



Black Warrior RIVERKEEPER®



Lawsuit Challenges Flawed Permit for \$5,445,000,000 Northern Beltline

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On October 25, 2013, the Southern Environmental Law Center filed a new federal lawsuit on behalf of Black Warrior Riverkeeper, challenging a permit issued by the U.S. Army Corps of Engineers for the Northern Beltline's first phase of construction.

The lawsuit addresses the Corps of Engineers' failure to follow requirements of the Clean Water Act and the National Environmental Policy Act. Although the 52-mile Beltline will have widespread impacts on rivers, streams and wetlands throughout North and West Jefferson County, the Corps chose to evaluate impacts and issue a permit only for a small 1.86 mile segment of the project between Hwy. 75 and Hwy. 79. Due to this improper segmentation, the full extent of the project's impacts to wetlands and waterways, which supply area drinking water, is unknown. The Corps' unlawful decision to segment this large-scale project for review and analysis could set a dangerous precedent for future Alabama transportation projects.

"The Northern Beltline will cross and permanently alter Black Warrior and Cahaba river tributaries in 67 places," said Nelson Brooke, Black Warrior Riverkeeper. "ALDOT and FHWA have not adequately studied impacts to water resources and wildlife along the entire chosen route, which is the longest and most environmentally destructive of the seven routes considered."

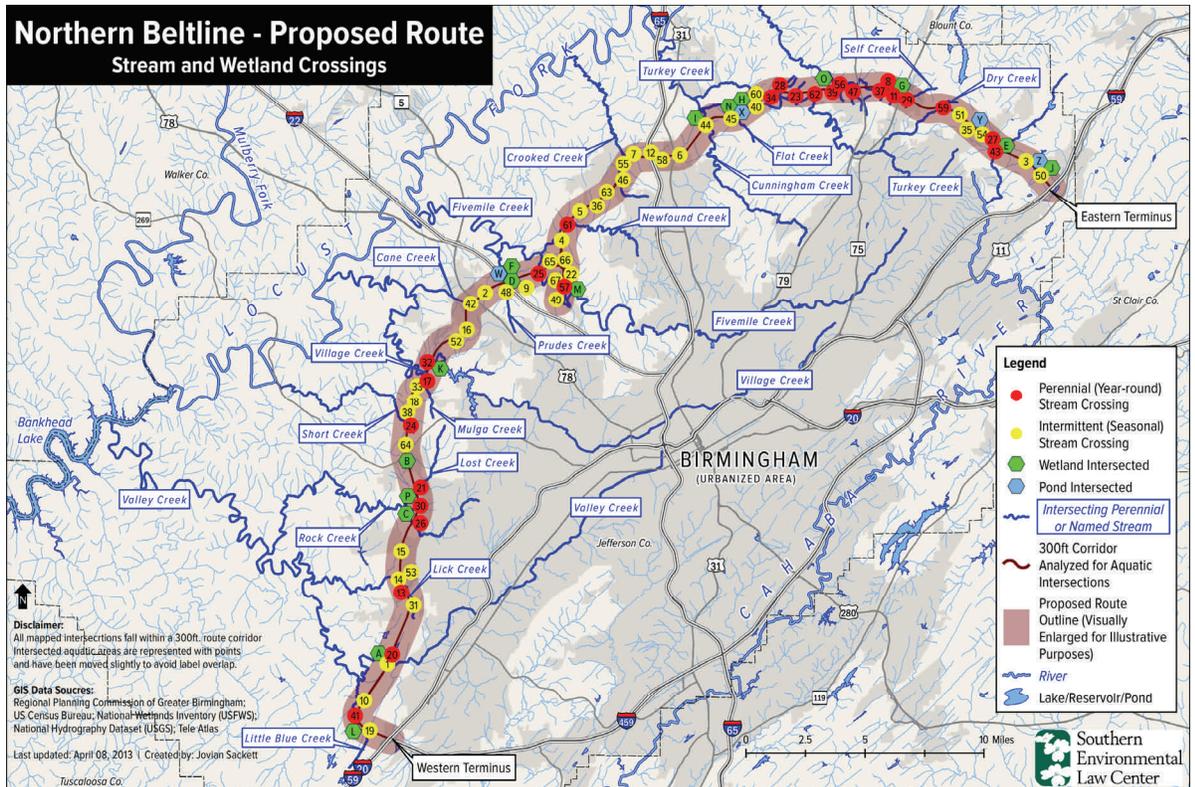
Along with its harmful environmental impacts, the Northern Beltline will draw limited federal transportation dollars away from dozens of worthy transportation projects necessary for safety and congestion relief in Birmingham and throughout the state. The overall cost of the Beltline (predicted by the Federal Highway Administration to be \$5.4 billion) is over \$1 billion more than it would cost to address I-65, I-20/59, Highway 280, and ongoing maintenance and improvements for at least 50 other major highways and connections. To break it down, the Beltline will cost over \$104 million per mile.

"Proper analysis required by law would show that this project's significant environmental impacts are not justified by its costs," said Sarah Stokes, one of the Southern Environmental Law Center attorneys on the case.

The state currently has about \$160 million which could be applied to Corridor X, whose construction is underway, Corridor V in Huntsville, or the Northern Beltline. This amount may not be enough to even cover the Beltline's initial 1.86-mile section. Once the funds are exhausted, there is no longer an approved funding source for the Beltline, so the project will compete directly with more immediate transportation needs around the state.

This lawsuit and our ongoing one against ALDOT and the Federal Highway Administration highlight the ongoing failure of agencies to provide necessary analysis of alternative transportation investments as required by law and to justify the Beltline's economic and environmental costs. That failure is critical as the Beltline will only reduce traffic congestion by 1-3% in downtown Birmingham and supplant other priority transportation projects that will create jobs in the near term and address safety and congestion on area roads.

Northern Beltline - Proposed Route
Stream and Wetland Crossings



Lawsuit Challenges Flawed Coal Mine Permitting along the Black Warrior

The continued use of a controversial permit in the Black Warrior River watershed by the U.S. Army Corps of Engineers fails to comply with federal requirements for surface mining, according to a lawsuit filed on November 25, 2013 by the Southern Environmental Law Center and Public Justice on behalf of Black Warrior Riverkeeper and Defenders of Wildlife.

The lawsuit challenges the Corps' use of a general permit known as Nationwide Permit 21 in Alabama, which has already authorized the fill and burial of hundreds of miles of streams and wetlands to accommodate surface mining, without the detailed study and analysis of cumulative impacts required by the Clean Water Act and the National Environmental Policy Act. In two prior lawsuits brought by Public Justice against the Corps in Kentucky and West Virginia, two federal courts have already declared NWP 21 to be in violation of these laws.

The Corps suspended the use of this permit elsewhere in the Appalachian region in 2010 because of mounting concern over its adverse effects on aquatic resources. Although the Corps substantially revised the permit when reissuing it in 2012, the Corps also included an arbitrary "grandfather" provision that allows the unlimited fill of streams and wetlands authorized by the previous version of the permit to continue in Alabama until 2017. Originally estimating that the "grandfather" would be used rarely, the Corps has approved around 80 total projects across the country under its auspices — including 41 projects in the Black Warrior River watershed alone.

"These 41 grandfathered permits should never have been granted, because they rely on the Corps' unsupportable and undocumented assumption that burying and disturbing tens of miles of streams has only minimal cumulative effects," said Jim Hecker, Environmental Enforcement Director at Public Justice.

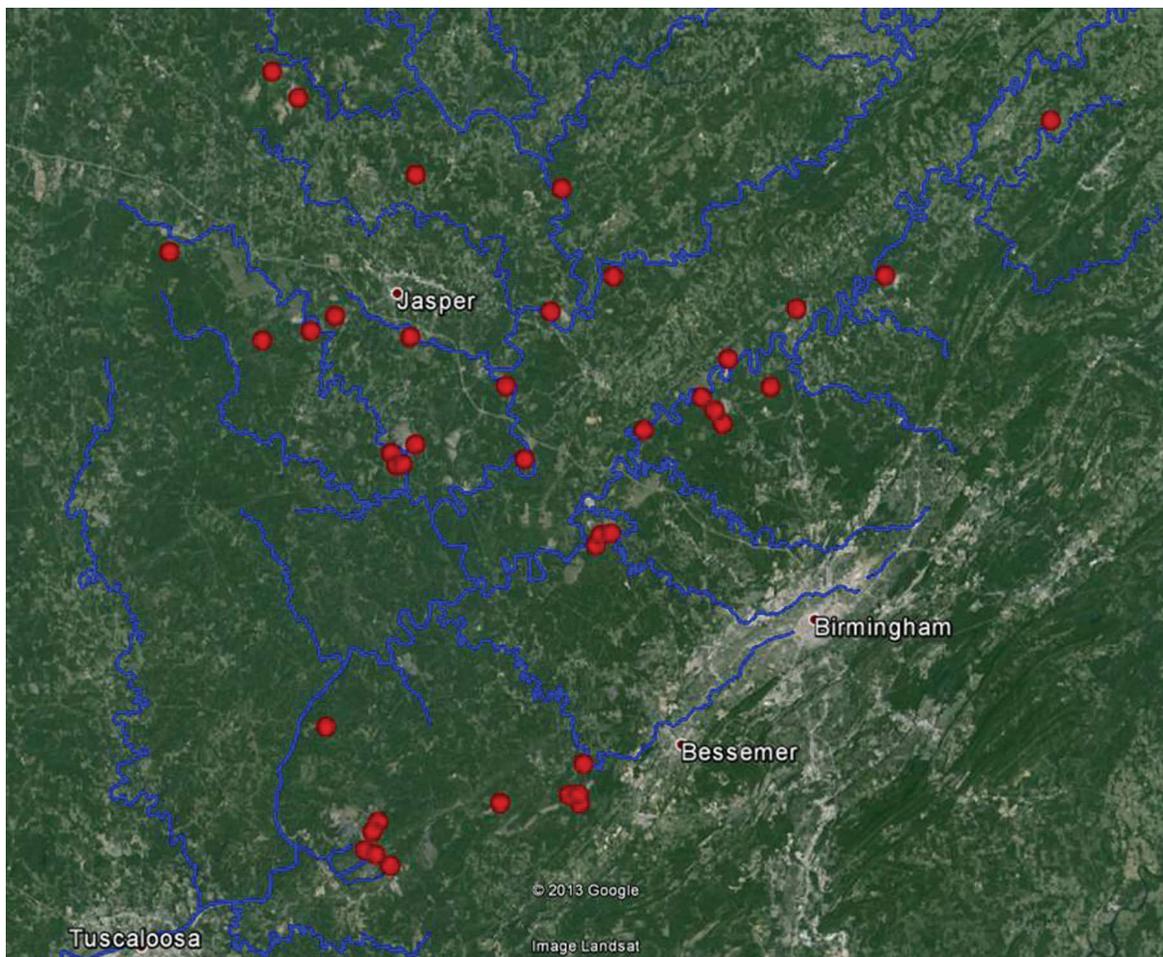
Since May of 2012, the use of this deeply flawed permit has authorized the fill of over 145,000 linear feet of streams (or approximately 27 miles) in the Black Warrior River basin. The Black Warrior River watershed is a major source of drinking water for Birmingham, Tuscaloosa, and other Alabama communities.

"The Corps of Engineers is depriving Alabama of protections it affords other states, allowing miles of precious streams along the Black Warrior River to be destroyed by coal mines," said Nelson Brooke, Black Warrior Riverkeeper. "The Corps should be barred immediately from using Nationwide Permit 21 in Alabama, home to the United States' largest number of aquatic species and the tail end of the Appalachian Mountains."

This lawsuit asks the Corps to revise the permitting process to adequately consider the site-specific and cumulative environmental impacts of new stream-filling by coal mining. Activities that have more than minimal effects, either individually or cumulatively, such as significant stream-filling by coal mining, require individual permits under the Clean Water Act that can only be issued after careful review and public comment, a process the Corps has avoided under Nationwide Permit 21.

"It's the responsibility of the U.S. Army Corps of Engineers to ensure that surface mining in Alabama strictly follows the permitting process required by law," said Catherine Wannamaker, attorney with the Southern Environmental Law Center. "It is possible to balance protections for clean water and natural resources with economic opportunities, but this process has failed to do so."

The Black Warrior River watershed is the largest coal producing region in Alabama, with more than 90 active coal mines. Much of



the area has been degraded by surface coal mining, which has allowed significant loss of headwater tributary stream function, damage to wetlands with essential water filtration capabilities, and elevated pollutants in mine runoff such as sediment and heavy metals.

"Alabama's streams host one of the greatest bounties of freshwater biodiversity in the world, yet the Corps has turned a blind eye to the impacts of multiple coal mining projects polluting and destroying stream habitats," said Jane Davenport, senior staff attorney at Defenders of Wildlife. "The rare species pushed to the brink of extinction by coal mining are the canaries warning us that our irreplaceable streams must be protected from further damage if we are to protect human health as well."

41 improperly grandfathered mining projects in the Black Warrior basin are shown in red.

Board Member Bio: Gilbert Johnston Jr.

Gilbert Johnston joined Black Warrior Riverkeeper's Board in 2012. Prior to his retirement in 2011, he practiced law with the firm of Johnston Barton Proctor & Rose LLP, concentrating primarily in First Amendment and business litigation.

As a teenager Gilbert attended a canoe camp in the Boundary Waters of Northern Minnesota that became, later that year, the second Outward Bound School in the United States. This experience was transformative for him, due to both the rigor of the program and the pristine condition of the waterways in the Boundary Waters and the adjoining Quetico Provincial Park of Ontario. Through the years thereafter he and his wife and children have frequently returned to this area, each time being rejuvenated by its unspoiled beauty.

With that background as motivation, Gilbert is pleased to have the opportunity to work with Black Warrior Riverkeeper in seeking to protect his home environment. He was elected Board President for 2014.

Gilbert did his undergraduate work at Vanderbilt University and, after two years of military service, received law degrees from the University of Alabama School of Law (J.D.) and Harvard Law School (LL.M.).

View the bios of the other members of our Board of Directors at: blackwarriorriver.org/board.html



Black Warrior RIVERKEEPER® Milestones and Statistics from 2013

In order for the Black Warrior to be a healthy river, it needs a healthy organization protecting it. Black Warrior Riverkeeper made major strides in 2013 toward becoming an even stronger nonprofit for a stronger watershed. While our primary focus is, of course, the river and its tributaries, we recognize that organizational health is crucial for maintaining the sustainability of our nonprofit as well as the ongoing support of our generous grassroots membership base. Leading this organizational progress is Charles Scribner, Executive Director, who in 2013 was inducted into Pi Alpha Alpha, the National Honor Society for Public Affairs and Administration. The most important source of our strength, however, is our membership. Because of the support of our members, we are continually improving for the sake of clean water, public health, wildlife habitat, and recreation throughout the Black Warrior River watershed. We accomplished the following in 2013:

- Monitored 207 facilities in the field through patrols led by Nelson Brooke, Riverkeeper.
- Reviewed 256 facilities' Discharge Monitoring Reports thanks to John Kinney, Enforcement Coordinator.
- Submitted 30 regulatory/permit comment letters to government agencies, improving rules for our water.
- Sued to address problems at Donaldson Prison and Shannon Mine thanks to Eva Dillard, Staff Attorney.
- Challenged the Corps of Engineers' flawed permit for the Northern Beltline with our partners at SELC.
- Reached Gold (top) status on GuideStar, the leading source of information on American nonprofits.
- Got American Rivers to list our river on *Most Endangered Rivers* due to the proposed Shepherd Bend Mine.
- Grew the Shepherd Bend Mine Opposition Coalition to over 100 groups urging UA to protect our tap water.
- Engaged volunteers of all ages in our work, passing our previous one-year record of 230 active volunteers.
- Made 39 educational presentations to various groups – ask Nelson to speak to your club, church, or school.
- Received a generous grant from the Community Foundation of Greater Birmingham for our Patrol Program.



American Rivers
Rivers Connect Us®



COMMUNITY FOUNDATION
OF GREATER BIRMINGHAM

UAH SGA Resolution Urges UA System to Stop the Shepherd Bend Mine

On September 23, 2013, The Student Government Association (SGA) at the University of Alabama in Huntsville (UAH) passed a Resolution urging the University of Alabama System (UA) Trustees to stop the proposed Shepherd Bend Mine from polluting a major drinking water supply for the greater Birmingham area. SGA Senators expressed concern that heavy metals and sediment from the mine would lead to decreased water quality and increased filtration fees for consumers.

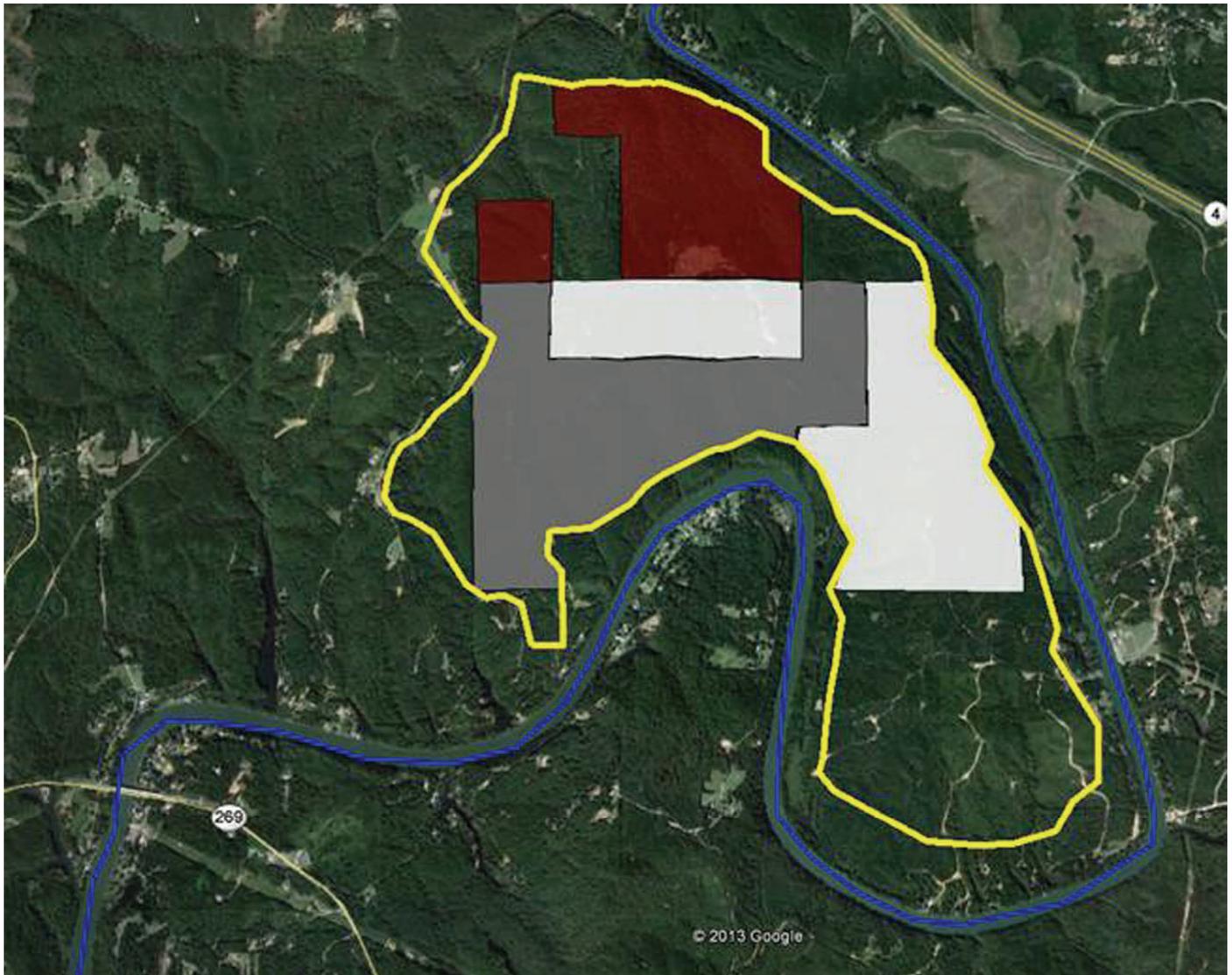
UA is the major owner of land and mineral rights needed for the proposed coal mine on the Mulberry Fork of the Black Warrior River in Walker County. The 1,773-acre strip mine would discharge wastewater at several points across the river from a Birmingham Water Works Board intake facility providing drinking water to 200,000 residents daily.

Scientists, engineers, businesses, governments, civil rights groups, religious organizations, environmental advocates, and UA System alumni, faculty and students, have all implored UA not to lease or sell their land and minerals to Shepherd Bend, LLC. That company is owned by Garry Neil Drummond, a Trustee Emeritus of the UA System.

"This issue is of concern to us since we have many students that are from the Birmingham area, said Nandish Dayal, UAH SGA President. "The establishment of this mine will directly and indirectly affect them and their families. By standing against this mine the UAH SGA says that we place the health and safety of our students and their loved ones over any economic benefit. We are proud to stand in solidarity with the Student Government associations of UAB and UA to oppose this detriment to the environment and the health of 200,000 plus Birmingham residents. "

"Opposition to the Shepherd Bend Mine stretches to all corners of this great state," said Charles Scribner, Executive Director of Black Warrior Riverkeeper. "Now, all three UA System campuses' Student Government Associations have urged their trustees to protect one of America's Most Endangered Rivers and the UA System's good reputation."

To read similar resolutions by the Birmingham City Council, several Birmingham neighborhood associations, UA Student Government Association, UAB Undergraduate Student Government Association, UAB Graduate Student Association, UAB Public Health Students Association, and to view more information, documents, action alerts, maps, pictures, and articles about the Shepherd Bend Mine proposal, visit: blackwarriorriver.org/ShepherdBendMine.html



Within the proposed Shepherd Bend Mine's wastewater discharge permit boundary (yellow line) near the Black Warrior's Mulberry Fork (blue line), UA's surface rights are shown in red, mineral rights in white, and combined surface and mineral rights in gray.

Lands Unsuitable For Coal Mining: Rejection Appealed, Hearing Scheduled



Our Lands Unsuitable for Coal Mining Petition aims at protecting over 200,000 Alabamians who receive drinking water from this Birmingham Water Works Board intake (across from dock) on the Mulberry Fork of the Black Warrior River. Photo by Nelson Brooke.

On October 28, 2013 the Alabama Surface Mining Commission (ASMC) refused to declare 40,300 acres of land adjacent to the Mulberry Fork of the Black Warrior River as off limits to coal mining, missing an historic opportunity to protect the drinking water source for 200,000 residents in the greater Birmingham area.

Staff Attorney Eva Dillard commented, “It is a shame that state regulatory agencies are not doing more to ensure that the citizens of Birmingham have a safe, dependable and affordable supply of drinking water, both now and for the future.”

Riverkeeper Nelson Brooke added, “This stretch of river deserves full protection as a vital source of water, and as a recreation resource for the general public. The state should not be allowing companies to discharge water pollution from coal mines into the daily source of water for 200,000 greater Birmingham-area drinking water consumers.”

Black Warrior Riverkeeper filed a petition with the ASMC on September 10, 2012 to designate this area as unsuitable for coal mining under a provision of Alabama’s Surface Mining Control and Reclamation Act which was specifically enacted to preserve public resources like drinking water. The designation is required when surface mining could *potentially* result in a substantial loss or reduction in the long range productivity of the water supply.

Riverkeeper submitted extensive public comments and evidence to support their petition, including an analysis of Birmingham Water Works Board water quality data, as well as preliminary data recently compiled by the Alabama Department of Environmental Management demonstrating that even after reclamation occurs, surface coal mining has negative effects on downstream water quality.

Citing concerns about potential treatment cost hikes or even an inability to treat the water under certain circumstances, the Birmingham Water Works Board intervened in the petition process to represent their concerns about the impacts of surface coal mining on source water quality.

John Kinney, Enforcement Coordinator for Black Warrior Riverkeeper noted, “After initial review, it appears the ASMC severely misinterpreted the available data as well as the standard of review for the petition.” Despite the ASMC’s decision on our petition, Black Warrior Riverkeeper will continue to oppose current and potential threats to the largest water source for Alabama’s largest city.

On November 26, Black Warrior Riverkeeper appealed the ASMC’s denial of the petition. The Birmingham Water Works Board filed their own similar appeal that same day. The public hearing on those appeals will be February 20, 2014. Details about the hearing will be posted on blackwarriorriver.org. To read our petition and learn more, visit: blackwarriorriver.org/news/lands-unsuitable-for-mining.html

Meanwhile, in a separate effort, Black Warrior Riverkeeper and a growing coalition remain steadfast in their opposition to the proposed Shepherd Bend Mine. The ASMC has granted the Shepherd Bend Mine a permit – still contested – to mine across from the same Birmingham Water Works Board intake that Riverkeeper aims to protect with its Lands Unsuitable for Coal Mining Petition. Over a hundred businesses and organizations in the Shepherd Bend Mine Opposition Coalition urge the University of Alabama System, the major owner of land and mineral rights at Shepherd Bend, to oppose this threat to a major drinking water source.

Nelson Brooke's RIVERKEEPER® Patrol Log

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

June 21: Patrolled Birmingham along the Locust Fork to check facilities' runoff.
June 25: Patrolled Gorgas Steam Plant on the Mulberry Fork to check discharge pipes; found gray water being discharged out of one of their outfalls.
June 28: Patrolled riverfront in Tuscaloosa area looking for pollution issues; found orange water coming out of UA stormwater pipe into the river.
July 17: Took UA Geological Sciences professor Natasha Dimova out on the Mulberry Fork to perform a radon survey.
July 18: Checked Sumiton Lagoon & East Walker County WWTP's wastewater.
July 20: Attended the first Boats & Brunch Antique Boat Show on the river at Quinn's Landing.
July 25: Took the Union of Concerned Scientists (UCS), Southern Alliance for Clean Energy, Alabama Rivers Alliance, CBS 42, and AL.com out on the Mulberry Fork to Gorgas Steam Plant to discuss UCS' report on power plants' significant water usage.
July 26: Patrolled Avondale area storm sewer system along railroad tracks near 41st Street to document cleanout progress meant to address area flooding issues.
August 2: Checked Gorgas Steam Plant's 20 million gallons per day coal ash discharge into the Mulberry Fork.
August 14: Patrolled the Locust Fork from Birmingham up to Miller Steam Plant, looking for pollution on a rainy day.
August 16: Took part in the Valley Creek Cleanup in Brighton and Bessemer. We removed a large amount of trash including tires, grocery carts, and an ATM.
August 22: Monitored Sumiton Lagoon & East Walker County WWTP.
August 29: Took Samford professor Dr. Betsy Dobbins and graduate student Tony Lewis to Shepherd Bend on the Mulberry Fork to perform background water quality analysis of streams in the area.
August 30: Patrolled the river's Oliver Pool next to UA, Tuscaloosa, and Northport along with UA Law School professors and students.
September 4: Toured Donaldson Correctional Facility's Wastewater Treatment Plant to inspect operations and determine what issues there need to be resolved as a part of our ongoing lawsuit.
September 17: Patrolled Carthage Branch in Moundville in response to a pollution complaint about nasty water flowing into the river upstream of Moundville Archaeological Park. I found oil & glycerin pollution in a tributary below Veros Energy's biodiesel plant.
September 20: Participated in the Village Creek Cleanup with Village Creek Society in Ensley.
October 15: Patrolled the Mulberry Fork with our Enforcement Coordinator John Kinney. Sampled reddish water coming out of American Proteins' discharge pipe.
October 18: Attended the AL Environmental Management Commission meeting where we presented along with the Black Belt Citizens Fighting for Health and Justice about the ongoing wastewater treatment fiasco in Uniontown, where ADEM permitted the city to add another sprayfield onto its already failing sewage system.
October 20: Patrolled Bankhead Lake to check on discharges from Shoal Creek Mine, noting that the waterfall discharge was dry, and to check on Camp Creek regarding a complaint about trees dying in its upper end.
October 21: Patrolled the Locust Fork with John Kinney. Found contaminated water seeping out of the riverbank into the river next to the old Sayre coal washing facility.
November 6: Patrolled the Locust Fork near Birmingham and sampled a discharge from the Powhatan Mine.
November 21: Patrolled the river below Oliver Dam in Tuscaloosa and checked on Hunt Oil's discharge pipe.
December 11: Canoed Hurricane Creek with our fellow Waterkeeper in the Tuscaloosa area: Hurricane Creekkeeper John Wathen.



Onboard our patrol boat, UA Geological Sciences professor Natasha Dimova prepares her equipment for a radon survey on the Mulberry Fork.

Photo by Nelson Brooke.



Nelson samples wastewater discharges from Sumiton Lagoon's outfall to the Mulberry Fork.

Photo by John Kinney.



Concerned citizens travelled to Montgomery to protest a wastewater treatment debacle where ADEM has permitted their city, Uniontown, to add another sprayfield onto the city's already failing sewage treatment system.

Photo by Nelson Brooke.



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.....\$ _____

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 or honorarium gift: _____

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 (long and short-sleeve t-shirts, stickers, front bumper plates, dock signs, hats, etc.), visit blackwarriorriver.org/shop.html or contact us at: 205-458-0095 or info@blackwarriorriver.org.

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 advocating for clean water, wildlife, 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 full-time staff includes Nelson Brooke (Riverkeeper), Eva Dillard (Staff Attorney), John Kinney (Enforcement Coordinator), 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 about our work at blackwarriorriver.org.

We are proud members of the Alabama Association of Nonprofits, Alabama Rivers Alliance, GuideStar Exchange (Gold Level), River Network, and Waterkeeper Alliance. Our fellow Waterkeepers in Alabama include Cahaba Riverkeeper, Choctawhatchee Riverkeeper, Coosa Riverkeeper, Hurricane Creekkeeper, Little River Waterkeeper, Mobile Baykeeper, and Tennessee Riverkeeper.

Nelson Brooke on patrol. Photo by John Wathen, Hurricane Creekkeeper.

Black Warrior RIVERKEEPER®

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Upcoming BWRk Events in Tuscaloosa and Birmingham

Mark your calendars for our first two public events of 2014! Stay tuned to blackwarriorriver.org for upcoming details. To learn about our many event sponsorship opportunities or to get more information, contact Charles Scribner at 205-458-0095 or info@blackwarriorriver.org

Thursday, February 6: To raise money for Black Warrior Riverkeeper and awareness for local food and beverages, there will be a **Beer Dinner** with **Druid City Brewing** at **Epiphany** (519 Greensboro Ave), Tuscaloosa's excellent farm-to-table restaurant. **Snow's Bend Farm** be providing vegetables for use in both the meal and the brewing. While Snow's Bend Farm is situated along the Black Warrior River, the water for Druid City Brewing's beer comes from Lake Tuscaloosa (as does Tuscaloosa's drinking water). Both of these major waterways are in our patrol area, the Black Warrior River watershed, near Tuscaloosa.

Sunday, April 20: Jam rock veterans **Earthbound** play their popular annual outdoor concert, **Earthbound's Earthfest**, at Birmingham's **Avondale Brewery** (201 41st Street South). Open to all ages (under 21 must be accompanied by a parent), this family-friendly event will raise awareness for Earth Day and funds for Black Warrior Riverkeeper. Throughout the event (2pm to sundown), Earthbound will play several sets, joined by speeches from Riverkeeper and exhibits from local artists. Optional donations from the audience, and merchandise sales, will support Black Warrior Riverkeeper's efforts to protect local waterways and drinking water sources. Avondale Brewery has publicly urged The **University of Alabama** to prevent the proposed Shepherd Bend Mine, a major threat to Birmingham-area drinking water and beer.

Interns: Volunteers Making Their Mark

Jordan Hyche is a student at the University of North Alabama pursuing a degree in Geographical Information Systems. This summer, he created maps of the Black Warrior River categorizing areas of swimming, fishing and wildlife and industries. Jordan also built a map of industry discharge points in the Black Warrior River watershed.

Phoenix Iverson is a student at the Cumberland School of Law. Phoenix helped with legal research for our Lands Unsuitable for Mining Petition, and assisted us in monitoring noncompliant wastewater treatment plants. He also raised much-needed funds for Black Warrior Riverkeeper at several public events throughout the watershed, inspiring other volunteers with his enthusiastic service over long hours.

Gillian Richard is a student at the University of Alabama majoring in Public Relations with minors in Management and Restaurant and Hotel Management. She also serves as the President of the Tide for Christ Student Ministry. Gillian worked as a communications intern this summer through a grant from the Curtis and Edith Munson Foundation. She focused on outreach in Tuscaloosa through forming relationships with local businesses and media outlets.

We offer a wide range of service projects for volunteers from any age group or location. Contact Charles Scribner to learn more and get started: 205-458-0095, info@blackwarriorriver.org