

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
HUNTINGTON DIVISION**

**OHIO VALLEY ENVIRONMENTAL
COALITION, COAL RIVER MOUNTAIN
WATCH, WEST VIRGINIA HIGHLANDS
CONSERVANCY, and THE SIERRA CLUB,**

Plaintiffs,

v.

Civil Action No. 3:08-0979

**UNITED STATES ARMY CORPS OF
ENGINEERS; ROBERT L. VAN ANTWERP,
Commander in Chief of Engineers, U.S. Army
Corps of Engineers; DANA R. HURST,
Colonel, District Engineer, U.S. Army Corps of
Engineers, Huntington District,**

Defendants.

**FOLA COAL COMPANY, LLC'S
MOTION TO DISQUALIFY PRESIDING JUDGE**

Fola Coal Company, LLC (“Fola”)¹ hereby moves, pursuant to 28 U.S.C. § 455, the Honorable Robert C. Chambers to disqualify himself from presiding in this case. Fola does not file this motion lightly. Fola also recognizes that it has no first-hand knowledge of the facts as stated below, which have only very recently come to the attention of Fola’s undersigned counsel. Fola, however, does believe that the facts, as reported, create an appearance of impropriety should Judge Chambers preside over the challenge by the West Virginia Highlands Conservancy (“WVHC”) and others to the Section 404 permit issued to Fola by the United States Army Corps of Engineers. In support of this motion: Fola states as follows:

¹Fola has filed its motion to intervene in this action.

1. On September 18, 2008, WVHC, together with Ohio Valley Environmental Coalition, Inc. (“OVEC”), Coal River Mountain Watch, Inc. (“CRMW”) and the Sierra Club (collectively “Defendants”), filed a motion in this action for leave to file a second amended complaint to challenge an individual permit issued by the U.S. Army Corps of Engineers under § 404 of the Clean Water Act (CWA) to Fola for its Ike Fork No. 1 and Ike Fork No. 2 surface mines in Nicholas and Clay Counties in West Virginia.

2. A publication titled *Almanac of the Federal Judiciary* (Aspen Publishers, 2008), contains biographical and other information on all sitting federal judges. In its section devoted to Judge Chambers, this publication reports under the catchline “Other Activities” “West Virginia Highlands Conservancy.” A copy of this portion of the publication is attached as Exhibit A.

3. October 10, the *West Virginia State Journal* attributes comments to Judge Chambers to the effect that he was a member of and financial contributor to WVHC up to his appointment to the federal bench in 1997.

4. Fola believes that, given Judge Chambers’ past membership in and financial support of WVHC (if the reports are accurate), his impartiality might reasonably be questioned in connection with this action.

WHEREFORE, Fola respectfully requests that Judge Chambers disqualify himself from presiding in this action. In further support of this motion, Fola submits the accompanying memorandum.

FOLA COAL COMPANY, LLC

By SPILMAN THOMAS & BATTLE, PLLC

/s/ James S. Crockett

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Defendants,

CERTIFICATE OF SERVICE

I, James S. Crockett, Jr., counsel for Fola Coal Company, LLC, hereby certify that on October 10, 2008, I electronically filed the foregoing **Fola Coal Company, LLC's Motion to Disqualify Presiding Judge** with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

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