swamp to oppose the company's applications. Because of the public blowback, Twin Pines reduced the scope of its proposal.

Now, because of the Trump Administration's illegal rollbacks of essential Clean Water Act standards, the company is moving forward with no permit at all, placing at risk over 350 acres of wetlands that were once protected. But we won't relent. We are in court now fighting the Trump EPA's clean water rollbacks, and we will continue to work with our local partners to stop this destructive mining proposal.

Why Is SELC in Court in New Mexico?

When the Trump Administration began gutting the nation's clean water protections, we knew we were the right organization to lead the national response. SELC attorneys have decades of experience enforcing the Clean Water Act in the Southeast, and the success of our work on the ground depends on the strength of federal protections. As the EPA churns out policies that leave our waterways vulnerable to pollution, big business has set its sights on undoing the Clean Water Act itself. We are currently pursuing federal litigation in South Carolina against Trump

Administration rollbacks, but we are also in federal court in New Mexico to make sure our bedrock clean water law gets the best defense possible.

Attorneys representing industry groups have filed lawsuits in a number of states, including New Mexico, arguing that the Clean Water Act is unconstitutional. With Trump's EPA unlikely to diligently defend the law in court, we are stepping in to stand up for the core water protections we all depend on.

The stakes couldn't be higher. An adverse decision in these cases could erase clean water protections for all

wetlands and the smaller streams that are essential to water quantity and quality in our larger rivers. If the constitutional challenges are successful, they could eliminate clean water protections entirely. We are coordinating with partners across the country to oppose these lawsuits, and we have intervened in the District of New Mexico case on behalf of Amigos Bravos, a local nonprofit dedicated to water conservation and social justice. No matter where we must go to do it, we will ensure our nation's most important clean water law remains intact.

Innovative Deal Will Grow Solar in Carolinas

SELC provided key leadership in collaboration with partners, solar companies, and other solar advocates to strike a groundbreaking deal with Duke Energy that strengthens incentives for new rooftop solar customers and ensures long-term growth for renewable energy in South Carolina.

The agreement uses an innovative approach, pairing rooftop solar with smart thermostats and dynamic pricing, which accounts for the varying costs for supplying energy at different times of the day and different times of year. The new pricing structure will allow Duke Energy to charge solar

customers more for electricity during peak energy use times, similar to surge pricing on toll roads or for rideshare services. In turn, solar customers can receive more compensation for excess electricity they produce during peak times. That structure not only encourages conservation during times of high demand, but also helps Duke better manage resources, saving money for all utility customers.

The net-metering policies we've helped pioneer in South Carolina have driven a massive market expansion that has made the state a rooftop solar leader in the South. When net

metering was first implemented in 2014, through SELC-supported solar legislation, the state had fewer than 500 rooftop solar systems. Today, there are more than 20,000 rooftop solar installations across South Carolina.

With this expansion, the solar industry as a whole has been an economic boon to the state, generating \$1.5 billion in economic activity and supporting more than 7,200 jobs in 2019.

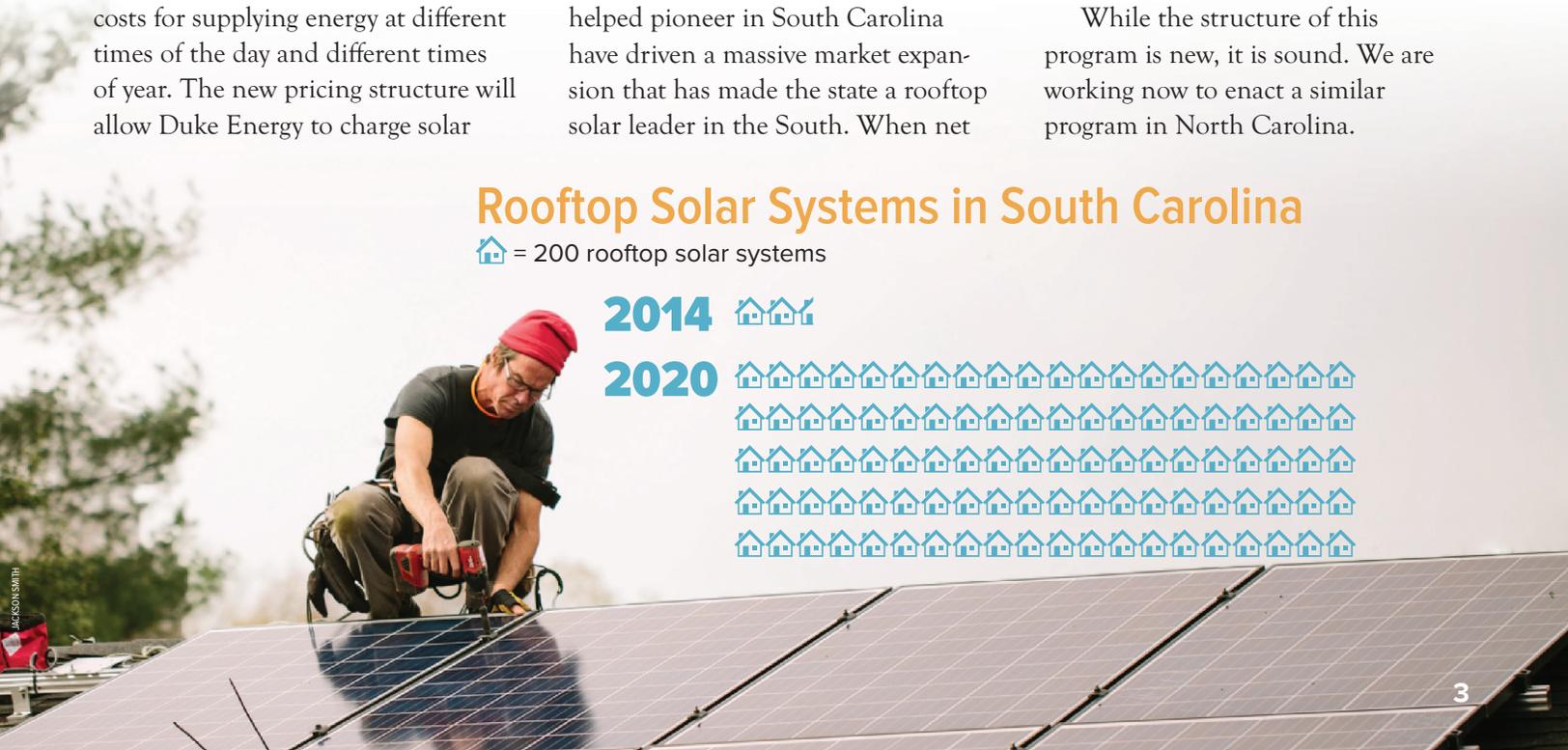
While the structure of this program is new, it is sound. We are working now to enact a similar program in North Carolina.

Rooftop Solar Systems in South Carolina

 = 200 rooftop solar systems

2014 

2020 



WHAT'S HAPPENING IN YOUR STATE?

ALABAMA

Halting Unnecessary Sprawl

Earlier this year, an Alabama developer proposed a half-baked plan to build the “Coosa River Express,” an unneeded new road and toll bridge that would have spanned a portion of the Coosa River over Lay Lake. The project would have wasted money, opened up land for

development, and increased pollution in an area where residents and visitors fish, swim, and boat. Our attorneys teamed up with long-time partner Coosa Riverkeeper to debunk the unfounded claims supporting the proposal and drive public opposition to the project. In response,

the county commissioners—who initially showed interest in the project—voted unanimously against the proposal. This is a clear victory for environmental protection in Alabama as we work to stop unnecessary, destructive, sprawl-inducing highway projects in the state.

GEORGIA

New Law Forces Disclosure of Toxic Air Pollution

In the 2020 legislative session, Georgia took an important step toward protecting metro-Atlanta communities from toxic air pollution by passing a law requiring companies that use ethylene oxide to sterilize medical devices to report releases of this cancer-causing chemical within 24 hours. For nearly one year, state regulators failed to inform the public about this harmful air pollution despite receiving clear warnings from the EPA about elevated cancer risks in three Atlanta areas. In response to public outcry over this dangerous lack of transparency, SELC and our local partners strengthened and built lawmaker support for the passage of this bill, which forces companies and regulators to promptly alert Atlanta communities about the release of this toxic pollution in their neighborhoods.



Win-Win Solution for NC Mountain Highway

This September, the NC Department of Transportation landed on a win-win solution to a problem that has bedeviled highway designers for decades. Originally conceived as a freeway-style highway to connect Chattanooga and Asheville, “Corridor K” was untenable. The multibillion-dollar project would have slashed through steep mountain terrain and the pristine backcountry of the Nantahala National Forest. With enormous impacts and low projected levels of

traffic, the project could not secure necessary permits or funding. SELC and our partners long advocated for a right-sized road, but for years the project was stalled, and local needs for a safe, reliable road went unmet. Our input led NCDOT to withdraw its proposal for Corridor K and to develop a much better plan for existing roadways that will improve transportation and safety, protect and improve access for recreation, support local economies, and restore connectivity for wildlife.

MVP Southgate Denied North Carolina Water Permit

In another sign the South is shifting away from fossil fuels, North Carolina regulators denied a necessary water quality permit for the proposed Mountain Valley Pipeline Southgate project in August. The 75-mile natural gas pipeline would have extended the incomplete Mountain Valley Pipeline from Virginia into central North Carolina. But with legal uncertainties clouding the future of the MVP

mainline, the state’s Department of Environmental Quality refused to allow Southgate to plow across North Carolina rivers, streams, and wetlands. On behalf of local and national partners, SELC urged regulators to deny the permit due to the harm it would bring to our waters and the lack of demonstrated need for the pipeline, and we are now helping the state defend its decision, which was challenged by the developers in the U.S. Fourth Circuit.



Cutting Carbon in the Tarheel State

As the Trump Administration moved U.S. federal climate change policy backward, SELC remained committed to moving our states forward. In North Carolina, we are working to implement Governor Cooper's 2019 executive order to tackle climate change and build a clean

energy economy through statewide greenhouse gas reduction targets. Among other mandates, the order calls for the state to develop a plan to reduce greenhouse gas emissions from the electric grid by 70 percent from 2005 levels by 2030 and to reach net zero carbon by 2050. SELC

is taking the lead in the planning process and promoting energy sector carbon emission limits that tighten over time. In light of the urgent and growing threat climate change poses for the Southeast, we also are working to accelerate the planning and implementation schedule.

SOUTH CAROLINA

Pipeline Polluter Held Accountable

In October, SELC secured \$1.5 million to be held by a local community foundation and used for watershed protection and education in response to a Kinder Morgan pipeline spill in Anderson County, South Carolina. In 2014, a break in the underground pipeline spilled at least 369,000 gallons of

gasoline, polluting a nearby Savannah River tributary. Because of delays in the clean up, SELC filed a Clean Water Act suit on behalf of Upstate Forever and the Savannah Riverkeeper in 2016. In the U.S. Fourth Circuit Court of Appeals, we established the precedent that the Clean Water Act covers surface

water pollution that moves through groundwater. This conclusion, later confirmed by the U.S. Supreme Court, significantly strengthens protections for waterways contaminated by toxic waste. The conservation groups will also continue to push state regulators to require full cleanup of the spill.

TENNESSEE

Introducing George Nolan



This summer, George Nolan joined SELC's Tennessee office as a senior attorney, and we could not be more delighted. George has degrees from the University of Tennessee and the University of Virginia School of Law and is a seasoned trial lawyer with nearly 30 years of experience. He has appeared on the Best Lawyers in America list for the past 12 years. George adds

significant firepower to our Nashville team, and he is eager to dig in on energy and climate change issues, particularly in light of the terrible storms the area has suffered. "I'm excited to work with some of the most highly regarded environmental litigators in the country," he says. "Together we will hold utilities like TVA accountable as we take on climate change in the Volunteer State."

VIRGINIA

Project Proposed for Historic Monacan Capital on Hold

SELC is supporting the Monacan Indian Nation's efforts to protect the site of its historic capital from new development. The James River Water Authority proposes to build a pump station and pipeline at Rassawek, where centuries ago the Monacan Nation established an economic and cultural

center at the confluence of the James and Rivanna rivers. The National Trust for Historic Preservation recently recognized Rassawek as one of the most endangered historic sites in the United States. In collaboration with Preservation Virginia, SELC urged the Army Corps of Engineers to adhere

to federal laws protecting significant cultural and historical resources and to reject the permit to build the facility at this site. In August, the water authority paused the permitting process in order to consider alternative sites, a significant potential step toward the preservation of Rassawek.

INSIDE STORIES

Tackling Climate Change: SELC Expertise Critical to Biden Day One Priority

Climate change is the defining environmental challenge of our era. For more than 30 years, SELC has led efforts to transform the energy paradigm in the South from fossil-fuel dependence to clean, affordable approaches to generating and using electricity. We've made tremendous progress, but there's still a lot of hard work to do, and time is running short if we are to avert the most serious consequences of climate change. That's why we are eager to work with a Biden Administration that has made tackling climate change one of its top priorities. We are uniquely able to do so.

One fact is clear: we can't solve the climate change problem in this country without solving it in the South. Our region plays an outsized role in contributing to the causes of climate change and is also the region in the nation most vulnerable to its consequences—from low-lying coastal areas that bear the brunt of more frequent and intense storms and flooding, to vulnerable and vanishing mountain forests, to unique ecosystems and species that are at risk of extinction. Here's the fact of the matter: **as the South goes, so goes the nation.** That's why very nearly everything we do addresses the causes and the consequences of climate change.

In the past decade, our work has been instrumental in stopping proposals for seven new coal-fired power plants and shutting down 153 existing plants—more than half

of the coal-fired capacity in our historically coal-dependent region. We have averted billions in natural gas infrastructure investments, preventing gas well fracking in our region and canceling the Atlantic Coast Pipeline. At the same time, we have removed obstacles and advanced policies that have expanded investments in renewable resources to meet our energy needs. In a sea change that was unimaginable a few years ago, three investor-owned Southern utilities—Dominion Energy, Duke Energy, and Santee Cooper—

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recently announced goals of zero carbon by 2050.

While enforcing Clean Air Act requirements to stop harmful air pollution from burning coal, we also have focused on cleaning up the ash left after coal is burned. Over the last decade, we have pioneered innovative legal strategies that have produced the biggest coal ash cleanup in history—and one of the biggest industrial pollution cleanups of any kind: more than 255 million tons of coal ash in our region will be excavated and safely disposed or recycled.

In addition to reducing climate-changing air pollution, we work to preserve and enhance nature-based climate solutions. Since SELC was

founded nearly 35 years ago, we have preserved hundreds of thousands of acres of forests, which are the planet's most important natural carbon sequestration reservoirs. We have protected wetlands that are natural carbon sinks and that store and mitigate floodwaters and rising sea levels in low-lying coastal areas. As just one recent example, we drafted and worked with South Carolina lawmakers to enact legislation providing funding for communities to convert repeatedly flooded properties to open space and restore floodplains (see facing page).

And we are promoting climate-friendly transportation solutions while opposing ill-conceived projects that would induce sprawling development in vulnerable areas, like coastal plains that are subject to sea level rise and flooding.

Solving climate change is a daunting and urgent proposition. But it is a challenge we can and must meet. The decisions we make and the steps we take today will determine the kind of world our children and their children inherit. Our experience over the last three decades proves that transformative change is possible, even in a historically fossil-fuel dependent region. After four years of rhetoric denying climate change and relentless assaults against environmental protections, the hill is a bit steeper, and the Biden Administration has its work cut out for it. SELC will continue to play a critical role. You can count on it.



New Law Brings Relief to South Carolina Coastal Communities

As the climate crisis becomes a daily reality for frontline communities in South Carolina, SELC drove the effort with our coastal partners to enact the landmark Disaster Relief and Resilience Act. The new law, passed by the South Carolina General Assembly this summer, will reduce flood risks and improve disaster response by helping homeowners relocate away from repeatedly flooded properties, ensuring smarter planning for future growth and facilitating nature-based solutions to flooding.

South Carolina has endured several devastating flooding events since 2015. The floodwaters from storms, including Hurricanes Matthew, Irma, and Florence, inundated thousands of homes, caused over one billion dollars in damage, and required hundreds of millions of dollars in state spending. Flooding has been exacerbated by the combination of more powerful climate change-fueled storms, rising seas, and risky development practices in floodplains. Many homeowners have been trapped in a cycle of flooding and rebuilding, unable to relocate on their own and with no avenue for long-term relief.



This law will help to make sure South Carolina has the resources and plans to better prepare for climate hazards, including more powerful storms.

The new legislation establishes a statewide Office of Resilience to be headed by a new state resilience officer, mandates a statewide resilience plan, creates a revolving loan fund to provide funding for floodplain buyouts and restoration, and requires localities across the state to plan for the impacts

of climate change. SELC's advocacy made this bipartisan legislation possible—a major victory that lays the foundation for the state's resilience work going forward.

To learn more about how Southerners living along the coast are navigating sea level rise and what is being done to address this urgent issue, check out the new season of our Broken Ground podcast, at BrokenGroundPodcast.org.

IRA Gifts Still Smart in 2020

The end of the year is when many start thinking about deductions and donations—and wondering about the implications of current tax law. The good news is, if you are 70½ years old or older, an IRA Qualified Charitable Distribution is still a great way for

you to make a generous charitable gift. Clearly, SELC has a critical role to play protecting the South and rebuilding our federal environmental protections, and we urge you to consider an IRA

contribution to help us lead the way in 2021. Contact Deb Donnelly at ddonnelly@selcva.org or 434-977-4090 if you are interested or have questions.



SOUTHERN ENVIRONMENTAL LAW CENTER

201 West Main St., Suite 14
Charlottesville, VA 22902
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Protecting the Most Critical, Least Familiar Environmental Safeguard

In July, the White House Council on Environmental Quality finalized a “complete overhaul” of regulations implementing the National Environmental Policy Act. NEPA is an essential, easily overlooked tool in SELC’s transportation, public lands, and wetlands-protection work. Because the new rule would reverse important protections in place for more than 40 years, we challenged it in federal court.

Others are also challenging the NEPA rollbacks, but only SELC sought a preliminary injunction to block the rules before they took effect. Working from home offices and dining room tables, our attorneys collected 56 declarations—including several from top Obama Administration officials and the General Counsel of CEQ in 1978 when the original rules were promulgated—and developed evidence to demonstrate existing and imminent threat of harm.

Preliminary injunctions are extraordinary remedies, and judges are reluctant to issue them in all but the clearest

of cases where irreparable harm is all but certain. In this instance, the court denied our request for a preliminary injunction, and the new rules are now in effect.

Although we would have preferred a different outcome, we remain in a strong position to vacate the new rules when the court considers the full case. We won’t stop exerting this kind of effort until we have restored this and other critical environmental protections.