

# Mountains & Marshes

South Carolina Environmental Law Project ~ P. O. Box 1380 ~ Pawleys Island, SC 29585 ~ 843-527-0078

Summer/ Fall 2011

## SCELP Presses Forward to Ensure Environmental Protections

Since the beginning of the year SCELP's attorneys have had a full docket and made numerous courtroom appearances. We have fought for the protection of our State's natural resources in cases ranging from prevention of ill-sited mega-dumps, to enforcement of water quality standards, to protection of the Congaree National Park and an undeveloped barrier island. Our founder, Jimmy Chandler, always said that he thought SCELP would be a short-lived project; that after winning a few key cases the laws would start being implemented and enforced properly. While that has not proven true, SCELP continues to unwaveringly press towards that goal.

Since our last newsletter, our major efforts have been in the following cases:

### Captain Sam's Spit Case

We started on January 18 by arguing before the S.C. Supreme Court against a permit for a half-mile long, 40 foot wide concrete block wall along the banks of the Kiawah River at Captain Sam's Inlet. The wall would allow the development of a pristine, undeveloped and unique barrier island spit on Kiawah Island and would completely destroy a beach regularly used by the public. We strenuously argued that the permit violated our state's Public Trust Doctrine, which protects the public's rights to access and use areas below the mean high water mark. We are hopeful that the Court will agree, and are anxiously awaiting a decision in that case.

### Mega-dump Cases

We argued two of our landfill cases in the S.C. Court of Appeals on May 3 and 4. Both of these cases involve landfill permits issued for areas that already have excess existing landfill capacity. In the first case, we defended our successful challenge to a landfill permit issued in Laurens County. Laurens County generates less than 10,000 tons of construction and demolition waste annually and has existing capacity for over 250,000 tons of such waste. In the second case, we challenged the issuance of a landfill permit in York County. York County similarly has excess existing landfill capacity, and has passed a Solid Waste Plan that bans additional landfills.

In both cases DHEC determined landfills were needed and issued permits without



*Captain Sam's Spit is the 150 acre pristine end of Kiawah Island shown here*

conducting a review of the existing landfill capacity in the area. The proposed landfills would allow large amounts of out-of-state waste to flow into rural South Carolina.

We have also been working on opposition to a proposed mega-dump in Marlboro County. Our clients in that case have been exercising their First Amendment rights by vocally opposing an unneeded 1.5 million ton per year landfill. In an apparent effort to quell opposition, the landfill company retaliated by filing a SLAPP suit (Strategic Lawsuit Against Public Participation) alleging the landfill company had been defamed. We are vigorously defending this case, and in March filed a motion asking the court to throw out the landfill company's abusive complaint. We expect argument to be held by a federal judge later this year.

## SCELP Challenges Debordieu Groin Project

On behalf of the S.C. Coastal Conservation League and the Sierra Club, SCELP is challenging the DHEC's issuance of a permit to construct three groins and conduct renourishment on the southern end of Debidue Beach. The project is adjacent to the home to the Baruch Marine Field Lab of USC. We are working with Rob Young, a nationally-recognized coastal geologist, and Jim Morris, the director of the Baruch Institute, to build our case that the groins will cause harm to the downdrift beaches, and to show the value of the extensive research being conducted at the marine lab. The DHEC Board upheld the permit on June 9, 2011, but we are optimistic about our chances going forward.



## Save the Date for the 2011 Wild Side

The time has come for the SCELP team of volunteers to begin preparations for the second annual Wild Side event! Last year's event was a resounding success, both in terms of paying tribute to our beloved founder Jimmy Chandler and in rallying friends and supporters of SCELP. We urge you to make plans to join us on October 22, 2011, for an evening of celebration, remembrance, dining and outright fun.

The event will take place in the same unmatched setting as last year, on the grounds of Hobcaw House in Georgetown, overlooking Winyah Bay. The first Wild Side would not have been possible, much less a success, without the generous support of our event sponsors, and we hope to add even more sponsors this year. If you are interested in a business or personal sponsorship for this worthwhile event, please contact us for more information on the benefits of becoming a sponsor.

On a personal level, the support received during last year's event has sustained and motivated SCELP through a year of what has often been long and grueling litigation. We look forward to communing with you again in the fall.

Check our website at [www.scelp.org](http://www.scelp.org) for Wild Side updates.

**South Carolina  
Environmental Law Project, Inc.**  
*(a 501c3 tax-exempt non-profit corporation)*

### **Mission Statement**

*To protect the natural environment  
of South Carolina  
by providing legal services and advice  
to environmental organizations  
and concerned citizens and  
by improving the state's system  
of environmental regulation.*

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*Thank you.*

## Cover Story; continued...

### Congaree National Park/Highway 601 Bridges case

We argued the Highway 601 bridges case in early April in federal court. We asked the Judge to rule that the Federal Highway Administration and the S.C. Department of Transportation failed to conduct an adequate environmental analysis of the impacts of the bridge construction project on the Congaree National Park and its floodplain. Initially we prevailed in getting the Court to order a new environmental study, but we believed that the new study was as inadequate as the first. Unfortunately the Judge did not agree, and found that the environmental analysis met the legal requirements. While we were very disappointed in the court's ruling, we hope our vigorous challenge will impact how DOT considers environmental consequences in the future.

### Water Quality Certification Waiver case

In this case, DHEC announced its unilateral decision to waive its water quality certification over certain broad categories of activities (Nationwide Permits, beach renourishment and groin projects). Under the DHEC decision, these projects and activities will no longer have to meet state standards and conditions enacted to protect water quality and uses, such as swimming, fishing and shellfish harvesting. The sole basis for DHEC's decision to discontinue reviewing these projects is budget shortfalls. In a deposition we took on May 17, the agency agreed that its water quality certification program is valuable and gave reasonable assurances that water quality standards would be met and uses protected.

On May 19, Administrative Law Judge Ralph King Anderson heard arguments on DHEC's motion to dismiss our case, and we have provided legal memorandum to aid in the Judge's decision.



### Deerfield Clean Water Act case

On May 25 we argued our case challenging the U.S. Army Corps of Engineers' decision to decline to assert Clean Water Act jurisdiction over ponds, channels and wetlands running through an abandoned golf course and draining into the Atlantic Ocean in Horry County. This decision opens the door for the planned development of this property, which calls for the destruction and fill of practically every square inch of these waters. The Corps decision ignores the fact that all of the ditches and channels are interconnected and that they all carry water that flows directly into the Atlantic Ocean. The Corps failed to apply the proper legal tests – whether there is “relatively permanent standing or flowing water” and whether there is a “significant nexus” to the downstream waters of the Atlantic Ocean, which is a mile away from the site. Arguments were held before Judge Harwell in Florence, with the Judge asking many thoughtful questions.

**SCELP staff and our clients are anxiously awaiting decisions in these significant cases as we continue to press for wise, science-based decisions that comply with laws designed to protect our air and water quality, unique and pristine natural resources, and quality of life.**



*One of the ponds that the Corps claims is “non-jurisdictional” in the Deerfield case, above. A cypress swamp, one of many areas over which DHEC said it would no longer conduct water quality certification review of Nationwide Permits, top right.*

## SCELP Welcomes New Board Members: John Mark Dean & Leon Rice



**John Mark Dean** is a Distinguished Professor Emeritus of Marine Science and Biological Sciences and Senior Fellow in Science and Ocean Policy at the University of South Carolina. John's research focused on Age and Growth of Fishes, Estuarine Ecology and Fisheries Management. He has taught numerous graduate and undergraduate courses and has more than 100 publications in the scientific literature. John received his MS and PhD in Aquatic Ecology from Purdue University and was awarded an honorary Doctor of Science degree by Cornell College of Iowa, where he also received his BA.

John's service on numerous advisory committees dealing with natural resource issues, and the role of science in the development and implementation of natural resources policies at the domestic and international level enables him to bring a unique perspective to students, policy makers and SCELP. John was a critical expert witness in our Captain Sam's Spit case. His company performed an exhaustive environmental inventory of the natural resources on Kiawah Island entitled "*Environmental Inventory of Kiawah Island,*" which recommended that the Spit remain undeveloped because of its instability as a land formation. That document continues to be nationally and internationally recognized as a background document for sustainable environmental planning in the coastal zone and it specifically

John helped form and is currently a member of the Steering Committee of the South Carolina Sustainable Seafood Initiative. He lives in Columbia with his wife Robin, and we are very excited to welcome both John and Leon to SCELP's Board of Directors.

**Leon Rice** was born in Winston-Salem, NC, and practiced law in Atlanta, Georgia, for 30 years, dealing mainly in real estate law and transactions. Ten years ago he retired to Murrells Inlet, SC, where his family has owned a creek house for the last 90 years. He was a board member of Murrells Inlet 2007 (now Murrells Inlet 2020), and he is now a director and secretary of Preserve Murrells Inlet, Inc., a group dedicated to preservation of the creek, and to preserving the low density use of the water shed on the Waccamaw Neck. He is a member of Bike the Neck, a cycling advocacy group, and a member of Belin United Methodist Church. Leon is married to Jan, and they have 3 children and 3 grandchildren who live in Charleston.

Leon enjoys all outdoor activity, including fishing, hunting, golf, biking and boats of all types. He is a graduate of Duke University and Emory University Law School, and is a former arbitrator American Arbitration Administration. Leon says he is passionate about the goals of SCELP, and the conservation of our wonderful natural resources.



*SCELP's Amy Armstrong & Michael Corley conduct a survey for Swallow-tailed Kites, an endangered species in SC, on the Black River*