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Contact:

Judy Petersen, Kentucky Waterways Alliance (270) 524-1774

Kentucky Waterways Alliance and Others Challenge Bush Administration over Midnight Rulemaking

If unchallenged, rule change would allow stream destruction, more mountaintop removal mining

Louisville, KY – Along with a coalition of environmental groups, Kentucky Waterways Alliance (KWA) took the Bush administration to court today over a controversial rule change pushed through the Office of Surface Mining December 12. The rule was approved by the U.S. Environmental Protection Agency (EPA) in the waning days of the administration's power. The legal challenge would overturn the last-minute repeal of the stream buffer zone rule -- an environmental law that, since 1983, has prohibited surface coal mining activities within 100 feet of flowing streams.

Attorneys with Earthjustice, Appalachian Center for the Economy and the Environment, Appalachian Citizens Law Center, Sierra Club, and Waterkeeper Alliance filed the legal challenge today in federal district court in Washington, DC on behalf of Southern Appalachian Mountain Stewards, Kentucky Waterways Alliance, Tennessee-based Save Our Cumberland Mountains, West Virginia Highlands Conservancy, and two other West Virginia-based groups: Coal River Mountain Watch and Ohio Valley Environmental Coalition.

If not overturned, the rule change would lead to even more mountaintop removal coal mining – the aptly named process of mining coal by blasting off the tops of mountains, and bulldozing the crumbled peaks into adjoining valleys. Detrimental to Kentucky streams, the rule change would give coal mining operations free reign on the use of mountaintop removal and other surface mining methods to bury the state's waterways under mountains of rock and debris.

The rule change was published in the Federal Register December 12 and will go into effect January 12, at which time mining companies would be free to bury streams with mining waste without reproach under the law administered by the Office of Surface Mining. Because the change was finalized before Dec. 20, it will be difficult for Congress to undo it under the Congressional Review Act.

“This is among the 11th hour landmines planted by the Bush administration that an EPA headed by Lisa Jackson stands to inherit,” said Earthjustice attorney Jennifer Chavez, who filed today's complaint. “We are doing what we can to make it easier for the incoming administration to undo

the damage wrought by the last one and restore our nation's commitment to protecting the waters and summits of the Appalachians.”

Kentucky Waterways Alliance argues with other opponents that the rule change violates the Clean Water Act and that EPA failed to fulfill its duties under the law when it signed off on the rule change, proposed by the Department of the Interior's Office of Surface Mining. Kentucky Waterways Alliance has been a [voice against the rule change since 2004](#) when it was first introduced taking the stance that any attempt to eliminate the stream buffer zone rule is contrary to the public interest and illegal under the Clean Water Act.

“The notion that coal mining companies can dump their wastes in streams without degrading them is a fantasy that the Bush administration is now trying to write into law,” said Judith Petersen, executive director, Kentucky Waterways Alliance. “What part of the goal of the Clean Water Act: *To restore and maintain the chemical, physical, and biological integrity of the Nation's waters*, did EPA not understand when it approved this rule?”

The outgoing administration finalized this controversial rule change in spite of a recent wave of criticism by some of Kentucky's top officials, including Gov. Steven Beshear. Last month, the governor, along with Attorney General Jack Conway and Reps. Ben Chandler and John Yarmuth each wrote letters to EPA head Stephen Johnson asking him not to sign off on the repeal of the stream buffer zone rule.

"Kentucky's vast water resources are critical to our health and economic development, and I do not believe the newly proposed waivers can be effectively and uniformly applied to protect these water resources," Beshear wrote in a Nov. 17 letter to the U.S. Environmental Protection.

"Current regulations offer minimal protections, and decreasing those protections will be devastating to the communities and environment around the mining sites," wrote Yarmuth, D-3rd District.

Since coal companies began the practice of mountaintop removal mining, the topography of Appalachia has been forever altered: More than 400 mountaintops have been stripped of trees and flattened, and 1,200 miles of mountain streams buried under rubble. Between 2001 and 2006, Kentucky state mining officials granted nearly 1,000 waivers of this very regulation. This represented a waiver in 71 percent of all Kentucky mine permits. Mining companies have been allowed to disregard the stream buffer zone regulation for years, burying miles of living stream underneath tons of rock and debris and polluting the drinking water of millions of Kentuckians in the process. The removal of the buffer zone would make this practice legal and would be detrimental to the future health of Kentucky.

“The Bush Administration has tried time and again to twist the rules for mining companies, excusing them from abiding by the Clean Water Act,” Petersen stated. “KWA has worked to stop all their attempts beginning in 2000 when they proposed changing the definition of fill – so that mining waste would no longer be considered fill and could ‘legally’ be dumped into streams. This latest action was the last straw. We are hopeful that the Obama Administration will be more interested in upholding environmental laws rather than weakening or eliminating them.”

For a copy of the complaint filed today in federal district court in Washington, DC, please visit:
<http://www.kwalliance.org/Portals/3/pdf/KWAComments/Coal%20River%20Mtn%20Watch%20et%20al%20v%20Kempthorne%20et%20al%202008-2212-Compl.pdf>

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About Kentucky Waterways Alliance: With a mission to protect and restore Kentucky's waterways, Kentucky Waterways Alliance is the only advocacy organization in the state working full-time on clean water issues. For more information about what we do to protect and restore Kentucky's rivers, lakes, and streams visit: www.KWAlliance.org.