

PUBLIC JUSTICE E-LERT

AMERICA'S PUBLIC INTEREST LAW FIRM

December 2, 2011

It may sound like a benign, politically correct term, but "biologically impaired" has serious implications for the health of our natural waterways.

That's why it's such good news that the Sierra Club and West Virginia Highlands Conservancy, both represented by Public Justice's Jim Hecker, entered into a settlement this week with Fola Coal Company that will require Fola to clean up pollution in Boardtree Branch, a tributary of Twentymile Creek in Nicholas County, West Virginia. According to the West Virginia Department of Environmental Protection (WVDEP), Boardtree Branch has become "biologically impaired" as a result of toxic runoff from Fola's Surface Mine No. 3, a mountaintop removal coal mine that covers two square miles and is situated above the stream.

The settlement resolves a lawsuit that was brought after Fola's own monitoring data showed that Boardtree Branch was toxic to aquatic life and contained levels of electrical conductivity (a measure of impurities in water) up to ten times the benchmark for biological health.

This settlement marks the first time that such monitoring results have been used to establish violations of West Virginia's narrative water quality standards. It also sets an important precedent because many other mines in Appalachia have the same problem. (The EPA recently found that nine out of every ten streams located downstream from surface coal mining operations are biologically impaired.)



Boardtree Branch discharges into Twentymile Creek, pictured, which is popular for steelhead and trout fishing

As far back as 2008, the WVDEP classified Boardtree Branch as "biologically impaired," but, because of the coal industry's influence in West Virginia, the WVDEP did not compel Fola to clean up the stream.

Under the settlement, Fola, a subsidiary of CONSOL Energy, must restore the stream to a healthy state. If it doesn't, the coal company will have to install an expensive system to treat the water. The settlement also requires Fola to pay \$200,000 to a land trust to support sustainable development and land use planning. The cleanup will be overseen by an independent aquatic ecologist and an independent engineer.

The full settlement, which awaits final approval by the court, is available [here](#). Also, take a look at the [Charleston Gazette blog post](#) about it and the [Associated Press/Charleston Daily Mail's story](#), which offer further details.

Congratulations and thanks to Jim Hecker, the director of our Environmental Enforcement Project, and his co-counsel in this case, Joe Lovett and Derek Teaney of Appalachian Mountain Advocates.

And thank you for the support that makes it possible for us to do this vital work.

Arthur Bryant

Executive Director
Public Justice and the
Public Justice Foundation