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Deal will end Fola Coal water pollution lawsuit

by The Associated Press

CHARLESTON, W.Va. -- Two environmental groups agreed Wednesday to settle a lawsuit against Fola Coal Co. over runoff from a mountaintop removal mining operation in Clay and Nicholas counties.

The Sierra Club and West Virginia Highlands Conservancy sued the company in October 2010, claiming violations of the federal Clean Water Act and federal surface mining laws at Fola's Surface Mine No. 3.

Under the proposed consent order filed with the U.S. District Court in Charleston, Fola will pay \$200,000 to the West Virginia Land Trust and a \$25,000 fine to the federal government. It also agrees to repair any damage caused to a stream called Boardtree Branch but does not have to admit liability.

The agreement still must be approved by Judge John T. Copenhaver.

Surface mining releases contaminants that can harm water life. The groups sued after monitoring by the U.S. Environmental Protection Agency showed water quality in Boardtree Branch was acutely and chronically toxic, with levels of electrical conductivity as much as 10 times higher than recommended.

Conductivity is a key indicator of stream health.

Public Justice attorney Jim Hecker said this is the first time monitoring results have been used to establish violations of West Virginia's water quality standards.

The proposed remediation involves construction of wetlands to remove sulfates from runoff. An independent authority will monitor the progress. If the mine continues to discharge above permit limits, Fola will have to install a treatment system and pay another \$500,000 to the West Virginia Land Trust.

"The mining companies are now on notice," said Cindy Rank of the Highlands Conservancy. "This is just the tip of the iceberg, and we will keep pressing until the mines clean up their messes and all of our streams meet the water quality standards."