



Black Warrior RIVERKEEPER®



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Two Waterkeepers Sue Fleetwood Mine in Tuscaloosa

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Waterkeeper organizations Black Warrior Riverkeeper and the Friends of Hurricane Creek filed a lawsuit on September 13, 2011 against Black Warrior Minerals, Inc. in United States District Court. The lawsuit alleges that pollution from Black Warrior Minerals' Fleetwood Mine in Tuscaloosa County is polluting Hurricane Creek, a tributary of the Black Warrior River.

According to John Wathen, Hurricane Creekkeeper for the Friends of Hurricane Creek, "Coal mining has been a serious problem in Hurricane Creek for many generations, causing it to be placed on the EPA's impaired streams list. Black Warrior Minerals has not only failed to reduce those pollutants but has exceeded effluent standards repeatedly and should be held accountable. The state has failed to do so. With no recourse left, we have joined forces with Black Warrior Riverkeeper to step in to enforce the laws."



Nelson Brooke collects samples of polluted water coming from Fleetwood Mine. Polluters beware: we are tripling our laboratory analysis budget for 2012. Photo by John Wathen.

Nelson Brooke, Black Warrior Riverkeeper, added, "Fleetwood Mine's numerous violations of the Clean Water Act at Hurricane Creek and its tributaries are unacceptable. Orange polluted water flowing from this strip mine is an unwelcome sight along this beautiful stretch of Hurricane Creek. Coal mines like this one should not be allowed to operate if they cannot meet applicable effluent standards."

Black Warrior Minerals is in violation of the Clean Water Act (CWA), which prohibits their Fleetwood Mine from discharging pollutants to waters of the United States except in compliance with applicable New Source Performance Standards ("NSPS") for coal mining. In their complaint, the two Waterkeeper Alliance member groups catalogued over 1,200 NSPS violations at the Fleetwood Mine over the past five years. The mine has violated standards for iron, manganese, total suspended solids and pH.

Black Warrior Riverkeeper and the Friends of Hurricane Creek are asking the Court to enjoin Black Warrior Minerals from discharging pollutants from Fleetwood Mine in violation of the CWA and to assess appropriate penalties for the violations alleged. Most citizen suits require a sixty day waiting period before suit can be filed. However, in this situation, David Ludder, counsel for Friends of Hurricane Creek explains, "Congress authorizes immediate citizen suits to enforce NSPS rather than allowing those violations to continue."

Eva Dillard, Black Warrior Riverkeeper's Staff Attorney, added, "We expect the coal mines that operate in the Black Warrior River watershed to follow the law and meet all regulatory standards. When they fail to do so, we are willing to take action to ensure that the law is properly applied and enforced."

We continue to monitor the mine. Courtroom arguments on the case begin in January. Meanwhile, on November 28, 2011, the Alabama Department of Environmental Management (ADEM) filed a parallel enforcement action against Black Warrior Minerals in state court based upon the same problems identified by our citizen suit. ADEM's action is in direct response to our lawsuit and would not have been undertaken otherwise.

This development in the case exemplifies ADEM's misguided practice of protecting polluters. Instead of allowing citizen suits like ours to proceed, ADEM often files its own enforcement action with a shorter statute of limitations that includes fewer violations and a policy that significantly undercounts those violations. In doing so, **ADEM not only hinders citizens' efforts to enforce laws, but also wastes its own scarce funding.**



Water laden with heavy metals from Fleetwood Mine constantly flows over a spillway to Hurricane Creek. Photo by John Wathen. Flight by SouthWings.org.

Groups Urge Army Corps To Reject Flawed Northern Beltline Permit

The Alabama Department of Transportation is attempting an end-run around federal law by pursuing permits for one section of the proposed Northern Beltline in the face of persistent questions about whether the beltline as a whole merits a multi-billion dollar investment by federal taxpayers, and while a lawsuit challenging the beltline's environmental study is pending.

In detailed comments filed with the Army Corps of Engineers on November 14, the Southern Environmental Law Center and Black Warrior Riverkeeper said the project, at about \$4.7 billion, ranks as one of the most expensive highways ever built in the U.S. Further, this estimate does not include the significant cost of local road improvements, schools, fire stations, water and sewer lines, and other infrastructure that would be borne by struggling local governments—including Jefferson County—that will be necessary to support any potential sprawl development.

The groups told the Corps that it is premature to issue ALDOT a "Section 404" permit under the federal Clean Water Act to build the first 3.4-mile segment of the beltline between State Routes 79 and 75 in Palmerdale. ALDOT is anxious to break ground on this isolated segment of the project, which would in effect "lock in" the route of the proposed beltline, which the Environmental Protection Agency has identified as the longest and most environmentally destructive of all routes considered.

"This first segment has no transportation value in and of itself," said Sarah Stokes, SELC associate attorney. "The Corps is required by law to study the overall impacts of the entire Northern Beltline project, not just isolated segments that ALDOT wants to build one at a time. If ALDOT is unwilling or unable to conduct the required studies, then clearly the Corps must do so before it even considers issuing the permit."

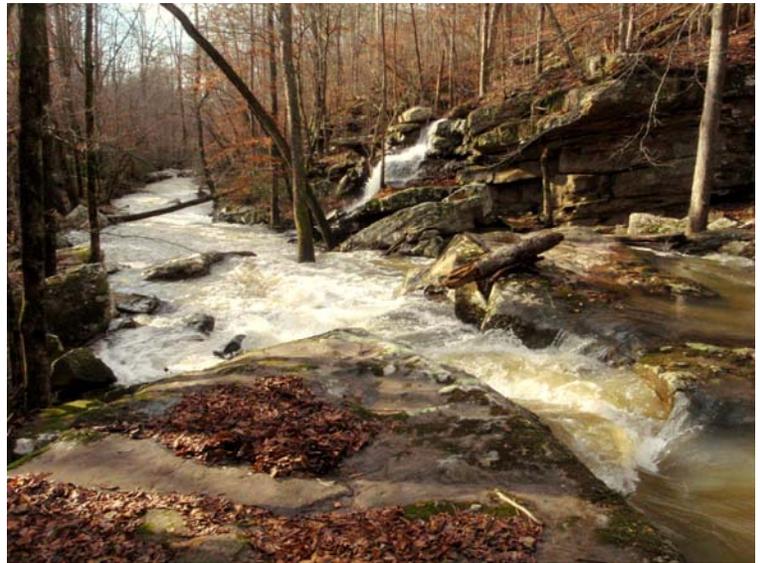
Another flaw identified by the groups is ALDOT's failure to consider better alternatives that would be less damaging to the environment but which could accomplish the beltline's stated purpose of stimulating economic development and enhancing cross-regional transportation.

"The Northern Beltline will pollute our area's streams, wetlands, and air, all of which are vital to area residents for their drinking water, recreation, fishing, and overall health. This road will not reduce traffic problems, yet ALDOT continues to pursue its development without the required studies of overall impacts or alternatives that are less damaging," said Nelson Brooke, Riverkeeper at Black Warrior Riverkeeper.

Earlier this year, Black Warrior Riverkeeper, represented by SELC, filed a lawsuit against ALDOT and the Federal Highway Administration under the National Environmental Policy Act for failing to undertake a full analysis of the indirect and cumulative impacts of the Northern Beltline and for not updating the studies when new information became available, as required by law. The groups say the lacking studies are a necessary precursor to any decision by the Corps on the permit requested by ALDOT.

On November 15, ALDOT announced that it has withdrawn its application for an Army Corps of Engineers permit to build the first segment of the Beltline until an in-depth study of the entire 52-mile proposal is finished. For updates, articles, maps and commentary on the Northern Beltline, visit:

blackwarriorriver.org/northern-beltline.html



This beautiful double waterfall on Self Creek near Palmerdale is one of many pristine waterways in the path of the Northern Beltline.

Photo by Nelson Brooke.



Turkey Creek Nature Preserve, a Forever Wild tract in Pinson, features this popular swimming hole at Turkey Creek Falls. The preserve is downstream of the Northern Beltline's proposed route.

Photo by Nelson Brooke.



\$90 million per mile

--- 1-3% traffic reduction ---

We deserve cost effective transportation.

Shepherd Bend Mine Opposition Grows, Seeking UA Commitment

The Shepherd Bend Mine remains a major threat to the river and Birmingham's water. The University of Alabama (UA) has been non-committal regarding the potential sale or lease of their land and mineral rights at Shepherd Bend for coal mining across the river from an intake facility supplying water to 200,000 citizens. As just one recent example, on October 27, 2011, students from UAB, Samford, and UA collected over 1,000 petition signatures in opposition to the mine, and received polite but evasive lip-service from UA. While these students and their counterparts at Montevallo and Birmingham-Southern continue to hear the same vague UA response (“we have no current plans...”) we hope each petition, letter, call, or news report shows UA that stopping the mine is the right decision — and one that needs to be made now.

There has been one notable breakthrough among UA's otherwise boilerplate responses. On September 14, 2011, Rev. Anthony Johnson of the Metro-Birmingham NAACP received a letter from Dr. Robert Witt, President of University of Alabama, responding to Rev. Johnson's letter that opposed the mine. Rev. Johnson and our Executive Director, Charles Scribner, went on ABC and CBS to say that we are somewhat encouraged by one difference in this response: Dr. Witt's letter offered that he would invite NAACP and other concerned parties to a meeting before making any final decision about Shepherd Bend, should such a decision be looming. Thus, in the worst-case scenario that UA does make a sudden decision to sell or lease Shepherd Bend property for mining, they would have lied in writing to the NAACP while neglecting 200,000 Birmingham Water Works customers. That would obviously not be a good PR move for UA, or a responsible decision.

Opposition will persist until UA makes a commitment. Our partners in this effort are Alabama Environmental Council, Alabama Rivers Alliance, Birmingham Audubon Society, Cahaba Riverkeeper, Cahaba River Society, CASE, Choctawhatchee Riverkeeper, Citizens Opposed to Strip Mining on the Black Warrior River, Coosa Riverkeeper, EnAct, GASP, Greater Birmingham Ministries, Green Initiative at UAB, Hurricane Creekkeeper, League of Women Voters of Alabama, Metro-Birmingham NAACP, Mobile Baykeeper, Montevallo Environmental Club, Patriots for Conservation, Restoring Eden, Southern Environmental Law Center, Tennessee Riverkeeper, UA ECo, UA NAACP, and Waterkeeper Alliance. The Birmingham City Council also passed a unanimous resolution imploring UA to stop the mine.

We are cautiously optimistic that Dr. Witt, who we sincerely respect as an effective, intelligent, community-minded leader, will ultimately decide to protect the river, Birmingham's drinking water, and UA's reputation by rejecting any mine proposal at Shepherd Bend. He has proven his considerable fundraising abilities through UA's impressive expansion and improvements in recent years, and does not need to resort to this highly-problematic funding option. However, we share Rev. Johnson's frustration that Dr. Witt apparently feels making a decision, or even just hosting a meeting with concerned parties, is “not needed at this time.”

Meanwhile, UA's inaction bears opportunity costs for the University and its students. The media continues to highlight UA's evasiveness, while many alumni retract support. At Black Warrior Riverkeeper, if we did not have to spend years lobbying UA's leaders to stop a mine proposal that the Birmingham Water Works Board long ago announced was “unprecedented” and “incompatible,” we could be devoting far more time to enhancing our already-positive collaborations with the UA Center for Ethics and Social Responsibility, UA Community Service Center, UA ECo, UA Museums, UA NAACP, UA Panhellenic Association, and many excellent UA professors.

It should also be noted that the Birmingham Water Works Board warns that water bills could increase if the Shepherd Bend Mine goes forward, since new investments would have to be made in filtration — an expense typically passed to ratepayers. And in the area around Shepherd Bend, dozens of private property owners have stated their own concerns. Many of them fish, boat, and swim on the Mulberry Fork. They are also worried about the reduction of their property values and quality of life as a result of a strip mine operating in their backyards.

Black Warrior Riverkeeper and the Southern Environmental Law Center confidently continue our litigation against the wastewater discharge permit that the Alabama Department of Environmental Management rubber-stamped for Shepherd Bend LLC, a Drummond-owned company. This permit is inadequate for protection of the river and our drinking water, as scientists and engineers have testified, and we believe the coal mine operator might not be up to the task of meeting permit limits. We have documented many violations at Drummond coal mines. Should such issues arise at this mine, we are not confident ADEM will take effective enforcement action to deter future violations.

If there is any silver lining to the Shepherd Bend controversy, it has increased awareness about the Black Warrior River watershed's importance to water consumers in the greater Birmingham area and parts of 17 Alabama counties. As more people become cognizant of this issue, we continually encourage them to relay concerns to Dr. Witt: (205) 348-5100, witt@pres.ua.edu and to other UA System leaders: mportera@uasystem.ua.edu mbownes@uasystem.ua.edu mspearing@uasystem.ua.edu rsmith@uasystem.ua.edu kreinhar@uasystem.ua.edu stjohnfe@bellsouth.net cgarrison@uab.edu robert.altenkirch@uah.edu dwilson@alumni.ua.edu

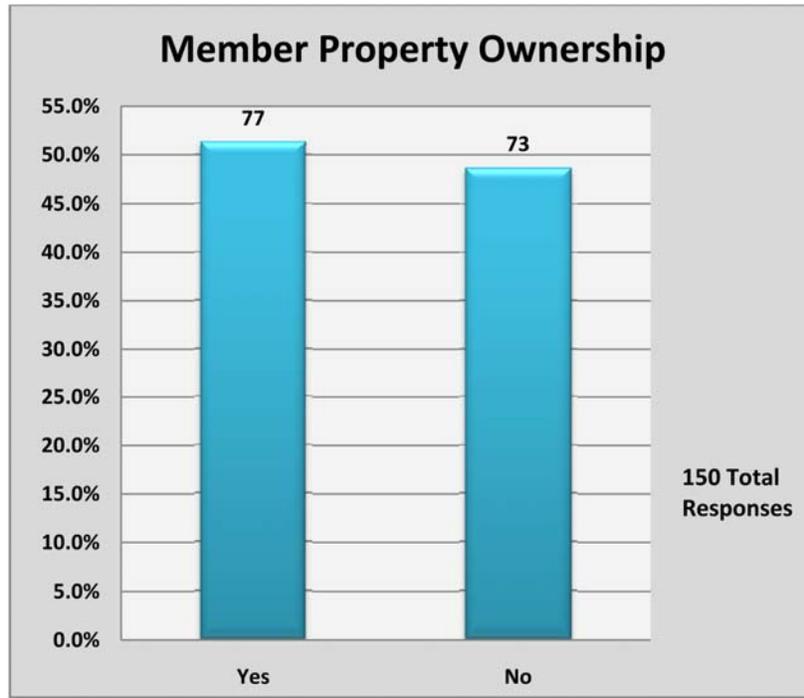
In addition to contacting UA directly, citizens should also write letters to their local media outlets. We hope you will keep spreading the word about this issue through email, facebook, twitter, petitions, and elsewhere. Finally, we encourage you to check our website for frequent updates: blackwarriorriver.org. **Here's to common sense: no mining across from the drinking water facility!**



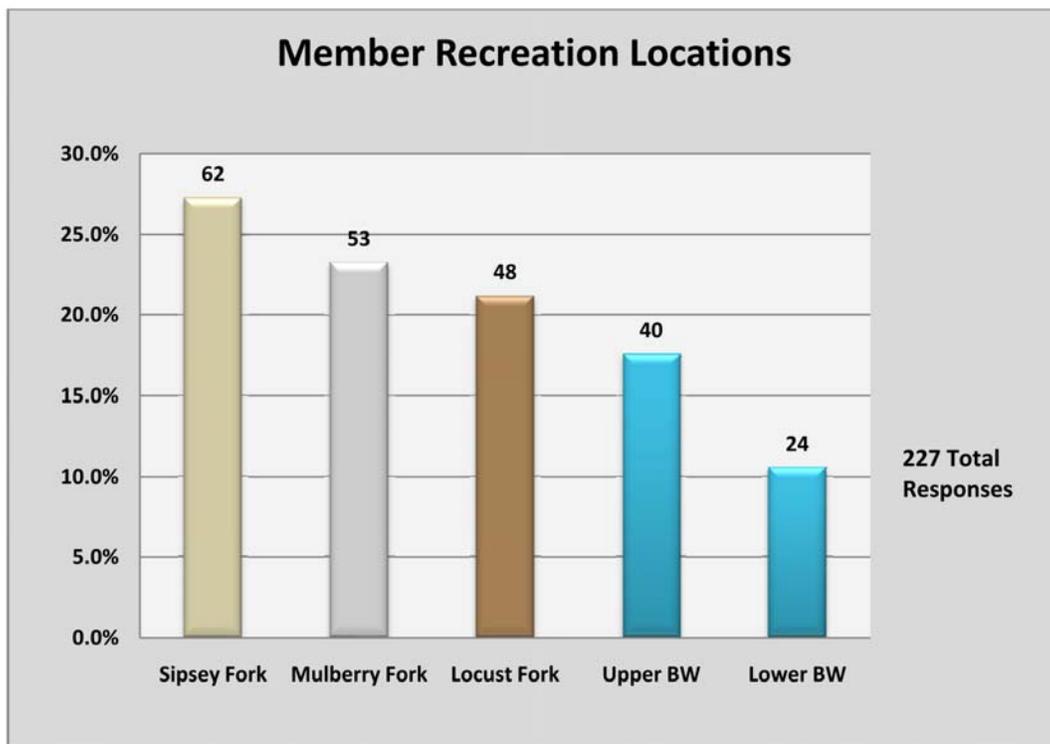
The drinking water facility (left) is 800 feet from one of the proposed mine's 29 permitted wastewater discharge points (right). Photo by Nelson Brooke.

Membership Survey Results: Part 1

As we approached our **10th Anniversary** this year, we decided it was time to send a survey to our members. The survey's purpose was to learn how and where our members enjoy the watershed, and to get their advice regarding our advocacy pursuits. We are so grateful to hundreds of members who filled out surveys. Here are four graphs of their quantifiable responses. Special thanks to Dr. Mary Meares' Communications class at UA and Keith Donohue of Positive Present for their volunteer help creating the survey; to Laura Ottaviani-Chacon of the Altamont School for tallying hundreds of responses; and to Colleen Forrer of the UA Geography Department for creating these graphs:

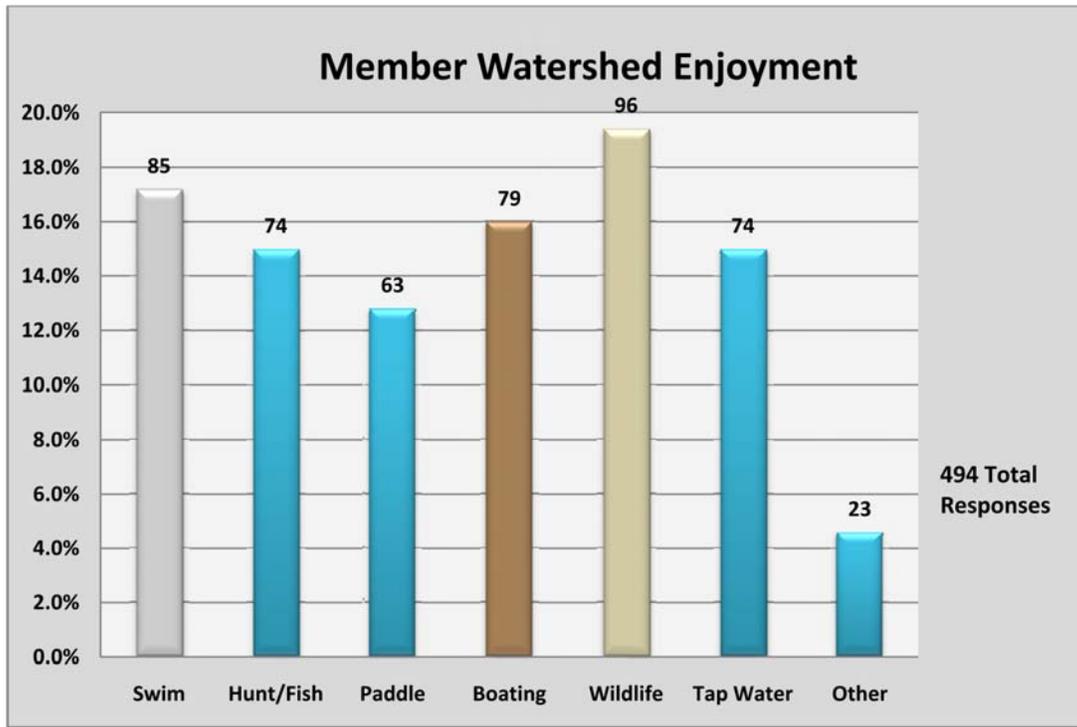


Do you own property in the Black Warrior River watershed?

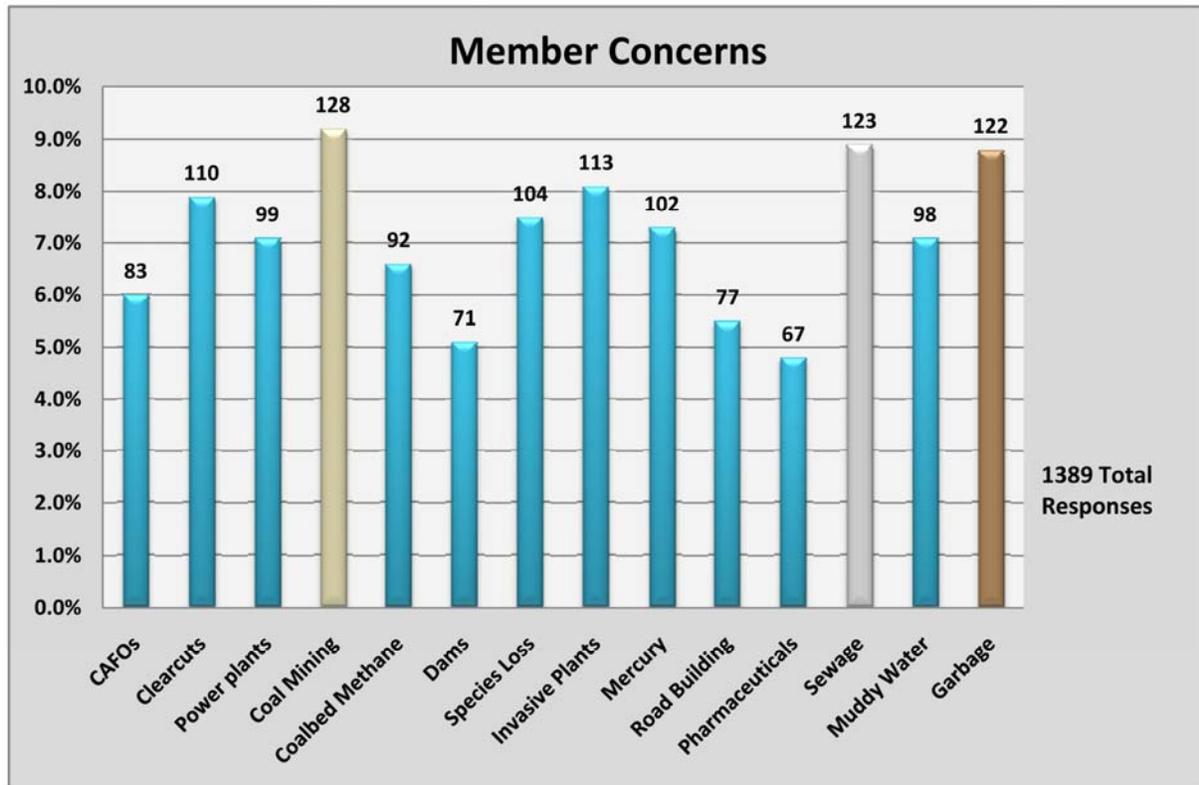


Where do you recreate on the river or its tributaries?

Membership Survey Results: Part 2



How do you enjoy the watershed?



Are you concerned with issues that may threaten your enjoyment of the watershed?

Nelson Brooke's Black Warrior RIVERKEEPER® Patrol Log

Here is a chronological summary of just a few of the many activities that Nelson Brooke, Riverkeeper, performed recently as patrolman and spokesman of the Black Warrior River watershed. To report pollution call (205)458-0095, email: nbroke@blackwarriorriver.org or use our "Report Pollution" form at blackwarriorriver.org.

August 13: Took volunteers out on Holt Lake in the patrol boat for the annual cleanup.

August 18: Patrolled Bankhead Lake and checked out pollution discharges from Shoal Creek Mine, including the one that is often mistaken by swimmers as a natural waterfall.

August 20: Took volunteers out on Lake Tuscaloosa in the patrol boat for the annual cleanup.

September 1: Checked out pollution discharges to tributaries of Clear Creek from Poplar Springs Mine in Winston County.

September 12: Checked out pollution discharges to the Locust Fork from Sloan Mountain Mine in North Jefferson County after Tropical Storm Lee.

September 16: Checked out pollution discharges to Valley Creek from Birmingham Hide & Tallow in Bessemer.

September 20: Checked out erosion issues causing muddy water to flow into Five Mile Creek at ALDOT's construction site connecting Corridor X to I-65.

September 20: Documented poor erosion controls and muddy water flowing into a tributary to Black Creek from a large abandoned construction site in Gardendale.

September 30: Documented poor erosion controls at a large construction site off Hwy. 43 in Northport, right next to a tributary to Mill Creek.

October 7: Patrolled Battles Spring Branch, which receives polluted discharges from the Kellerman Coal Preparation Plant in Tuscaloosa County with Hurricane Creekkeeper John Wathen, and found heavily polluted orange/yellow water flowing into Daniel Creek.

October 11: Patrolled Pegues Creek and Davis Creek in Tuscaloosa County to look at sedimentation and coal mine runoff issues I received complaints about.

October 20: Sampled acid mine drainage coming from the abandoned Maxine underground mine while patrolling the Locust Fork. Results showed alarming levels of iron, aluminum, manganese, lead, total dissolved solids, sulfate, and conductivity flowing into the river.

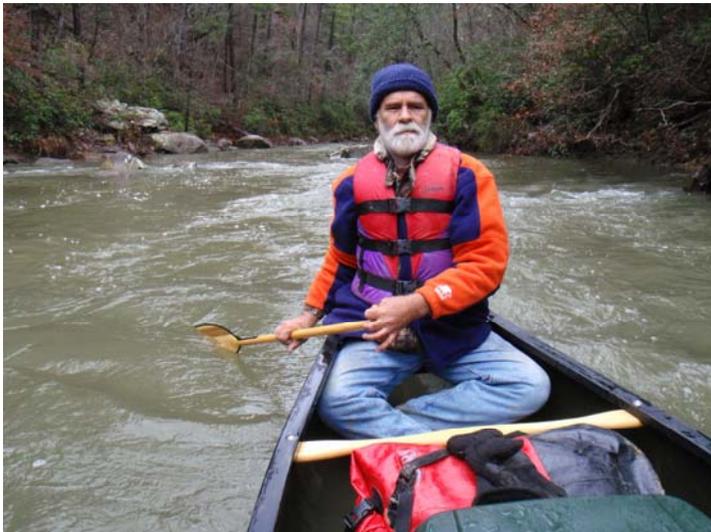
October 28: Checked out Shannon Mine in Jefferson County in response to a complaint about coal dust piling up on roads near the mine and washing into Blue Creek during rains.

November 3: Checked on new construction at Metalplate Galvanizing's plant in Birmingham along a tributary of Avondale Creek.

November 11: Patrolled the Locust Fork and found Cooper Marine & Timberlands Corp. dredging mud out of the river and then washing loads of mud off barges back into the river.

November 18: Patrolled the Mulberry Fork to check on pollution discharges from the East Walker County & Cordova wastewater treatment plants – samples taken showed both were discharging fecal coliform bacteria at levels in violation of their permits.

November 23 & 29: Checked on pollution discharges to Hurricane Creek and its tributaries from Kellerman Mine in Tuscaloosa County with Hurricane Creekkeeper John Wathen.



John Wathen patrols Hurricane Creek on a cold November day.

Photo by Nelson Brooke.



Acid mine drainage flows into the Locust Fork from abandoned refuse piles left over by the old Maxine underground coal mine.

Photo by Nelson Brooke.



This muddy discharge from one of Sloan Mtn. Mine's sediment ponds was in violation of its permit limit.

Photo by Nelson Brooke.



This silt fence's improper installation is one of many poor sediment controls at this highly eroded construction site in Gardendale.

Photo by Nelson Brooke.



About Black Warrior RIVERKEEPER®

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

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

Black Warrior Riverkeeper is a proud member of Waterkeeper Alliance (waterkeeper.org). Our fellow Waterkeepers in Alabama are Cahaba Riverkeeper, Choctawhatchee Riverkeeper, Coosa Riverkeeper, Hurricane Creekkeeper, Mobile Baykeeper, and Tennessee Riverkeeper.

Nelson Brooke sampling polluted water discharged by Poplar Springs Mine into a tributary of Clear Creek in Winston County Photo by Jenn Patterson.



Membership / Donation Form



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

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 / Non-monetary Contribution (Volunteer or In-Kind donations)

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

Please Mark a Donation Category

- Plicate Rocksnail.....\$25
- Watercress Darter.....\$50
- Vermilion Darter.....\$100
- Flattened Musk Turtle.....\$250
- Black Warrior Waterdog.....\$1,000
- Other Dollar amount.....\$ _____

Black Warrior Riverkeeper is a 501(c)(3) tax-exempt charitable organization. Contributions are **tax deductible** to the extent allowed by law. No goods or services of monetary value will be provided in exchange.

To purchase merchandise (shirts, stickers, hunting/fishing gear, car tags, dock markers, Dr. Bronner’s Soaps, hats, etc.), visit blackwarriorriver.org/shop.html or contact us at: 205-458-0095 or info@blackwarriorriver.org.

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

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

Stock donation (Please call Charles Scribner at 205-458-0095 for easy instructions).

(Any gift above) In Memory of: _____

(Any gift above) In Honor of: _____

Name & address to notify of memorial / honorary gift: _____

Black Warrior RIVERKEEPER®

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Birmingham, AL 35222

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Email: info@blackwarriorriver.org

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Members in Standing: Thank You!

Black Warrior Riverkeeper needs *your* active participation so that we can continue to file lawsuits when necessary to enforce environmental laws. (See our cover story as an example). A citizen-based organization like ours satisfies the legal concept of “standing” (that we are entitled to have the court decide the case) through its members. When the need for litigation arises, we look for members that use, own property on, or have an interest in the stream affected in the case. Standing is based on injury to your protected legal interests, not injury to the environment.

After interviewing standing witnesses for specifics of how they use the stream and how the pollution may harm those interests, we draft affidavits for the court that set out the (1) injury to your interests; (2) causation of the injury; (3) how the injury can be redressed by the court. Sometimes standing witnesses are deposed (questioned under oath by the other side) and they may testify about their interests if the case goes to trial. **Thank you to the many members who have agreed to serve as our members in standing to help us protect this vital but vulnerable basin.** And thank you to all of our members, as always!

Fall Semester Interns: Thank You!

Margaret Haas is a student at the Altamont School, where she is Senior Class President. Margaret cataloged ADEM’s woefully inconsistent responses to our public comments, and represented us at several community events. She is now working on a project to update water use classifications along tributaries of the Black Warrior River.

Mary Lindblom is a law student at the University of Alabama School of Law, and current Vice President of the UA Environmental Law Society. Mary wrote a comment letter advocating the suspension of Nationwide Permit 21 in Alabama. She also researched legal issues for the Northern Beltline lawsuit and for coalbed methane hydraulic fracturing (hydrofracking) in Alabama, and enjoyed participating in various community events for Black Warrior Riverkeeper.

Volunteers: Thank You!

Volunteers founded Black Warrior Riverkeeper 10 years ago, and have been crucial participants in our work ever since. **194 volunteers contributed 4,093 hours** of community service in 2010! Hundreds have been active so far in 2011. Please call us to help: 205-458-0095.

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~ 0.76 min BTUs energy



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