

February 7, 2018

Steve Marshall
Alabama Attorney General



For More Information, contact:

Mike Lewis (334) 353-2199

Joy Patterson (334) 242-7491

Page 1 of 1

ATTORNEY GENERAL STEVE MARSHALL LEADS AMICUS BRIEF TO STOP IMPROPER FEDERAL OVERSIGHT OF GROUNDWATERS THAT WOULD CAUSE RATE INCREASES FOR TVA CUSTOMERS

(MONTGOMERY) –Attorney General Steve Marshall announced the filing of an amicus brief late yesterday in the U.S. Circuit Court of Appeals for the Sixth Circuit, led by the States of Alabama and Kentucky, to fight a federal court ruling that usurps States’ authority to regulate groundwaters and would result in debt to the Tennessee Valley Authority (TVA), causing rate increases that could leave many customers in Alabama and other states unable to afford electricity. The case is *Tennessee Clean Water Network v. TVA*.

At dispute is the issue of whether “hydrological connectivity” could dramatically extend federal oversight into groundwater pollutants, an area that the Congress designated for States under the Clean Water Act (CWA). Using this theory, a lower court has ordered that the TVA clean up a coal ash pond at its Gallatin coal plant in Middle Tennessee by a close-by-removal procedure that is more expensive than the TVA’s preferred close-in-place method.

Specifically, the expected cost of closure-in-place at Gallatin is \$230 million, as opposed to an estimated \$2 billion to \$4 billion for closure-by-removal. If the lower court ruling is allowed to stand and set precedent for additional lawsuits regarding the TVA’s other ash impoundments, the brief states this “could ultimately devastate TVA’s financial position, putting the future of millions of Americans’ energy supply at risk.”

“Not only is this matter clearly designated for state rather than federal regulation and the proposed remedy unnecessary and overwhelmingly costly, but the theory of hydrological connectivity could be extended to ridiculous circumstances,” said Attorney General Marshall. As he asserts in the amicus brief, “For example, owners of large parking lots could find themselves subject to CWA citizen suits as storm water runoff mixes with petroleum products discharged by cars parked on pavement, and may make its way into groundwater and eventually ‘navigable water.’ The same logic extends to runoff from state, county and municipal roads and highways.” Considering the possibility that all groundwater could eventually migrate to navigable waters, individuals and companies might need permits for “essentially any discharge that might find its way to groundwater.” States joining Alabama and Kentucky in the amicus brief are Arkansas, Georgia, Indiana, Kansas, Louisiana, Mississippi*, Missouri, Montana, Nebraska, Oklahoma, South Carolina, Texas, Utah, West Virginia, Wisconsin and Wyoming. A link to the brief is [here](#).

**In Mississippi the amicus was joined by the state Department of Environmental Quality.*

