

# Upstate Update

NUMBER 103

OCTOBER  
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Upstate Forever's Monthly Bulletin on  
Important Issues and Events in the Upstate

## In this Upstate Update:

1. Judge Defers Ruling on Removal of Third Dam on Twelve Mile River
2. Key Oconee Property Protected
3. Spartanburg Learns More About Improving "The Air We Breathe"
4. Limited Boating Allowed on upper Chattooga
5. Conservation Groups Urge Funding for Land Conservation in Climate Bill
6. Upstate Break a Unique Golf Challenge
7. Introducing...*Upstate Forever* Coffee
8. Federal Employees Can Help *Upstate Forever*
9. Congratulations!
10. Upcoming *Upstate Forever* Events
11. Quote of the Month

### 1. Judge Defers Ruling on Removal of Third Dam on Twelve Mile River

After a five-hour hearing on October 13, U.S. District Judge G. Ross Anderson, Jr. decided to defer making a ruling on removing the third dam from Twelve Mile River. *Upstate Forever*, the Lake Hartwell Association, and the Pickens Soil and Water Conservation District strongly support removing this dam in order to restore the natural, free-flowing character of over 100 miles of this beautiful river system and to address environmental contamination in both the river and Lake Hartwell.

From 1955 to 1977, the Sangamo-Weston capacitor manufacturing plant in Pickens dumped over 400,000 pounds of polychlorinated biphenyls (PCBs) into Town Creek, a tributary to Twelve Mile River, which flows into Lake Hartwell. PCBs are toxic man-made compounds that are very slow to break down, do not mix well with water, and settle into sediments where they can enter the food chain and accumulate in small organisms, fish and people. The U.S. Environmental Protection Agency has determined that PCBs are a "probable human carcinogen" and have numerous adverse effects, including physiological, immunological, developmental and reproductive.

As the result of Sangamo-Weston's operations, there is now PCB contamination not only in Twelve Mile River but also in the upper Seneca River and Twelve Mile River arms of Lake Hartwell. These regions of the lake have had the most restrictive warning, "Don't eat any of the fish," for over 30 years.

In May 2006, Schlumberger, Inc. (the successor to Sangamo-Weston) signed a Consent Decree entered by the U.S. District Court in South Carolina that, among other things, requires Schlumberger to pay almost \$12 million as compensation for damages to the natural resources of the river and Lake Hartwell. Most of this payment (nearly \$9 million) is assigned to South Carolina, with the rest for Georgia. In addition, Schlumberger is required to dredge, and dispose off-site, most of the PCB-contaminated sediments behind two of the three dams on the river (known as the Woodside I and II dams) and to dismantle the dams. One of the basic objectives of the Consent Decree is that after the contaminated sediments behind the two dams are removed, clean sediments will move downstream and eventually cover or "cap" the contaminated sediments in Lake Hartwell.

The Consent Decree also requires certain federal and state agencies, which are designated as "natural resource trustees" and are parties to the decree, to consider the removal of the third dam. This requirement was included in response to an outcry from the local community for removal of all the dams. The Easley-Central Water District owns this dam but does not object to its removal if an alternative water supply system is provided.

Promoting sensible growth and protecting special places in the Upstate

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After the Consent Decree was signed, Schlumberger made the required \$12 million payment but did little else to comply with the order. Outstanding reporting by Anna Simon of *The Greenville News* called public attention to the lack of progress and led Judge Anderson to hold a hearing and rule on July 7, 2009 that no further delays would be tolerated. Under Judge Anderson's watchful eye, the project is now back on track—the contaminated sediments and the Woodside I and II dams should be removed next year. For more information, see [UU 102](#).

No final decision has been made on how to spend South Carolina's share of the payment. Proposed projects include removing the third dam and providing an alternative water system for the Easley-Central Water District; building an education center in Anderson County; enhancing fish habitat in Lake Hartwell; establishing inland fishing ponds; and improving fish access opportunities in Anderson County.

In Pickens County, where the bulk of the contamination exists, there is overwhelming support for the first project. Both the Pickens County Council and the Pickens County legislative delegation recently adopted resolutions stating that removal of the third dam and providing an alternative water system should be the "absolute top priority" project. *Upstate Forever*, the Lake Hartwell Association, and the Pickens Soil and Water Conservation District agree.

Removing the third dam would achieve a wide range of public benefits, including restoration of natural river flows; movement of clean sediments from the river into Lake Hartwell; opening more than 100 miles of the river system and allowing unimpeded passage for many species of fish; improving water quality; and establishing outstanding whitewater paddling opportunities through the spectacular Twelve Mile River gorge.

At the hearing last Tuesday, Dr. Larry Dyck, a retired professor of biological sciences at Clemson and a member of both the Lake Hartwell Association and Pickens Soil and Water Conservation District Boards, presented compelling testimony on why the third dam should be removed. The power point presentation that he used at the hearing is posted on our website: [www.upstateforever.org/FreeFlowing12MileRiverLarryDyck10-13-09.pdf](http://www.upstateforever.org/FreeFlowing12MileRiverLarryDyck10-13-09.pdf).

Paul League with the S.C. Department of Natural Resources (DNR) testified on behalf of the natural resource trustees. Mr. League summarized a draft plan that was filed with the Court and posted on the DNR website on October 9: [www.dnr.sc.gov/news/fishingcomp.html](http://www.dnr.sc.gov/news/fishingcomp.html). This plan recommends no funding for removal of the third dam! Mr. League explained that while the trustees would like to see the third dam removed, there is "only a limited nexus" between its removal and the restoration of lost recreational fishing opportunities caused by the PCB contamination, which he said should be the main objective of projects funded by the \$12 million payment.

The trustees' position, in our view, lacks merit for three basic reasons. First, removing the third dam and allowing sediments to flow naturally into Lake Hartwell is the only way to achieve the goal of effectively capping the contaminated sediments in the lake. That, in turn, will reduce the levels of PCBs in the fish, finally eliminate the need for fish warnings, and restore fishing opportunities throughout this large area of the lake. Second, the Consent Decree itself states that the funds can be used for "projects designed to improve the habitat and natural resources within the Twelve Mile River corridor." Removal of the third dam would obviously achieve that goal. Finally, the Consent Decree requires the trustees to consider removing the third dam. It is the only project specifically mentioned in the decree. (The DNR draft plan states that the estimated cost for removing the dam is \$7.7 million. That is incorrect—preliminary estimates indicate that the cost would be between \$4 and \$5 million, leaving plenty of funding for other projects).

At the conclusion of the hearing, Judge Anderson stated that he probably does not have the authority to order the trustees to implement specific projects. Nonetheless, he said that he would issue an order setting forth his recommendations for the use of the funds. In the meantime, the trustees are requesting public comments on the draft plan. Please let them know that you strongly support removal of

the third dam by sending or letter or e-mail to Paul League, General Counsel, S.C. Department of Natural Resources, 1000 Assembly Street, Columbia, S.C. 29201 or [leaguep@dnr.sc.gov](mailto:leaguep@dnr.sc.gov).

Click here to read an op-ed by Dr. Dyck and Brad Wyche, *Upstate Forever's* Executive Director, on why the third dam should be removed: [www.upstateforever.org/WycheDyckOp-Ed10-7-09.pdf](http://www.upstateforever.org/WycheDyckOp-Ed10-7-09.pdf).

## 2. Key Oconee County Property Protected

*Upstate Forever* has partnered with the John Ivester family and the South Carolina Conservation Bank (SCCB) to protect the first phase of Rose Hill Farms, a 336-acre parcel of land that borders Oconee Station State Park and Sumter National Forest (SNF). The privately-owned property is a scenic buffer and wildlife corridor and includes seven tributaries of Oconee Creek along with access to the 50-foot-high Lee Falls in SNF. The tract, which was approved for funding by the SCCB Board in June, 2008, consists of beautiful rolling hills and steep ravines descending into hayfields and pastures.

Initially, John Ivester intended to sell his farm. But after working closely with *Upstate Forever* and SCCB, he decided that a better choice would be to retain ownership for his heirs while protecting the property with a conservation agreement. Although his love of the land and his family's future use and enjoyment of the property were motivating factors, compensation from the South Carolina Conservation Bank and the increased tax benefits in 2009 made this a viable option for Mr. Ivester.

State budget cuts redirected SCCB funds in the fall of 2008, threatening the future of this parcel (along with others across the state) and preventing the closing from occurring until last month. But in the 11<sup>th</sup> hour of this year's session, the General Assembly provided \$2 million in funding for the SCCB, allowing the Rose Hill tract and a few others in the State to close.

To learn more about the South Carolina Conservation Bank, visit <http://sccb.sc.gov/>. For information about the grassroots effort to establish a local conservation bank in Oconee County, go to [www.oconeecountyconservationbank.org](http://www.oconeecountyconservationbank.org). *Upstate Forever's* [Land Trust Program](#) protects more than 11,000 acres on 65 properties in our region through conservation agreements -- visit [www.upstateforever.org/programs\\_landPres.html](http://www.upstateforever.org/programs_landPres.html). For information about efforts to increase federal funding for conservation easements, see item 5, below.

## 3. Spartanburg Learns More About Protecting the Air We Breathe

"The Air We Breathe" is an initiative for clean air in Spartanburg County sponsored by *Upstate Forever*, the Spartanburg Area Chamber of Commerce, the Spartanburg Development Association, and Spartanburg County. The program aims to educate the general public about the health impact of poor air quality as well as the economic impact of not meeting the federal air quality standards. The Air We Breathe website, [www.cleanairspartanburg.com](http://www.cleanairspartanburg.com), provides information on important air quality issues and upcoming events in Spartanburg County.

One of those events took place in Spartanburg on September 9 with a forum featuring Dr. Robin Puett of the University of South Carolina's Arnold School of Public Health; Richard Schutt, Chief of the Air Planning Branch of EPA Region 4; and Danny Patterson, Executive Director of the Policy Exchange Foundation.

Puett, who holds PhDs in Epidemiology and Environmental Health Sciences from the University of South Carolina, detailed the severe health impacts of airborne pollution. She noted that ozone pollution affects those with asthma and other pulmonary conditions, especially children, who take in more air than adults proportionate to their body mass.

Schutt, who has studied air quality issues for over 40 years, outlined the process that EPA follows in determining the national ambient air quality standards (NAAQS). The Clean Air Act requires EPA to

establish NAAQS for six air-borne pollutants and then to review the standards every five years. According to Schutt, teams gather and evaluate the scientific data from studies such as those conducted by Dr. Puett and recommend revisions of the standards to the EPA Administrator. The public must be given the opportunity to review and comment on any changes before they can take effect.

Last year the EPA established a new NAAQS for ground-level ozone at 75 parts per billion, but the agency has been widely criticized for ignoring the advice of its scientific advisors to establish a more stringent standard. In response, the EPA announced last month that it would reconsider the standard and would make a final decision by August of next year. The standard, if changed, would almost certainly be more stringent. Spartanburg County and many areas of the Upstate do not even comply with the current standard.

Because the overriding purpose of the NAAQS is to protect public health, the EPA may not consider the economic impacts associated with not meeting the standards. But as Patterson pointed out, these impacts can be huge. It is difficult for existing industries to expand, and for new industries to locate in, “non-attainment areas,” and federal funding for transportation can be withheld from these areas. For example, the City of Birmingham estimates that they lost \$4.6 billion in economic development in the 1990s as a result of their non-attainment status.

The next air quality forum, to be held in November, is a more technical workshop for the managers of public and private diesel fleets, explaining the use of technologies such as auxiliary power units for long-haul trucks and diesel emissions reduction filters, as well as innovative programs that can reduce emissions by increasing the efficiency of delivery routes. The final event in the series will be held in the spring and will focus on the steps that all of us can take to improve air quality.

#### 4. Limited Boating Allowed on Upper Chattooga

For years, a conflict over use of the Upper Chattooga River has pitted paddlers against anglers, leading to an appeal filed by American Whitewater and other paddling organizations in 2004 (see [UU 77](#)) over the longtime exclusion of boating from this 20 mile section of the river. The forest supervisors of the Sumter, Chattahoochee and Nantahala National Forests recently made their final decision on the management of recreation uses for this section. Boating will now be allowed between Dec 1 and March 1 when the water level is at least 2.5 feet as measured at the Highway 76 gauge. The decision, which is similar to a compromise first proposed by *Upstate Forever* in 2003, “emphasizes year-round high-quality trout fishing and at the same time provides boating opportunities on the main stem upper Chattooga River,” according to the Forest Service’s website. Hopefully, the new policy will enable trout fishing and paddling to coexist on the Upper Chattooga. More information is available at [www.fs.fed.us/r8/fms/sumter/resources/Chattooga.php](http://www.fs.fed.us/r8/fms/sumter/resources/Chattooga.php).

#### 5. Conservation Groups Urge Funding for Land Conservation in Climate Bill

*Upstate Forever* has joined a national coalition of over 50 conservation and forestry groups urging lawmakers to include funding in the climate bill for conservation agreements. Such a provision to protect domestic farms, forests, and ranchlands was not included in legislation passed by the House in June, although the bill did include funding to reduce deforestation in developing nations. Coalition leaders are asking Senate leaders to designate additional funding for existing federal programs that help private landowners place conservation agreements on their properties, permanently protecting them from development. According to the Pacific Forest Trust, “Permanent land conservation, which landowners undertake voluntarily, would prevent release of an additional 15 percent of all U.S. greenhouse gas emissions and would offer an important source of clean, renewable biomass energy as well as sustainable rural jobs.”

For more information about the coalition’s efforts and a link to the letter, visit [www.forestswonders.org/2009/09/broad-coalition-calls-for-land.html](http://www.forestswonders.org/2009/09/broad-coalition-calls-for-land.html).

## 6. Upstate Break a Unique Golf Challenge

“Upstate Break ’09,” a very different kind of golf event, took place October 1 at The Eagle Zone Golf improvement Center. Participants of all skill levels tried their hands at nine golf skill challenges ranging from the silly (hitting balls into a kiddie pool) to the serious (chipping out of a bunker), while also enjoying superb food, wine, and live music. All the fun was for a great cause, too -- the evening’s proceeds benefitted **Upstate Forever!** Several sponsors helped make this unique event a success, including Brett Communications; Phillips Staffing; Coconutwater; Eagle Zone Golf; MacClenahan Law Firm, LLC; Wells Fargo Insurance Services; Byford Law, LLC; Eddie and Krissy Adams; Griffin and Nicole Bell; Postcard from Paris Design; Go Magazine; and Eve and Shannon Schofield. Thank you!

## 7. Introducing...Upstate Forever Coffee!

Do you love coffee AND the Upstate? **Upstate Forever** and The Palmetto Bean Company are partnering to present the **Upstate Forever Blend!** This robust brew is a blend of 100% Arabica beans grown organically in sustainably farmed regions of El Salvador and Nicaragua. The beans are directly imported from locally owned estates and farming co-ops, contributing to the health of local economies. Our blend is fair trade certified and bird-friendly!

For every \$10 bag sold, \$3.50 goes to **Upstate Forever**, supporting our work of protecting special places and promoting sensible growth in the Upstate! Just email your order to us and pick up your coffee at The Open Book on S. Pleasantburg Drive in Greenville. For ordering details, visit our [website](#). For more information, contact Kirbie Crowe at [kcrowe@upstateforever.org](mailto:kcrowe@upstateforever.org) or (864) 250-0500x21.

## 8. Federal Employees Can Help Upstate Forever

Attention Federal civilian, postal, and military employees: **Upstate Forever** is a participant in the 2009 Combined Federal Campaign of Greenville County, which means that you can designate contributions to us through your workplace! The campaign runs through December 15; your employer should have pledge cards and a list of eligible charities available. **Upstate Forever’s** CFC number is 91584. If you have any questions about how to make a contribution to **Upstate Forever** through the Combined Federal Campaign, please contact Sue Zedek at the United Way at (864) 467-3513 or at [szedek@unitedwaygc.org](mailto:szedek@unitedwaygc.org).

## 9. Congratulations!

Former **Upstate Forever** intern Shea Airey, who recently graduated from the University of South Carolina School of Law and now practices law in Walhalla, has won first place in a national legal writing contest for his paper about conservation easements. The Real Property, Trust and Estate Law (RPTE) Section of the American Bar Association chose Shea’s paper, “Conservation Easements in Private Practice: A Detailed Overview of the Device and Why It Should Be Embraced by the American Lawyer,” as the best student writing on an RPTE topic in the nation. Congratulations, Shea!

## 10. Upcoming Upstate Forever Events

Thursdays, now through November 12

Green Screen Film Series

Cost: Free

Hub-Bub Showroom, 149 S. Daniel Morgan Avenue, Spartanburg, 7:30 p.m.

Green Screen has returned for 2009! This collaborative documentary series focuses on environmental issues and healthy lifestyles. For more information, call **Upstate Forever’s** Spartanburg office at (864) 327-0090. For descriptions of the films, visit our website or [www.hub-bub.com](http://www.hub-bub.com). Green Screen is sponsored by **Upstate Forever**, Hub-Bub, the Hub City Farmers Market, and Partners for Active Living.

# Upstate pdate

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Saturday, November 14

Upstate Forever Annual Meeting

Cost: Free for *Upstate Forever* members

Kresge Hall, Clemson University Outdoor Laboratory, 7 Charlie White Trail, Pendleton, SC 10:00 a.m.

Come hear about our work in 2009 and our plans for the future! The Annual Meeting is a great way to meet *Upstate Forever* staff and mingle with other like-minded members. After the meeting, stick around for lunch and guided walks through the Clemson Forest! RSVP to Kirbie Crowe by Friday, November 6 at (864) 250-0500x21 or [kcrowe@upstateforever.org](mailto:kcrowe@upstateforever.org).

## 11. Quote of the Month

“The best thing we can do for recreational fishing is to reduce PCBs in the fish. The only way to do that is to let sediment go down as nature intended.”

-- Retired Clemson biologist Dr. Larry Dyck, speaking at the hearing about the removal of the third dam on Twelve Mile River, quoted in *The Greenville News*, 10/14/09

