

POWER OF THE LAW QUARTERLY

Spring 2019

New Wilderness Areas in Cherokee National Forest

More than two decades of advocacy by SELC and our Tennessee Wild partners produced a lasting victory in December when the Tennessee Wilderness Act became law, giving the strongest protection available under federal law to nearly 20,000 acres of the Cherokee National Forest. These public lands will never be logged. They will never be leased for mining or other industrial development. They will never be fragmented by roads. Instead, they will be preserved as a wild trust for future generations.

Approved as part of the 2018 Farm Bill, the first new Tennessee wilderness designations in over 25 years will protect areas that include the headwaters of the Bald River, some of the South-east's most untouched brook trout fisheries, and popular horseback riding and hiking destinations. Now nearly every acre of the Bald River watershed is protected, along with thousands of acres of unbroken habitat for black bear, bobcat, migratory songbirds, and more.

The legislation also doubles the Big Laurel Branch Wilderness, which overlooks Watauga Lake and now protects over 10 miles of the Appalachian Trail corridor along Iron Mountain. Other new additions significantly expand the Sampson Mountain, Joyce Kilmer-Slickrock, Little Frog, and Big Frog Wilderness areas—all offering pristine water, rich wildlife habitat, and opportunities for solitude and recreation.

The work to protect these areas began decades ago when local citizens first identified areas worthy of des-

ignation and continued through advocacy with Senators Alexander and Corker and Representative Roe to introduce this bill. Our success demonstrates that a balanced, bipartisan approach to wilderness campaigns is still effective, even in today's divisive political atmosphere.

The Farm Bill was also a victory for SELC's Washington, D.C., office, which kept congressional attention on the Tennessee Wilderness Act and pressed hard to keep bad logging amendments out of the final package. For

months, some members of Congress sought to drastically increase and streamline timber production by creating new exemptions from standard environmental and public reviews. Through the tireless efforts of SELC and other conservation groups, those provisions were excluded from the legislation.

This work is far from finished. Many more of our region's wildest places are vulnerable to logging, roads, and other threats. While we can still permanently protect the most beautiful, important areas within our national forests, we must ensure these areas are not

degraded in the meantime—an ongoing challenge as the Trump administration ramps up its “get out the cut” agenda.

In December, President Trump issued an executive order for an increase in logging, along with shortcuts to the public's right to participate in those decisions. As this order inevitably begins to affect our region, SELC will continue to speak up for southerners and to protect the special places that enrich our lives.

“A success like this requires a collaborative effort of organizations, elected officials, and citizens working together for a greater cause, which is a testament to just how special these places are.”

—Sam Evans,
National Forest and Parks Program
Leader for SELC

“WE KNOW HOW TO DO THIS”

Rick Middleton Builds—and Prepares to Pass On— The Right Organization to Get the Job Done



On April 1, SELC's Founder Rick Middleton will retire after 33 years, passing the torch to a new executive director, Jeff Gleason. On the eve of this important transition, Rick reflects back on how SELC became the powerhouse that it is today, and what gives him confidence about the challenges lying ahead.

Although he admits it would have been impossible to predict when he started the Southern Environmental Law Center in 1986, Rick Middleton maintains that SELC in its present form is exactly the right organization, in just the right place, at precisely the right moment. "Because of its size, expertise, and capacity, SELC is far and away the best-situated organization in the country to deal with the biggest environmental issues facing our region."

He lists a few. Global warming and climate change. Population growth and development pressure. Offshore drilling. Unprecedented Trump administration attacks on even the most fundamental environmental safeguards.

Rick muses, "It's almost as if someone wrote a script 30 years ago, imagining what the future would be like and laying out a blueprint for the organization that could deal with it." "But," he says with a laugh, "Of course, I had no idea."

Combining Heart and Mind

But, characteristically, Rick did have very definite ideas about what principles would guide the organization he wanted to create. The first was the notion of stewardship and love of place.

"I probably fall into the category of appreciating nature more than the average person," he says. But Rick also knew that most southerners share a strong affinity with the landscape around them, and the places where they go to enjoy the outdoors. He knew firsthand that the South abounds in special places of heart-stopping beauty and ecological significance, which are largely unknown or unappreciated by people in other parts of the country. His hypothesis: if our special places were to be saved, it was up to us southerners to do it. "I've got a very strong sense of fairness and justice," he says. "We've been given this bounty, this magnificent gift—are we just going to let it be destroyed?"

Which leads to SELC's second foundation stone: the power of the law. "When we started SELC, there were a number of local and state groups doing great work, but

they couldn't achieve the results they wanted because they didn't have a legal arm," he says. "When you have a powerful opponent, with a lot more money and plenty of lawyers, they just have the run of the situation."

Rick had learned from his own experience that the law could be an extraordinarily effective counterweight. After graduating from Yale Law School in 1968 and spending two unfulfilling years in private practice, Rick joined pioneering Alabama Attorney General Bill Baxley's posse of young guns.

In his early thirties, Baxley was the youngest person in the United States to hold a state attorney generalship. He was, as Rick describes him, "a force and an inspiration." As attorney general he reopened the infamous case of the 16th Street Baptist Church bombing, which killed four African-American girls, and, in a groundbreaking trial successfully prosecuted the first of its perpetrators.

Baxley was as committed to the environment as he was to civil rights, and found in the 28-year-old Middleton someone he trusted with enforcement of the recently-passed Clean Air Act. The summer of 1975 was the deadline for every company in the country to bring its facilities in line with the law; the Tennessee Valley Authority, the largest polluter in Alabama, refused to comply. Rick brought suit—in a case that went to the U.S. Supreme Court. Right on the heels of the TVA case came his successful prosecution of U.S. Steel, the largest polluter in Rick's hometown. "It was a huge turning point for Birmingham and for me," he says. "I saw that a lawsuit could do something that nothing else could."

In essence, Rick found in himself—and in his experience—a way to

reconcile opposites that are as powerful in 2019 as they were in 1986. He placed the logic of the law in service of love of place, pairing the most effective means with the most compelling end. This approach has guided SELC since its inception—and drawn scores of passionately dedicated supporters and staff who likewise share this compelling combination of heart and mind.

Focusing on the Region

Rick's first major decision was to make SELC a southern, regional organization, focusing on the six states running along the spine of the Southern Appalachians. As managing attorney for an environmental nonprofit in Washington D.C., Rick had the perfect vantage point to study environmental organizations with a national presence. "I became very frustrated that they weren't working in the South; they were writing it off," he says. "I took it as a challenge and convinced myself that a homegrown, southern organization that better understood the people, places, and politics of the region was a much better concept."

Rick also saw clearly that addressing environmental challenges required a region-wide strategy and a multi-state approach. "Air and water pollution, the Southern Appalachian forests, our beautiful coast, they all cross state lines," he observes.

Today, the Southern Environmental Law Center covers the six states of Alabama, Georgia, South Carolina, North Carolina, Tennessee, and Alabama; has at least one office in each of these states; and collaborates with more than 200 partner groups to complement their individual group skills and strengthen the overall environmental community.

Counting Up the Difference

Imagine what the South would look like today if SELC had not set a different course from the harmful practices common in 1986. Southeast

national forests would be managed primarily for harvesting trees, crisscrossed by roads with large clear cuts. Millions of acres of coastal wetlands would have been ditched, drained, and destroyed. The air would be filled with chemicals that poison our environment and threaten the planet.

In Rick's view, though, the loss would have been spiritual and generational as well. "If things had continued on their course, how would young people know and love the environment if they had never felt a part of it?" he asks.

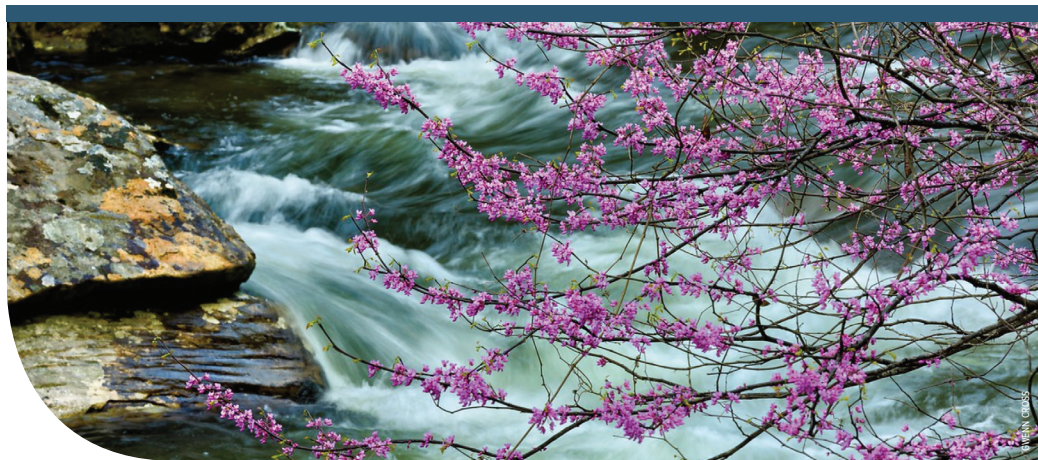
SELC's accomplishments over the last 30 years have been transformative, touching the lives and health of all the people of the South. A few statistics only hint at the scale of these successes. Carbon dioxide from coal-fired power plants is down 29 percent in the Southeast thanks to a decade of sustained SELC success, including a victory in the U.S. Supreme Court. Southern utilities have been forced to clean up 165 million tons of toxic coal ash. More than 700,000 roadless acres in the Southern Appalachians will be wild forever.

Along the way there have been hundreds of smaller, but no less meaningful victories. SELC saved Sandy Island in South Carolina and Bird Island in North Carolina from development. It helped safeguard dozens of waterways—including Alabama's Cahaba River, Georgia's Chattahoochee River, Tennessee's Harpeth River, and the James River in Virginia. And SELC ensured that The Priest and Three Ridges, beloved National Forest recreation areas, will remain undisturbed forever.

Like many people who know and love SELC, Rick has his own story about personal impact. In the mid-1990s when he, his wife Chita, and their young twin daughters moved to a farmhouse eight miles east of the Blue Ridge, those mountain views were obscured by smog for a full month every year. "We had the Clean Air Act, but it wasn't being enforced," he says. "SELC played a major role in changing that." Now the mountain ridges are a welcome sight—and proud reminder—whenever he looks west.

“Rick understands the need to get things done, but he has always pushed everyone at all levels of the organization to never settle for less than our best. **I think that this attitude, more than anything, has made SELC the success and the force that it is today.**”

—Jeff Gleason (joined SELC 1991)
Executive Director





ROBERT ILLWELYN

“There aren’t that many organizations where, if you’ve been on staff for five to 10 years, you’re still one of the new kids on the block. That tells you a lot about the kind of organization Rick has built. **The main reason I and so many others stay for years and years is, this is the smartest organization I’ve ever known.** It’s inspiring—and it definitely keeps you on your toes.”

– Erin Malec (joined SELC 2012)
Director of Program Communications

Building SELC on Talent and Character

“It’s always been very important to me that SELC be a special kind of organization,” Rick says, “known for the quality and character of its people.” Accordingly, he has gone to great lengths to find and attract likeminded people of uncommon talent and dedication to serve on SELC’s board and staff.

SELC’s extended hiring and recruitment process—and Rick’s hands-on, personal engagement—are legendary, and they have yielded consistently great results. (Consider that Rick’s first hire, Gloria Elder as his executive assistant, was previously assistant chief secretary to the Supreme Court of the United States.)

Environmentalist and SELC President’s Council member Fred Stanback says, “I’ve counseled Rick many times over the years to be patient and hold out for the best, and he has. They have put together a wonderful, talented group. SELC is the best environmental organization that I know of.”

Harkening back to 1986, with a folding card table and a filing cabinet, an assistant hired, and SELC’s nonprofit incorporation papers filed, Rick set out to bring on his first lawyer. Rick wasn’t overly concerned that David Carr was a just a few years out of law school and had never practiced environmental law. “What mattered to me was that he cared about these issues even more than I did,” Rick recalled. David’s Charlottesville roots and degree from UVA School of Law didn’t hurt either.

Rick decided that SELC’s first target should be improving the 10-year management plan for the Jefferson National Forest in southwest Virginia, which was prioritizing timber harvesting. David waded right into the fray, and ultimately convinced the forest’s supervisor to revise the plan. “It was a turning point for me and for the organization,” Rick said. “I had been so desperate to hire the right person, and David turned out to have a sixth sense for this kind of work. It came to me then that we were really going to make a go of this.”

Thirty-three years later, SELC’s 80-person legal team includes stars in virtually every aspect of environmental law, and SELC’s track record and close-knit culture is inspiring a new generation of young lawyers from around the country. Best-in-class students hope to earn a place on SELC’s dream team. “It’s hard to imagine a group better prepared for the challenges we face than our current staff,” Rick says.

Acting Strategically

Big picture selectivity has always been a critical part of Rick’s calculus. Over the years, SELC has taken on some of the most powerful, most recalcitrant corporations and government agencies—and won, much more often than not. But Rick is not a crusader. “We’re not afraid to think big,” he reflects, “but it’s important not to just tilt at windmills, no matter how bad the windmill is.” From his days in the attorney general’s office, he developed what he describes as a prosecutorial mentality. “I think it’s extremely important to pick and choose cases that you can win and that will leverage even bigger changes in opinions and behavior.”

Building a Community around a Shared Vision for the Future

From the start, Rick not only wanted to create a successful environmental law organization, he also set out to build a community. Over and over during tributes offered to Rick at his last SELC board meeting, his colleagues commented on how deeply Rick cared for every person at SELC. The result is, as one attorney commented, that SELC is “one big extended family that works together on some of the most important issues that the Southeast—and indeed the entire nation—is confronting.” Or as another said, “At SELC we like to win, but our victories are shared victories.”

Rick’s ability to extend this community and convince some of the most knowledgeable and generous people in the region and in and beyond the region help account for SELC’s long-term stability. “I hope I have brought a few different things to the organization, but certainly one that I feel has added the most value and has been central to SELC’s success is the personal relationships. He says, “Building those relationships has meant so much to me.”

In the early 1980s, as his conviction grew that the South was in desperate need of a strong environmental organization, Rick had a slowly

emerging revelation. “It just started to dawn on me that maybe I was the one who had to start that organization,” he says. “I had a certain naïve confidence—I just thought I could do it.”

Now, as the world looks to a future dominated by the most consequential environmental challenges that human beings have ever faced, it is the responsibility of SELC’s new Executive Director, Jeff Gleason, and the entire SELC community to step up and say, “We are the ones to take this on.” Thanks to Rick, they bring to the table more than his initial “naïve confidence.”

As Rick himself puts it, “We know how to do this. When you take the structure we’ve built, the talent we’ve assembled, and the model we’ve developed, we’ve created something extremely powerful.”

“In addition to everything else Rick has created, he has cultivated one big, extended family. This matters because the work we do is not easy. **The relentless persistence of opponents who are driven by a desire for a bigger profit—it can take a toll on even the most determined and passionate among us. But we carry on, and we carry on together, and we win a heck of a lot more often than we lose.** And a big reason for that is the close relationships we have with each other: it’s easy to forget you’re in the trenches when you’re in there with people you care about and respect.”

— Morgan Butler (joined SELC 2004)
Senior Attorney



REGIONAL HIGHLIGHTS

Coal Ash Efforts Produce Sweeping Virginia Legislation

Legislation that would require Dominion to excavate all of its 28 million tons of coal ash in the Chesapeake Bay watershed was approved by the Virginia General Assembly with near-unanimous bipartisan support. The new law requires at least a quarter of the ash to be recycled into products like concrete and cement, and whatever cannot be recycled will be placed in modern, lined landfills.

This landmark legislation validates all of SELC's work to force Dominion to clean up toxic coal ash stored in leaking impoundments along Virginia's waterways. We began by drawing attention to inadequate permits allowing coal ash to be stored in leaky pits along major rivers, and we pressed state agency staff to use existing laws to stop this pollution. After these efforts did not lead to swift cleanups, we turned to the courts, winning the first federal coal ash enforcement trial in the country as Dominion was found guilty of violating the Clean Water Act. When that ruling was overturned by an appeals court breaking with established precedent, we did not relent.

Instead, SELC and our partners used a strong communications campaign to raise public awareness of the clear facts uncovered in our trial and advocacy to convince elected officials to take strong steps to address this urgent problem. The result is a law that provides a lasting solution to the risks of improper coal ash storage in the Chesapeake Bay watershed.

EPA Targets Successful Air Pollution Limits

In the final hours before the government shutdown, the Trump administration reached a new low in its reckless quest to walk back successful, common-sense environmental protections. As the lights went out in Washington, EPA announced a proposal to undermine one of our most important federal clean air safeguards, the Mercury and Air Toxics Standards (MATS).

Since 2011, MATS has set national limits on toxic air pollution from coal-fired power plants, and is a significant reason why air emissions

of mercury, sulfur dioxide, and nitrogen oxides from electricity generation are down 85-95 percent in our region.

Today, utilities have already complied with these standards, and the impact on human health has been positive and dramatic. But EPA is proposing to ignore the clear evidence and find that MATS is not "appropriate and necessary." This plan could mean a quadrupling of mercury pollution, so SELC will be on the front lines to fight this dangerous proposal and its far-reaching health impacts.

Virginia is for Clean Energy

As the Trump administration attempts to walk back federal climate change policies, clean energy victories in our states are taking on increased national importance. In Virginia, the facts are winning, as three unprecedented recent SELC breakthroughs are clearing the way for a faster transition to clean, renewable energy.

Our multi-faceted strategy to prevent the Atlantic Coast Pipeline got a big boost in December when a federal appellate court in Richmond rejected a U.S. Forest Service approval to blast through two national forests and under the Appalachian Trail to build the pipeline. Along with a prior stay order related to our endangered species permit challenge, this victory has halted work on the pipeline for the time being.

In another venue, SELC convinced the State Corporation Commission to reject Dominion's long-range energy plan for the first time ever due to inaccurate projections. Year after year, Dominion has put forth overblown forecasts of massive growth in electricity demand, to try to

justify building new power plants and gas pipelines at the expense of Virginia ratepayers. SELC has been pushing back hard, using clear facts to show the accurate trends.

In December, we had a major breakthrough when the Commission agreed that Dominion's forecasts were not credible. Now, Dominion will have to submit a new plan that accurately predicts future demand and reflects how nearly \$900 million of new efficiency programs will produce enormous energy savings over the coming decade.

One month later, commissioners also rejected most of Dominion's wasteful, \$1.5 billion plan to extensively upgrade the electricity grid. Instead of focusing on good ideas that support more efficient usage and growth in rooftop solar, Dominion proposed to spend millions of customer dollars without showing the benefits to ratepayers.

SELC will continue to advocate for the best interests of Virginians to produce cost-saving, clean energy wins in the most significant state and federal forums.

Rallying Opponents of Offshore Drilling

Despite overwhelming opposition, the Trump administration is pushing ahead with plans to open the Atlantic coast to offshore oil and gas drilling and harmful exploratory seismic testing.

Seismic testing involves blasting powerful air guns into the ocean every ten seconds for days or weeks at a time. It is extremely harmful to marine life—including critically endangered North Atlantic right whales. For the first time in two years, six right whale calves were recently spotted off the coasts of Georgia and Florida. This is good news for the beleaguered right whale. But seismic testing poses the greatest threat to the most vulnerable of these whales—calves and birthing mothers.

In December, SELC filed a lawsuit in federal district court on behalf of regional and national partners to stop the administration from moving forward with seismic testing. Our case was joined by attorneys general from ten East Coast states—including Virginia, North Carolina, and South Carolina—as well as by 16 southeastern municipalities.

We also expect the administration to release its updated five-year leasing plan any day, and the public will have a chance to weigh in. We will again lead a coalition to demand that the Trump administration listen to the voices of local communities and state leaders who simply do not want dangerous, harmful oil and gas drilling off our Atlantic shores.



Preserving the Public's Right to Information

As the Trump administration moves forward with outrageous attacks on our nation's bedrock environmental laws, federal agencies are working hard to keep some of the most controversial aspects of these efforts out of public view. The Freedom of Information Act was established to prevent this kind of secrecy, and the public is entitled to information related to agency decision-making on environmental issues.

In response, SELC has launched a Government Transparency Project to push back against this assault on transparency, and we have quickly established a strong winning record on this issue, using court challenges to obtain important public documents from EPA and from reluctant state environmental agencies.

Recently, under the cover of a government shutdown and the holiday season, the Interior Department proposed a new rule that

Clean Water Act Defense

Last summer, SELC won a major victory in federal court, blocking EPA's effort to suspend a key rule implementing the Clean Water Act. Now the administration has released a new "replacement rule" to drastically narrow the universe of waters and wetlands that have been long protected by the Act, and we are speaking up once again to defend clean water as a way of life in the South.

Under EPA's new proposal, at least 290,000 miles of the Southeast's streams could be in jeopardy, including smaller streams that contribute to drinking water supplies for at least 32 million people in our six-state region. Also at risk are mil-



would dramatically reduce oversight of the agency charged with managing federal lands and wildlife. The administration sought to empower a political appointee to delay FOIA requests, or to reject requests outright. SELC sprang into action, and rallied nearly 150 national groups to speak out in opposition to this proposal.

Public review of agency actions is a critical part of protecting the places and natural resources that make the South special. Citizens have a right to know what their government agencies are doing, and SELC is prepared to return to court, if necessary, to defend basic government transparency.

lions of acres of southern wetlands, including tidal wetlands that help prevent flooding in our coastal communities.

As the administration considers public comment on this rule, we are amplifying the strong regional opposition to this reckless plan, because southerners don't want to lose critical protections for waters they use every day for fishing, swimming, kayaking, and drinking. Maintaining this public momentum will be essential to winning this fight in the long run.

If the rule moves forward despite opposition, SELC's legal team is preparing to challenge the final proposal in federal court, and this matter may ultimately be decided by the U.S. Supreme Court.

SOUTHERN ENVIRONMENTAL LAW CENTER

201 West Main St., Suite 14
Charlottesville, VA 22902
(434) 977-4090
SouthernEnvironment.org

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Shielding Our Water from Dangerous Toxins

SELC is leading the fight against a class of lightly-regulated but dangerous pollutants threatening southern waters. These new toxins, such as GenX, are used in producing everyday items like cookware coating and stain-proof fabrics. Despite the fact that studies have shown such chemicals can cause cancer, companies have been polluting air and water with these “emerging contaminants” at dangerous levels.

In North Carolina, we recently reached a proposed settlement with state regulators and DuPont subsidiary Chemours to reduce its GenX pollution by 99% at the end of 2019 and to stop contaminated water from reaching the Cape Fear River. The company was also hit with a \$12 million fine—the biggest environmental penalty in state history—for polluting the Cape Fear River for decades.

In Georgia, we also reached a settlement with chemical producer TenCate Southern Mills in a Clean Water Act case on behalf of our partner, the Flint Riverkeeper. The company had been spraying toxic wastewater containing dangerous chemicals in the same class as GenX onto areas that fed into neighboring streams and groundwater sources. The settlement requires the

company to eliminate its use of these toxic perfluorinated compounds, and to overhaul its wastewater disposal and treatment system. This is the first time the company has faced such a strict punishment.

We anticipate that this will be an expanded area of SELC’s work going forward.

