

Buffer-zone rule needs clarity

Barry Thacker, Citizen's Voice
Saturday, September 22, 2007

As a college intern working for the U.S. Army Corps of Engineers in 1975, I researched 19th-century land grants to find where grist mills had been located adjacent to rivers. The Corps used this documentation to claim jurisdiction over those streams based on their historic use as navigable waterways for transporting goods downstream to market.

When Congress passed the Surface Mining Control and Reclamation Act of 1977, it used a stream definition similar to the Corps' in establishing a buffer-zone rule to place restrictions on mining activities adjacent to major waterways. SMCRA regulations recognize that overburden and impurities mined with coal require disposal and provide stringent procedures for such practices in smaller watersheds.

Recent legal challenges to surface mining by protest groups now want no disturbance within a 100-foot buffer zone of intermittent streams having drainage areas of about 14 acres, which are normally dry and flow only in response to rainfall events. Even a single underground mine disturbs more than 14 acres, so prohibiting filling in small watersheds would abolish all coal mining, not just surface mining.

In the Tennessee River valley, 64 percent of our electricity is generated from burning coal, and 29 percent comes from nuclear reactors. TVA is adding new reactors at a rate of one unit every five years to help meet increasing demands for electricity. Add the current expansion rate in renewable green power to the mix, and even with energy conservation and no growth in demand, it would take TVA at least 65 years to replace its current coal-fired generating capacity. If the buffer-zone rule is applied to small watersheds and coal mining ceases today, how would our demand for electricity be met for the next 65 years?

If coal mining is banned in areas impacting more than 14 acres, should all construction with similar disturbance be banned? If so, every town, highway, commercial development, subdivision and farm would be adversely impacted.

Even the recent construction of the News Sentinel building would have violated an intermittent stream buffer-zone rule, as would the construction of TVA's wind turbines on Buffalo Mountain and any new nuclear reactors.

Taking the buffer-zone rule to such an extreme seems silly when compared to the infrastructure already in place around us. Yet the U.S. Office of Surface Mining is faced with lawsuit after lawsuit making such demands. Even when protest groups lose the lawsuits, they win when the government reimburses their legal fees. Consequently, attorneys and expert witnesses wait in line to represent them, while taxpayers fund these exercises in futility.

What will this rule make legal that was illegal before? Nothing. OSM is clarifying the intent of Congress when SMCRA was enacted, so it can devote its time to enforcing mining regulations and reclaiming abandoned mine land instead of fighting frivolous lawsuits.

Has there been a significant difference in the way the Bush administration treats the mining buffer-zone rule compared to previous administrations? No. According to its Web site, "OSM has been consistent in its interpretation and enforcement of the stream buffer-zone rule requirements over the past 30 years."

If protesters want to reduce the amount of coal that must be mined to fuel our economy, they can voluntarily pay more for renewable energy through TVA's Green Power Switch program or simply turn the circuit breakers in their offices to the "off" position. Under no circumstances should taxpayers be funding the legal games of protestors to reinterpret what SMCRA already defines.

Barry Thacker is an engineer, president of Geo/Environmental Associates Inc. and founder of the nonprofit Coal Creek Watershed Foundation Inc. in Knoxville. His e-mail address is barryt@geoe.com.

