



Black Warrior RIVERKEEPER®



Alabama Citizens Win through Black Warrior RIVERKEEPER® Coal Lawsuit

Alabama citizens can now challenge decisions by the Alabama Surface Mining Commission without risking financial ruin. Thanks to the settlement of a lawsuit filed by Black Warrior Riverkeeper citizens no longer risk the imposition of attorneys fees and costs when exercising their rights under the federal Surface Mining Control and Reclamation Act of 1977 (“SMCRA”).

SMCRA grants American citizens broad rights when a mining permit is considered or issued, a right to go onto the mining site, a formal hearing on the merits of the decision, and judicial review of that decision. The citizen also has the right to request and participate in inspections of mine property if there is believed to be imminent harm to the environment or the public, to file a complaint about blasting, to challenge an agency’s failure to take proper enforcement action, and to appeal any adverse decision to the courts.



Sloan Mountain Mine on the Locust Fork of the Black Warrior River. Photo by Nelson Brooke, Flight by SouthWings.org.

Before this settlement, the Alabama Surface Mining Commission’s regulations authorized a coal mining operator or the Commission to recover attorneys’ fees and costs from a citizen challenging a regulatory decision, even where the challenge was meritorious and in good faith. This punitive regulation not only violated federal law, for the past 40 years it also deterred Alabama citizens from challenging permitting and other regulatory decisions made at the Alabama Surface Mining Commission.

The federal Office of Surface Mining, Reclamation and Enforcement (OSMRE) previously required Utah, Alaska and New Mexico to fix similar nonconforming provisions. Black Warrior Riverkeeper requested that OSMRE require the Alabama Surface Mining Commission to amend its regulation to comply with federal law. When they did not, Black Warrior Riverkeeper filed suit in July 2015.

As a result of the suit, the Surface Mining Commission finally amended their regulation to explicitly state that coalfield citizens no longer risk an award of attorneys’ fees and costs unless their challenge is in bad faith. That regulation was approved by OSMRE on October 26, 2016. Black Warrior Riverkeeper worked on the successful challenge with attorney Clay Ragsdale, who represents private individuals in challenging surface mining operations.

Black Warrior Riverkeeper and its members frequently join in a variety of citizen participation opportunities under mining laws. Citizens can now challenge Surface Mining Commission decisions without the risk of a fee award. Even though the Commission had not previously awarded fees, the possibility it could do so significantly inhibited Alabama citizens’ ability to exercise their rights under the law.

For example, prior to the regulation’s amendment, Shepherd Bend, LLC sought the payment of \$249,719.34 in attorneys’ fees and costs from the Birmingham Water Works Board under this provision when the Board challenged a surface mining permit which authorized coal mining adjacent to and upstream of one of Birmingham’s primary drinking water intakes.

Congress gave citizens the opportunity to protect their rights and play a vital role in the implementation of the nation’s mining laws. These rights mean little when a fear of fees prevents their exercise.

“This settlement is a significant win for coalfield citizens in Alabama, who can now exercise the full participation rights and oversight responsibilities that Congress provided them in the Surface Mining Control and Reclamation Act, without the chilling effect of a fee award,” said Eva Dillard, Staff Attorney for Black Warrior Riverkeeper.

To read the consent decree, visit blackwarriorriver.org/wp-content/uploads/2016/11/BWR_SettlementAgreementWithOSM.pdf. For more information about citizens’ rights under SMCRA, visit blackwarriorriver.org/citizens-rights-under-alabama-surface-mining-laws/.

Southern Exposure DVDs Available in all Jefferson County Public Libraries

Southern Environmental Law Center (SELC) and Black Warrior Riverkeeper have partnered to donate 2015 and 2016 “Southern Exposure” DVDs to the Jefferson County Library Cooperative. “Southern Exposure” is a series of documentary shorts on various Alabama environmental topics by independent filmmakers.

In 2015 and 2016, SELC and Black Warrior Riverkeeper donated copies of “Southern Exposure” for all 19 Birmingham Public Library locations. This new donation enables all 21 Jefferson County Library locations outside of the BPL system to have the “Southern Exposure” DVDs as well. SELC and Black Warrior Riverkeeper also donated more copies of its 2015 film to BPL.

“Southern Exposure” is a film fellowship program that is actively raising awareness about Alabama's incredible natural resources and important environmental issues that impact all Alabamians. Now in its fifth year, the innovative summer fellowship brings emerging filmmakers from across the country to tell authentic, engaging stories through short documentary films about Alabama's environment and the people who cherish it, from the mountains to the coast.

Sponsored by the Southern Environmental Law Center and made possible through the support and partnership with environmental and conservation groups across the state, “Southern Exposure” fellows have the opportunity to create inspiring, captivating films that give viewers a sense of how much Alabama has to offer and the importance of protecting its resources.

As a result of these poignant stories depicting the triumphs and challenges facing the state, numerous films from past fellowship years have been selected for screening in juried film festivals around the country. Live screenings and online distribution of the films reach a variety of audiences, in Alabama and across the nation, helping “Southern Exposure” fulfill the mission to spread awareness, appreciation and inspire action on behalf of Alabama's environment. View the films and learn more at southernexposurefilms.org.

“Clean water and air are necessities for all, but not everyone has an internet connection for watching Southern Exposure online,” said Charles Scribner, executive director of Black Warrior Riverkeeper. “Now, everyone can borrow the DVDs for personal viewing or an event with their friends, family, church, school, or civic organization.”

“Throughout the past five years of the Southern Exposure Film Fellowship, these compelling films have been incredibly effective in raising appreciation for Alabama’s natural resources and in bringing some of the most urgent environmental issues facing our state into focus,” said Keith Johnston, managing attorney of SELC’s Birmingham office. “By making the 2016 Southern Exposure films available to the public throughout Jefferson County, we are thrilled that the Jefferson County Library Cooperative will continue to educate, entertain and energize our citizens to take action on behalf of Alabama’s environment.”



Keith Johnston, managing attorney of Southern Environmental Law Center in Birmingham; Sandi Lee, interim director of the Birmingham Public Library; and Charles Scribner, executive director of Black Warrior Riverkeeper.

Photo by Roy Williams, Director of Public Relations, Birmingham Public Library.

Black Warrior Waterdog: Endangered Status and Critical Habitat Proposed



Black Warrior waterdog (Necturus alabamensis). Photo by Mark Bailey.

The U.S. Fish and Wildlife Service wants to protect the Black Warrior waterdog as an endangered species under the Endangered Species Act (ESA) because of low population numbers, habitat fragmentation, and poor water quality in the Black Warrior River Basin. An endangered species is considered in danger of extinction throughout all or a significant portion of its range.

At the same time, the Service also is proposing to designate 669 river miles within 11 tributaries of the Black Warrior River Basin as critical habitat. The Service is including a draft economic analysis for this proposed action. The public was invited to submit comments on all of these actions through a 60-day comment period ending December 5, 2016.

The Black Warrior waterdog is not the only species struggling to survive in the Black Warrior River Basin. Fifteen other aquatic species are currently federally protected in the basin's rivers and streams, including snails, fish, mussels, turtles, and amphibians. The flattened musk turtle, federally-listed as threatened, has habitat needs similar to the waterdog, and the two species' ranges overlap.

"The decline of the Black Warrior waterdog indicates a decline in water quality," said Cindy Dohner, the Service's Southeast Regional Director. "By proposing to conserve the waterdog, we hope to work with partners to improve water quality within the entire basin to benefit people and all aquatic species. We are committed to improving the waterdog's status and habitat quality in the basin, which helps fish and wildlife, as well as people."

The Black Warrior waterdog is a large, aquatic, nocturnal salamander that permanently maintains its larval shape and external gills throughout its life. It is only found in streams within the Black Warrior River Basin in Alabama, including the main channel of the Black Warrior River, parts of the North River, Locust Fork, Mulberry Fork, and Sipsey Fork, and all tributaries in this basin.

Water quality degradation is likely one of the biggest threats to the continued existence of the Black Warrior waterdog, and is considered the primary reason for the extirpation of this species over much of its historical range. Because of their highly permeable skin and external gills, waterdogs are particularly sensitive to declines in water quality and oxygen concentration. Sources of pollution in the Black Warrior River Basin have been numerous and widespread, and include run-off from industrial plants, landfills, sewage treatment plants, construction, forestry management, and surface mining.

Physical features, such as rocks, submerged ledges, and other instream structures, play an important role in determining habitat suitability for the waterdog. One of the most important habitat features is the presence of semi-permanent leaf packs. These provide both shelter and foraging habitat for larval and adult waterdogs.

The Service will make a final decision in 2017 about whether to extend ESA protection to the Black Warrior waterdog after evaluating comments and all available information. In particular, the Service is looking for information on distribution, status, population size or trends, life history, and threats to these salamanders.

If the Black Warrior waterdog is listed under the ESA, the Service will work cooperatively with partners to conserve its habitat. In addition, federal agencies would need to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify designated critical habitat.

The Service has entrusted Black Warrior Riverkeeper with Peer Reviewer status for the Black Warrior waterdog's proposed listing as an endangered species and for the designation of its Critical Habitat. To view the Black Warrior waterdog's Species Profile and read updates on both proposals for its increased protection, visit fws.gov/southeast/wildlife/amphibian/black-warrior-waterdog/.

Groups Petition State to Place Stricter Limits on Toxic Pollutants in Waters

Nine environmental groups have petitioned the Alabama Environmental Management Commission to adopt new or revised limits on toxic pollutants in surface waters. These limits are intended to protect human health and aquatic life.

In 1994, the Commission revised existing limits on toxic pollutants for the protection of human health based on a fish consumption study that demonstrated that Alabama anglers consume considerably more fish than most other Americans. The fish consumption rate accepted by the Commission was 30 g/day – a rate reflective of angler consumption of fish caught from reservoirs and tailwaters below dams. However, the study also indicates that the same anglers consume another 15 g/day of fish caught from rivers and lakes. Furthermore, the study does not account for any estuarine fish and shellfish consumption.

“Continued reliance on the 30 g/day fish consumption rate does not adequately protect human health because it underestimates fish consumption and the potential for human exposure to toxic pollutants,” said David Ludder, the groups’ attorney. The groups recommend that the Commission increase the fish consumption rate significantly.

In 2001 the EPA recommended that states adopt limits on methylmercury in fish tissue to protect consumers from the adverse health effects of exposure to methylmercury (loss of peripheral vision, “pins and needles” feelings, usually in the hands, feet, and around the mouth; lack of coordination of movements impairment of speech, hearing, walking muscle weakness). The Alabama Department of Public Health has issued numerous health advisories urging limited consumption of fish from certain waters because of methylmercury contamination. Fifteen years later, the Commission has still not adopted a limit for methylmercury in fish tissue.

“The lack of any limit for methylmercury will ensure that little action is taken to reduce methylmercury contamination,” Ludder said. The groups recommend that the Commission adopt a limit on methylmercury in fish tissue.

Finally, in June 2015, the EPA revised its recommendations for limits on 94 toxic pollutants for the protection of human health. These recommendations incorporate the latest scientific information about pollutant toxicity and accumulation of toxic pollutants in fish tissue, as well as new data on human body weights and water consumption. The Commission has yet to announce any intention to revise its toxic pollutant limits to reflect this new scientific information.

“Protection of human health should be the first order of business for the Commission,” Ludder said. The groups recommend that the Commission immediately commence rulemaking to revise state limits on toxic pollutants in surface waters consistent with the latest scientific information.

The groups include Environmental Defense Alliance, Alabama Rivers Alliance, Black Warrior Riverkeeper, Cahaba River Society, Cahaba Riverkeeper, Choctawhatchee Riverkeeper, Coosa Riverkeeper, Friends of the Little Cahaba River, and GASP. To read the petition, visit: blackwarriorriver.org/altoxicspetition/

Worth protecting: Alabama’s citizens and critters.
Image by Alabama Water Watch.

America’s Amazon

Alabama the Beautiful

10%

of the freshwater resources in the continental United States flow through or originate in Alabama.



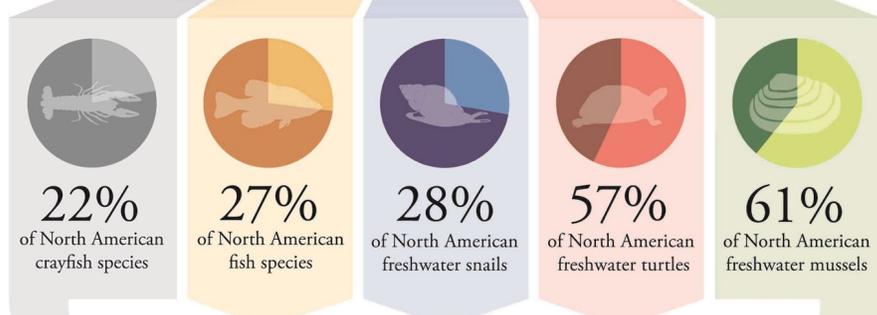
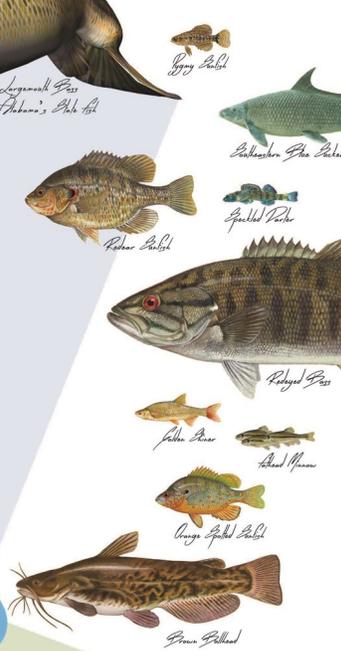
14 river basins form the waterways of Alabama

There are more than **132,000*** miles of rivers and streams in Alabama. That's enough to circle the earth 5 times!

Top 5 States

Freshwater Fish Biodiversity

Rank	State	# Species
1	Alabama	332*
2	Tennessee	320
3	Georgia	265
4	Kentucky	248
5	Mississippi	209



Native to Alabama

Alabama Ranks Number 1 in the U.S. for the number of freshwater crayfish, fish, snail, turtle and mussel species!



19% of the freshwater fish species in Alabama are at risk due to pollution and destruction of habitat.



Alabama Water Watch is a program in the Auburn University Water Resources Center, which receives support from the Alabama Agricultural Experiment Station and the Alabama Cooperative Extension System.

Get Involved!

Get certified as a water monitor and volunteer. Learn more at <http://alabamawaterwatch.org>

Black Warrior RIVERKEEPER® Board Member Bio: Chuck Rabolli



Chuck Rabolli is the owner and Senior Ecologist of Rabolli Environmental Inc. a professional environmental consulting firm in the Birmingham, Alabama area. His primary practice is in the area of regulatory compliance and environmental permitting. He specializes in terrestrial ecology, rare species surveys, erosion prevention and sediment control, and stream and wetland delineation and permitting.

Chuck received his Bachelor of Science in Forest Ecology from Penn State University and his Master of Science in Wildlife Biology from Clemson University. He is a Certified Wildlife Biologist and Certified Professional in Erosion and Sediment Control with over 30 years of experience in conservation biology.

After graduation, Chuck was a research technician at the University of Georgia's Savannah River Ecology Laboratory. He then worked for the Georgia Wildlife Resources Division where he established and directed the Wetlands and Natural Heritage Inventory Program.

As Acting Vice President for Environmental Policy for The Georgia Conservancy he wrote the strategic plan for the establishment of the Upper Chattahoochee Riverkeeper. Prior to moving to Alabama in 2014 he was an owner and Senior Biologist at CCR Environmental, Inc. in Atlanta, Georgia.

Chuck has a life-long love of the out-of-doors and has been active in numerous environmental advocacy and education groups. His hobbies include hunting, fishing, canoeing, camping and "tinkering in the garage". Chuck spends his free time involved with soccer as a coach and referee, and he raises and trains versatile hunting dogs.

Chuck and his wife live in Jefferson County near the banks of the Locust Fork River where they enjoy getting on the river in boat or canoe. They enjoy friends, gardening, working in the yard, the beach, college football, their grown children and their dogs and cat.

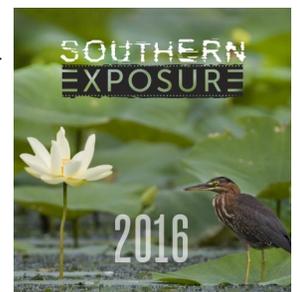
Read all of our Board bios at: blackwarriorriver.org/board/.

Black Warrior RIVERKEEPER® 2016 Accomplishments

50 years ago, veterans and fishermen launched the Riverkeeper movement on the Hudson River. Patrolling local waterways and suing polluters when necessary, they created a blueprint for clean water advocacy that succeeded before the Clean Water Act and EPA even existed. Riverkeeper's historic transformation of the Hudson has inspired over 300 Waterkeeper organizations across the globe to adopt their model while remaining independent and locally focused.

15 years ago, Black Warrior Riverkeeper became the world's 72nd Waterkeeper organization. The timeless Riverkeeper model has propelled us to increasing success as we grow with our grassroots membership base. In 2016 we achieved the following milestones:

- Alerted vulnerable populations to major spills at American Proteins, Gorgas Steam Plant, and Northport sewers.
- Won a settlement enabling citizens to contest Surface Mining Commission decisions without risk of financial ruin.
- Petitioned the Environmental Management Commission with 8 groups to improve limits on toxic water pollutants.
- Persuaded the U.S. Army Corps of Engineers to withdraw Black Creek Mine's permit, enabling study of impacts.
- Monitored Donaldson Correctional Facility's sewage treatment improvements resulting from our lawsuit.
- Filed a lawsuit with SELC and Public Justice to stop pollution at Drummond's abandoned Maxine Mine.
- Filed a lawsuit to stop Southeastern Cheese from discharging wastewater in Uniontown without a permit.
- Got SELC's educational Southern Exposure documentary DVDs into all 41 Jefferson County Library branches.
- Entrusted with Peer Reviewer status for the Black Warrior waterdog's proposed listing as an endangered species.
- Entrusted with Peer Reviewer status on proposed Critical Habitat designation for the Black Warrior waterdog.
- Became one of America's first Platinum organizations on GuideStar, the top source of information on nonprofits.
- Engaged 589 volunteers of all ages who donated 9,526 hours of community service in the watershed.
- Wrote 29 comment letters to government agencies, requesting improvements to permits and rules for our water.
- Made 43 educational presentations to business, civic, government, nonprofit, religious, and scholastic groups.
- Reviewed 278 facilities' Discharge Monitoring Reports to record the number and nature of their violations.
- Monitored 141 facilities across our 17-county watershed through patrols by foot, truck, canoe, boat, and plane.



Black Warrior RIVERKEEPER® Patrol Log

July 26: Inspected Metro Recycling's Blount County tire landfill with colleagues to check on their progress complying with the terms of our Consent Decree requiring compliance with the Clean Water Act.

August 5: Investigated a fish kill on Valley Creek and found hundreds of dead fish lining the creek downstream of where the creek flows out from underneath the City of Birmingham at 5th Ave. N & 7th Street N in Smithfield/Graymont. We received the fish kill tip days after the kill occurred, making it difficult to identify the source.

August 6: Participated in the annual Holt Lake Cleanup at Rocky Branch Park.

August 8: Patrolled the Mulberry Fork from Gorgas Steam Plant to Cane Creek in Cordova with intern Rachel Knowles and her family.

August 10: Patrolled the lower Black Warrior in Greene and Hale counties.

August 19: Investigated a fish kill on the Mulberry Fork by patrol canoe and found thousands of dead fish decomposing in the river. American Proteins spilled 900 gallons of sulfuric acid into the river on August 17th, causing the fish kill.

August 20: Participated in the annual Valley Creek Cleanup at Lock 17 Rd. bridge to pick up other people's trash.

October 13: Helped Bernard Kuhajda and David Neely from the Tennessee Aquarium Conservation Institute with a survey for fishes in the Locust Fork in Jefferson County. They found 21 species of fish, including two types of rare fish: the Cahaba shiner (*Notropis cahabae*), a federal endangered species, and the coal darter (*Percina brevicauda*), a state protected species of high conservation concern.

October 28: Helped Michael Gangloff from the Department of Biology at Appalachian State University with a survey for mollusks in the Locust Fork in Jefferson County. His team found 18 types of mussels and 6 types of snails, including a lot of the endangered Plicate rocksnail (*Leptoxis plicata*).

November 1: Patrolled the Colonial Pipeline explosion site with Coosa Riverkeeper, on behalf of Cahaba Riverkeeper. We documented that no gasoline had made it offsite into Shades Creek and the Cahaba River.

November 3: Patrolled the Oliver Pool in Tuscaloosa with Carla Atkinson's UA Freshwater Studies class.

November 7: Patrolled Bankhead Lake to check on discharges from Shoal Creek Mine with Rojo staff who won Birmingham's Sweetwater "Save the Black Warrior" campaign benefiting Black Warrior Riverkeeper.

November 15: Patrolled via helicopter with SouthWings volunteer pilot Charles Welden to check on unpermitted discharge pipes installed at Southeastern Cheese's wastewater sprayfields in Uniontown.

November 21: Patrolled Valley Creek in the Bessemer area via canoe with intern Hannah Studdard.

December 8: Inspected Donaldson Correctional Facility's wastewater treatment plant with John Kinney to check on their progress upgrading a clarifier, per the terms of our Consent Decree.

December 14: Visited the upper Locust Fork near Nelson's Gap with the Nature Conservancy to look at local geology, impacts from physical alterations to the landscape, and habitat for rare fish.

To report pollution anywhere in the Black Warrior River watershed, call our staff Riverkeeper, Nelson Brooke, at (205) 458-0095, email him at reportpollution@blackwarriorriver.org or visit our Report Pollution page where you can upload photos — always a helpful aspect of pollution tips: blackwarriorriver.org/report-pollution. You may remain anonymous.



Fish decompose in Valley Creek for miles. Photo by Nelson Brooke.



Two days after the fish kill occurred, hundreds of decomposing fish scattered the river. Photo by Nelson Brooke.



Bernie Kuhajda examining endangered Cahaba shiners found in the Locust Fork. Photo by Nelson Brooke.



Southeastern Cheese's sprayfields collect and illegally discharge wastewater to a stream impacting Cottonwood Creek and Big Prairie Creek. Photo by Nelson Brooke. Flight by SouthWings.org.

Black Warrior RIVERKEEPER® Membership / Donation Form

Please complete and mail form to: Black Warrior Riverkeeper, 712 37th Street South, Birmingham, AL 35222.

Black Warrior Riverkeeper is a 501(c)(3) tax-exempt charitable organization. Contributions are tax deductible to the extent allowed by law.

Name(s): _____

Address: _____ City, State, Zip: _____

Phone(s): _____ Email(s): _____

Signature: _____ Date: _____

If you enjoy the Black Warrior River, its tributaries, or its Sipsey, Mulberry, or Locust Forks, please tell us how and where:

Payment Method: Check enclosed / American Express / MasterCard / Visa / Discover / Non-monetary Contribution (Volunteer or In-Kind)

Credit Card number and expiration date (mm/yy): _____

Monetary donation: \$ _____ (If you prefer to donate stock, please call Charles Scribner at 205-458-0095 for easy instructions).

In-kind donation (List donated goods or professional services): _____

Volunteer time (List hours and type of volunteering): _____

(Any gift above) In Memory of: _____

(Any gift above) In Honor of: _____

Name & address to notify of memorial or honorarium gift: _____

About Black Warrior RIVERKEEPER®

Our mission is to protect and restore the Black Warrior River and its tributaries. We are a citizen-based nonprofit dedicated to improving water quality, wildlife habitat, recreation, and public health in our patrol area, the Black Warrior River watershed. This basin is contained entirely in Alabama, America's leading state for freshwater biodiversity.

Our staff includes Nelson Brooke (Riverkeeper), Eva Dillard (Staff Attorney), John Kinney (Enforcement Coordinator), and Charles Scribner (Executive Director). Learn more at BlackWarriorRiver.org. Email us at info@blackwarriorriver.org or call (205) 458-0095 to report pollution or to discuss how you can help defend your water.

We are members of the Alabama Association of Nonprofits, Alabama Rivers Alliance, GuideStar, River Network, and Waterkeeper Alliance. Other Waterkeepers in Alabama include Cahaba Riverkeeper, Choctawhatchee Riverkeeper, Coosa Riverkeeper, Hurricane Creekkeeper, Little River Waterkeeper, Mobile Baykeeper, and Tennessee Riverkeeper.



Turkey Foot Creek, a tributary of the Black Warrior River's Sipsey Fork in the Sipsey Wilderness within Bankhead National Forest.

Photo by Nelson Brooke.

Black Warrior RIVERKEEPER®

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Email: info@blackwarriorriver.org

Website: BlackWarriorRiver.org

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Black Warrior RIVERKEEPER® events

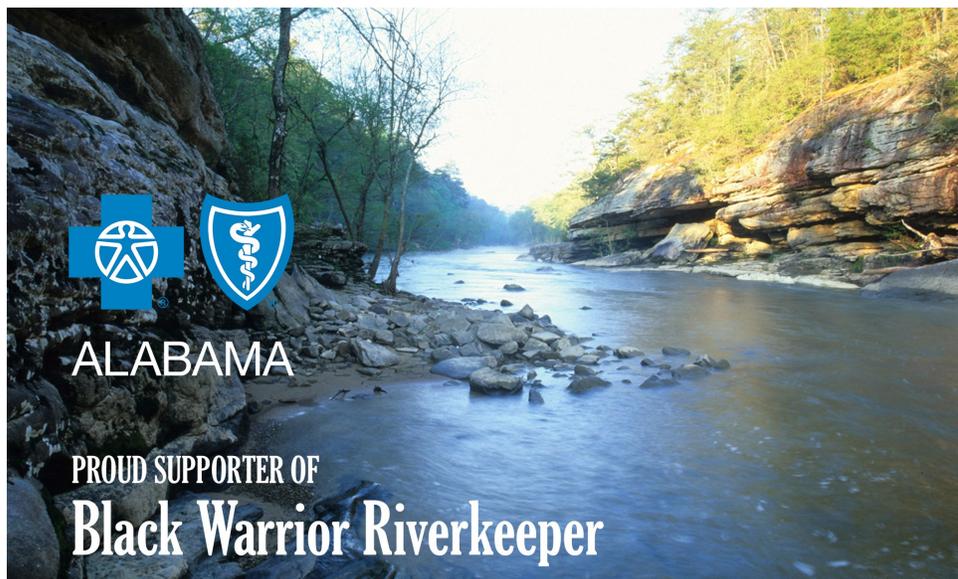
Tuesday, March 14: Giving Tuesday 5-10pm at Rojo (2921 Highland Ave, Birmingham, AL 35205). Food (“Latin and American”) and bar proceeds benefit us, Cahaba Riverkeeper, and Coosa Riverkeeper.

Saturday, March 25: AirWave (1-11pm) at Good People Brewing Company (114 14th St S, Birmingham, AL 35233). Live music by dozens of local artists! Food trucks! Art! Vendors! Sponsors, donations, and sales benefit us, Cahaba Riverkeeper, and Coosa Riverkeeper.

Saturday April 22: Earthbound’s Earthfest (2-9pm) at Avondale Brewing Company (201 41st St S, Birmingham, AL 35222). Live music by Earthbound! Food trucks! Art! Vendors! Sponsor, donations, and sales benefit us.

To sponsor an event, request interviews, volunteer, or learn more, contact Charles Scribner at info@blackwarriorriver.org or 205-458-0095.

Black Warrior RIVERKEEPER® Interns



Rachel Knowles is a student at Barnard College and vice president of the Roosevelt Institute at Columbia University. Rachel reviewed facilities’ discharge monitoring reports and researched the \$5,342,000,000 Northern Beltline’s threats to water and taxpayers for her article published in *Weld*.

Bennett Smith is a student at Auburn University and a USA Freestyle Kayak Team member who practices on the Black Warrior’s Locust and Mulberry Forks. Bennett helped coordinate our “Save the Black Warrior” program with SweetWater in Birmingham and Tuscaloosa.

Hannah Studdard is a recent graduate of The University of Alabama and a Walker County native who enjoys paddling all over the watershed. Hannah reviewed facilities’ discharge monitoring reports and helped with fundraising and outreach.