

Press Release from the Southern Environmental Law Center and
National Parks Conservation Association

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Federal Court Declares Bush-Era Rule that Removed Protections against Mountaintop Removal Mining Invalid

Charlottesville, VA — Late yesterday a federal court ruled in favor of the National Parks Conservation Association (NPCA) and tossed a regulation issued in the final days of the George W. Bush administration that removed essential protections for Appalachian waterways against mountaintop removal and surface coal mining. The rule, challenged by the Southern Environmental Law Center on behalf of NPCA, was declared invalid because it violated the Endangered Species Act.

The 2008 Stream Buffer Zone Rule had replaced a longstanding regulation that established a buffer zone between coal mining operations and waterways, in order to prevent the excess rubble and debris from mountaintop mining from being dumped in sensitive stream channels. The 2008 Rule virtually eliminated the buffer protections.

“Today's ruling is a significant victory for efforts to protect the beautiful and ecologically diverse waterways of Appalachia,” said Deborah Murray, senior attorney at the Southern Environmental Law Center.

In finding in NPCA's favor, the court concluded that the Office of Surface Mining Reclamation and Enforcement (OSM) failed to consult with the U.S. Fish and Wildlife Service (FWS) regarding the impact of the rule on federally listed

species. OSM instead relied upon a 1996 biological opinion of the FWS as justification for failing to consult; the court ruled that such reliance was unlawful because the opinion could not have taken into account the current scientific information documenting the devastating impacts from mountaintop surface coal mining. For example, according to federal government estimates, mountaintop removal coal mining has damaged or destroyed more than 2,000 miles of streams in four central Appalachia states.

Yesterday's decision by the U.S. District Court for the District of Columbia reinstates the original 1983 stream buffer protections. The Obama Administration has been working on, but has not yet issued, a new rule.

"The original rule, if properly enforced, is critical to the protection of streams in Appalachia from the impacts of mountaintop mining," said Murray.

"Now that this destructive rule is history, we are hopeful that we can begin a more meaningful and science-based examination of the devastating effects of mountaintop removal and stream destruction in the Appalachian mountains," said Don Barger, southeast regional director of NPCA.

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The Southern Environmental Law Center is a regional nonprofit using the power of the law to protect the health and environment of the Southeast (Virginia, Tennessee, North and South Carolina, Georgia, and Alabama). Founded in 1986, SELC's team of nearly 60 legal and policy experts represent more than 100 partner groups on issues of climate change and energy, air and water quality, forests, the coast and wetlands, transportation, and land use.

www.SouthernEnvironment.org

Since 1919, the nonpartisan National Parks Conservation Association has been the leading voice of the American people in protecting and enhancing our National Park System. NPCA, its 800,000 members and supporters, and many partners work together to protect the park system and preserve our nation's natural, historical, and cultural heritage for our children and grandchildren. For more information, please visit www.npca.org.