



# Dirty Money, Dirty Power

## *How Virginia's Energy Policy Serves the Interests of Top Campaign Contributors*

**A Report from Appalachian Voices, the Sierra Club – Virginia Chapter, and the  
Chesapeake Climate Action Network**

**October 2, 2012**

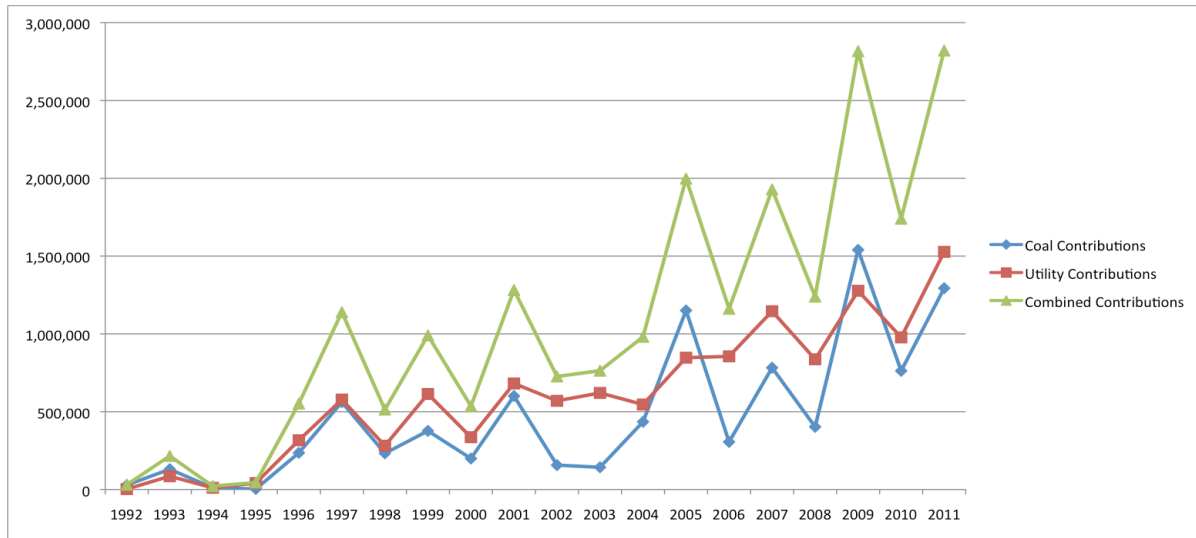
### **Executive Summary**

Virginia's utilities and coal companies are among the biggest contributors to Virginia state election campaigns, and their contributions continue to rise (see Figure 1). The state's largest utility, Dominion Virginia Power, is the single largest non-party contributor, having given \$5.2 million since 2004. The utility industry as a whole gave nearly \$9 million over this period, in addition to just over \$8 million from the coal industry. These contributions are motivated by corporate interest rather than ideology, with the money spread among Democratic and Republican candidates for the General Assembly and statewide offices.

**Table 1**

	<b>Dominion</b>	<b>Appalachian</b>	<b>Alpha</b>	<b>Consol</b>	<b>VA Coal Assn</b>
<b>2004</b>	\$372,329	\$46,175	\$100,439	\$6,000	\$58,700
<b>2005</b>	\$499,090	\$52,100	\$220,580	\$31,832	\$101,750
<b>2006</b>	\$600,598	\$93,780	\$145,043	\$36,159	\$23,250
<b>2007</b>	\$773,374	\$73,050	\$163,369	\$50,319	\$99,500
<b>2008</b>	\$539,040	\$62,550	\$177,661	\$32,420	\$32,500
<b>2009</b>	\$751,060	\$65,100	\$367,273	\$91,030	\$68,600
<b>2010</b>	\$572,794	\$174,900	\$292,570	\$90,806	\$47,907
<b>2011</b>	\$685,326	\$246,250	\$291,728	\$340,754	\$111,245

**Figure 1**



Contribution Data from the Virginia Public Access Project. Available at [www.vpap.org](http://www.vpap.org).

This report shows that the biggest donors dominate energy policy in the state and focuses on several prime examples of this influence:

- In 2012, the General Assembly passed, and the governor signed, a bill to extend the sunset date for tens of millions dollars annually in taxpayer subsidies to the coal industry—despite a finding by the Joint Legislative Audit and Review Commission (JLARC) in late 2011 that the subsidies are ineffective at job creation. According to JLARC, coal companies received over \$31 million from the Coalfield Employment Enhancement Tax Credit in 2008, including \$14 million in cash payments from state coffers.
- Also in 2012, Consol Energy and the Virginia Coal Association won passage of a bill overriding a 2008 state Supreme Court ruling and changing Virginia property law to allow coal companies to dispose of mine waste in empty underground mines without the consent of the landowner. While Consol had tried and failed to pass similar bills in 2010 and 2011, passage of its 2012 bill came after the company tripled its campaign contributions in 2011, as shown in Figure 3.

- The McDonnell Administration is advancing a proposal by the coal company Alpha Natural Resources to build the proposed Coalfields Expressway along a route designed to maximize coal extraction. As the state's contractor, Alpha would be allowed to extract coal along the route using mountaintop removal mining, and the company would benefit from an expanded 2,000 foot right-of-way (750 feet is typical for a road of this size) and from the state's eminent domain power to condemn private property. Governor McDonnell has received \$205,000 from Alpha, including \$55,000 donated to his inaugural fund.
- Dominion Virginia Power sharply increased its campaign contributions in the years leading up to Virginia's re-regulation of investor-owned utilities in 2007 (see Figure 2). The terms set out in the massive re-regulation law, which passed just seven weeks into the 2007 General Assembly session, are extremely favorable to the utilities, but problematic for ratepayers and the environment. The bill provides for extremely high customer-funded rates of return on the company's capital investments and a wholly ineffective voluntary Renewable Portfolio Standard (RPS) that will earn the company a \$76 million windfall at ratepayers' expense over a two-year period.

The dominance of coal and utility corporations over energy policy in the commonwealth harms the interests of electricity ratepayers and taxpayers, as well as public health and the environment, while impeding a transition from fossil fuels to cleaner sources of power and increased energy efficiency.

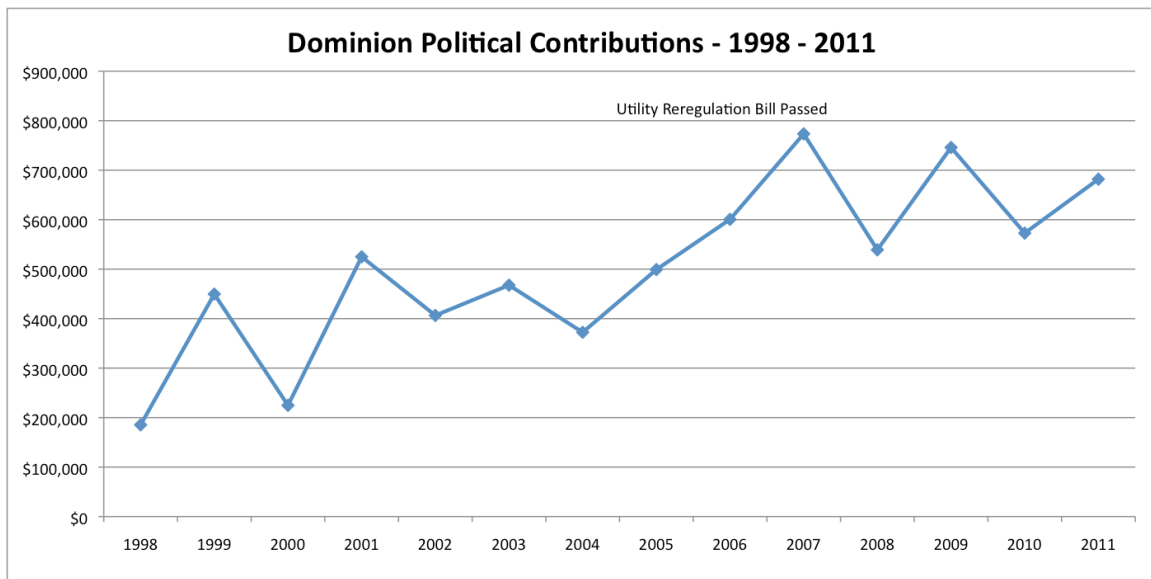
### **I. Big Utilities' Influence: Industry Profits Trump the Public Interest**

Virginia's largest utility, Dominion Virginia Power, is the largest non-party contributor to Virginia state election campaigns. According to data compiled by the Virginia Public Access Project (VPAP), Dominion has contributed \$5.2 million to the election campaigns of Virginia state politicians since 2004. During the same period, the state's other investor-owned electric utility, Appalachian Power, gave over

\$900,000 (see Table 1). In return, these utilities have exercised tremendous influence over the very laws that regulate their business.

The companies' campaign contributions increased sharply in the years leading up to Virginia's re-regulation of investor-owned utilities in 2007, when Dominion and Appalachian Power were established as regulated monopolies within their respective service territories. For example, Dominion's contributions increased from \$372,000 in 2004 to \$773,000 in 2007 (see Figure 2). The terms set out in the re-regulation law are extremely favorable to the utilities, but problematic for Virginia ratepayers and the environment.

**Figure 2**



Contribution Data from the Virginia Public Access Project. Available at [www.vpap.org](http://www.vpap.org).

The re-regulation law contains substantial incentives to construct new generation facilities. It provides for very high rates of return, funded by customers, on utilities' capital investments, making it far more profitable for the companies to invest in expensive new power plants than to promote electricity-saving energy efficiency measures. For example, Dominion is receiving a 12.12% rate of return on its

ratepayer-funded \$1.8 billion investment in its new Wise County coal plant under this law.<sup>i</sup>

Although the law contains a voluntary Renewable Portfolio Standard (RPS), ostensibly designed to incentivize investments in clean energy, the RPS is woefully ineffective, allowing the utilities to collect windfall profits from ratepayers without putting any new renewable energy onto the electric grid.

The requirements of the re-regulation law's voluntary RPS are so weak that Dominion has met the targets without building any new renewable energy projects, and with no wind or solar power. Yet, by meeting these targets, the company is entitled to approximately \$76 million in incentive payments over the next two years, to be collected from its customers.<sup>ii</sup>

To qualify for this bonus, Dominion claimed renewable energy from two types of sources: company-owned hydro-dams that have been part of its generation mix for decades and cheap renewable energy certificates (RECs) it bought from facilities outside the state. These RECs are estimated to have cost below \$2 million and are cheap because they come from facilities that, like the company's own renewable energy facilities, are decades old and do not qualify as renewable energy under other states' more stringent RPS statutes.

While solar energy is booming across the U.S., Dominion's solar plans extend only as far as a demonstration program. Even then, the company expects to sell the solar Renewable Energy Certificates from the project to states that require solar in their RPS, using the proceeds to buy cheaper, lower-quality RECs that meet the lax standards of Virginia's RPS.<sup>iii</sup> Dominion has also not built any wind farms in Virginia or used wind energy to meet the RPS, and it has opposed changes to the RPS that would give wind and solar an advantage over energy from old dams or from burning trash and wood.

While progress on renewable energy in Virginia is handicapped by the utilities' power over the state's politics, other states are moving ahead. Pennsylvania has installed more than 750 MW of wind energy to meet its RPS.<sup>iv</sup> New Jersey has installed over 17,000 solar arrays, which generate over 856 MW of energy for its residents.<sup>v</sup>

The wind and solar industries offer huge economic potential for Virginia. The solar industry is one of the fastest growing sectors of the U.S. economy, with a growth rate topping 100% in 2011 and a workforce of more than 100,000 Americans.<sup>vi</sup> The wind industry has contributed 35% of new electric generating capacity in the U.S. over the past five years and could put more than 10,000 Virginians to work building offshore wind farms.<sup>vii</sup>

In short, if Dominion were not in charge of the agenda, Virginia could be playing a leading role in the powerful new clean energy economy.

## **II. Big Coal's Influence: Corporate Welfare, Disposal of Mine Waste on Private Property, and Government-Sponsored Strip Mining**

According to VPAP, the coal industry has contributed over \$8 million to Virginia state political campaigns since 2004.<sup>viii</sup> Over this period, Virginia has advanced a number of policies that serve the industry's interests at the expense of taxpayers, the environment, and communities affected by mining pollution. Two coal industry bills that passed in 2012—the extension of the redeemable Coalfield Employment and Enhancement Tax Credit and a bill designed to allow coal companies to dispose of waste in underground mine voids without the surface owner's consent—and the Coalfields Expressway road project advanced by the McDonnell Administration are particularly illustrative of the industry's power.

### ***Corporate Welfare Extended: Sunset Date for Coal Subsidies Pushed to 2017***

Established in 1995, and extended to 2017 during the 2012 legislative session, Virginia's Coalfield Employment Enhancement Tax Credit represents a direct transfer of wealth from ordinary taxpayers to the coal industry, totaling tens of millions of dollars annually. JLARC found that companies received over \$31 million from the credit in 2008.<sup>ix</sup> Moreover, the value of the credit typically exceeds coal companies' tax liability, allowing the companies to redeem 85% of its value for cash payments from the state under the statute.<sup>x</sup> According to JLARC, the credits reduced recipients' tax liability by an average of 135% in 2008, allowing coal companies to receive over \$14 million in cash payments from the state that year.<sup>xi</sup>

While proponents' stated goal for these subsidies is to promote coal industry employment and production in the state, JLARC concluded in its November, 2011 *Review of the Effectiveness of Tax Preferences* that the subsidies appear to be ineffective. JLARC stated that "declines in Virginia coal mining activity appear unaffected by the tax credits[.]" noting that "[d]eclines in coal employment from 1996 to 2005 were greater than predicted *without* the Coalfield Employment Enhancement Tax Credit."<sup>xii</sup> Despite this finding, the coal industry went to the General Assembly this year seeking an extension of the tax credit's sunset date from 2015 to 2017. Ignoring JLARC's expert analysis, legislators complied, passing the extension by overwhelming margins in both houses.<sup>1</sup> The extension bill was signed by Governor McDonnell in March, 2012—just four months after JLARC issued its report highlighting the ineffectiveness of the subsidies.<sup>xiii</sup>

### ***Disposal of Mine Waste Allowed Without Property Owners' Consent***

In 2009, Consol Energy nearly tripled its Virginia state political campaign contributions before its 2010 attempt to advance a bill allowing coal companies to dispose of contaminated wastewater in underground mine voids against the wishes of the surface landowners.<sup>xiv</sup> The bill was designed to overturn a 2008 ruling against

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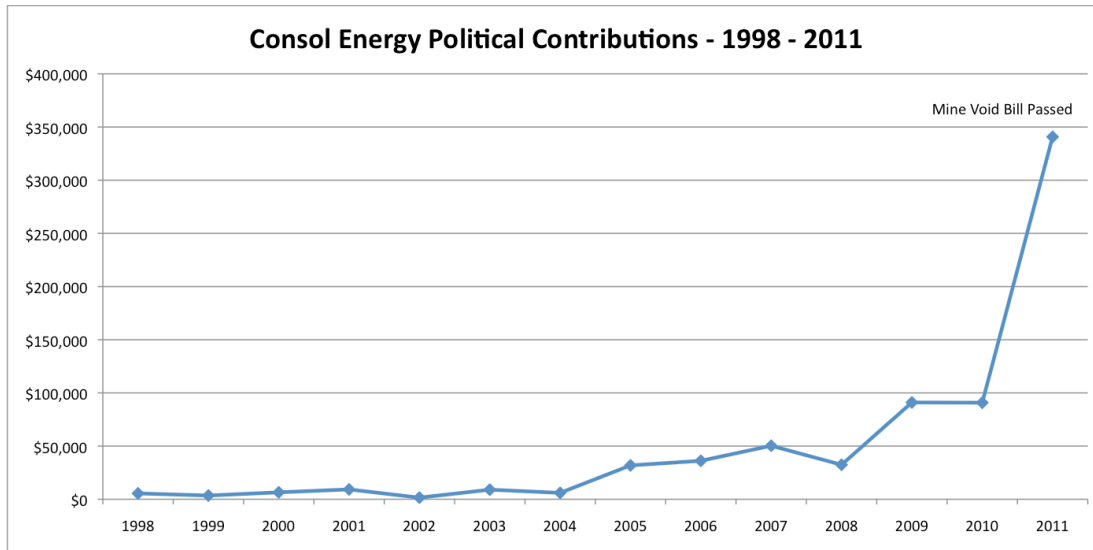
<sup>1</sup> This bill, HB 1192, passed 34-4 in the Senate and 82-18 in the House.

Consol by the Supreme Court of Virginia, which affirmed the right of landowners to prohibit such waste disposal on their property.<sup>xv</sup> For years, Consol, a Pennsylvania-based company, had been dumping toxic wastewater into empty underground mine chambers in Buchanan County without the property owners' consent. After the Supreme Court's ruling, Consol paid at least \$25 million for damages resulting from this practice in a publicly disclosed 2010 settlement of another case.<sup>xvi</sup>

Consol's legislative effort failed in 2010, and again during the 2011 session, in the face of concerns that it would infringe on landowners' property rights.<sup>xvii</sup> The company then increased its campaign contributions almost four times in advance of the 2012 session, from \$91,000 in 2010 to \$341,000 in 2011. Its bill passed in 2012 and was signed by the governor.<sup>xviii</sup> While a last-minute floor amendment required that coal companies obtain "consent" from owners before using mine voids, it provided that "such consent shall not be unreasonably withheld if the owner has been offered reasonable compensation for such use."<sup>xix</sup> Critics argued that compelling such "consent" from a landowner who opted to refuse "reasonable compensation" would constitute a governmental taking of private property in order to transfer it to the coal company, another private entity—something many supporters of Consol's bill, including Governor McDonnell, have opposed in principle with their support of the proposed property rights amendment to Virginia's Constitution.<sup>xx</sup>



**Figure 3**



Contribution Data from the Virginia Public Access Project. Available at [www.vpap.org](http://www.vpap.org).

### ***The Coalfields Expressway and Government-Sponsored Mountaintop Removal Coal Mining***

Since 1995, the Virginia Department of Transportation (VDOT) has pursued a highway project purportedly “needed to improve access to economic development” in southwest Virginia.<sup>xxi</sup> The proposed cost of building the divided highway through the mountainous terrain was prohibitively expensive for VDOT at \$2.4 billion and was never seriously pursued until 2006, when the project was resurrected with some help from Alpha Natural Resources.<sup>xxii</sup>

Alpha proposed to construct the roadbed with financing through a “coal-synergy” arrangement under the state Public Private Transportation Act. In September of 2007, Alpha and another company submitted a study that evaluated “possible highway alignments that consider areas of marketable coal reserves controlled by the companies.”<sup>xxiii</sup> This means that the coal companies, rather than VDOT engineers, were determining the route for a highway based on maximum coal recovery and return to private companies.

The realignment as proposed is considerably more destructive than the original alignment. The type of mining that would occur along the proposed highway right-of-way is predominantly mountaintop removal coal mining, putting adjoining residents at risk from increased toxic pollution in their water and more coal dust in the air. To get at the coal, the roadbed would be widened from a standard 750 feet for a road of this size up to 2,000 feet, giving Alpha an additional 1,500 acres that it can mine. Stream impacts of the project increase from 4 miles to 12 miles under the new alignment. And the new alignment actually bypasses existing communities that were supposed to be the economic beneficiaries of the original road alignment.<sup>xxiv</sup>

Since 2004, Alpha has contributed over \$1.9 million, 73% to Republicans and 20% to Democrats. Governor McDonnell has received \$205,000, including \$55,000 for his Inaugural Committee. A significant portion of the remaining campaign dollars flowed to leadership PACs and leaders of both parties in the House and Senate, and the remainder was spread among more than 120 candidates for House and Senate, mostly incumbents. Governor Kaine received \$20,000 for his gubernatorial bid and \$25,000 for his inauguration fund.

This largess has gotten the long-stalled Coalfields Expressway underway, including \$140 million in state funds designated for the Pound Connector and another \$81.5 million for the Doe Branch segment. If the project is allowed to proceed, VDOT's condemnation power, or the threat of condemnation, will be used to take homes and farms for the route, allowing Alpha to obtain coal to which it otherwise would not have access.<sup>xxv</sup>

The project must be approved by the Federal Highway Administration before it can proceed, and opponents are pressing the agency for a supplemental Environmental Impact Statement (EIS) to review the new alignment and the extensive coal mining impacts not considered in the original EIS.

## CONCLUSION

Coal and utility corporations' political campaign contributions allow these industries to dominate energy policy in the commonwealth, to the detriment of electricity ratepayers and taxpayers, as well as public health and the environment. This corporate influence is a major impediment to transitioning Virginia from fossil fuels to cleaner sources of power and increased energy efficiency.

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<sup>i</sup> *Application of Virginia Electric & Power Company*, Case No. PUE-2007-00066 (Final Order March 2008).

<sup>ii</sup> Compliance with the RPS confers a 50 basis point bonus on the utility. For the value monetary value of this bonus, see: Virginia Committee for Fair Utility Rates October 24, 2011 Post-Hearing Brief in State Corporation Commission case PUE-2011-00027 - public version, page 27: “With 100 basis points of ROE worth approximately \$76 million per year in revenue requirement...” Hence, 50 basis points will be worth approximately \$76 million over two years.

<sup>iii</sup> See SCC Case no. PUE-2011-00117, Direct Testimony of Ashwani K. Vashwani on behalf of Virginia Electric and Power Company, p. 8.

<sup>iv</sup> American Wind Energy Association, *Wind Energy Facts: Pennsylvania*, (May 2011), <http://www.awea.org/learnabout/publications/upload/1Q-11-Pennsylvania.pdf>.

<sup>v</sup> New Jersey's Clean Energy Program, *Solar Installation Projects*, (July 2012), <http://www.njcleanenergy.com/renewable-energy/project-activity-reports/installation-summary-by-technology/solar-installation-projects>.

<sup>vi</sup> Solar Energy Industries Association, *New Report Finds U.S. Solar Energy Installations Soared by 109% in 2011 to 1,855 Megawatts*, (March 2012), <http://vcnva.org/anx/index.cfm/1,386,0,0,html/Renewable-Portfolio-Standards>.

<sup>vii</sup> American Wind Energy Association, *Industry Statistics*, (June 2012), [http://www.vcerc.org/VCERC\\_Final\\_Report\\_Offshore\\_Wind\\_Studies\\_Full\\_Report\\_new.pdf](http://www.vcerc.org/VCERC_Final_Report_Offshore_Wind_Studies_Full_Report_new.pdf).

<sup>viii</sup> The coal industry contributed \$8.04 million during this period, compared to \$8.94 million contributed by the utility industry, according to VPAP.

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- ix Joint Legislative Audit and Review Commission (JLARC), Review of the Effectiveness of Virginia Tax Preferences, (November 2011), p. 138.
- x VA Code section 58.1-439.2(D)
- xi Joint Legislative Audit and Review Commission (JLARC), (November 2011), Review of the Effectiveness of Virginia Tax Preferences, p. 70.
- xii Joint Legislative Audit and Review Commission (JLARC), (November 2011), Review of the Effectiveness of Virginia Tax Preferences, pp 68-69 (*emphasis added*).
- xiii See HB 1192 history, Virginia General Assembly Legislative Information System, available at: <http://leg1.state.va.us/cgi-bin/legp504.exe?121+sum+HB1192>.
- xiv See HB 1072 history, Virginia General Assembly Legislative Information System, available at: <http://leg1.state.va.us/cgi-bin/legp504.exe?101+sum+HB1072>.
- xv *Levisa Coal Company v. Consolidated Coal Company*, 662 S.E.2d 44 (2008).
- xvi Bill Archer, *Mine Voids Debated in Virginia*, Bluefield Daily Telegraph, February 20, 2011, available at: <http://bdtonline.com/local/x740791463/Mine-voids-debated-in-Virginia/print>.
- xvii See HB 1988 history, Virginia General Assembly Legislative Information System, available at: <http://leg1.state.va.us/cgi-bin/legp504.exe?111+sum+HB1988>; Bill Archer, *Mine Voids Debated in Virginia*, Bluefield Daily Telegraph, February 20, 2011, available at: <http://bdtonline.com/local/x740791463/Mine-voids-debated-in-Virginia/print>.
- xviii See HB 710 history, Virginia General Assembly Legislative Information System, available at: <http://leg1.state.va.us/cgi-bin/legp504.exe?121+sum+HB710>; Manuel Quinones, *Mining-friendly Va. Law makes way for underground wastewater discharges*, E&E Reporter, April 24, 2012.
- xix VA Code section 55-154.2(B)(2).
- xx See Tom Cormons, *A Property Rights Bill on the Governor's Desk*, Virginian-Pilot, March 30, 2012, available at: <http://hamptonroads.com/2012/03/property-rights-bill-governors-desk>; Laura Vozzella, *Property Rights Amendment Headed for Virginia Ballot*, Washington Post, July 16, 2012, available at: [http://www.washingtonpost.com/local/dc-politics/property-rights-amendment-headed-for-virginia-ballot/2012/07/16/gJQAs6uZpW\\_story.html](http://www.washingtonpost.com/local/dc-politics/property-rights-amendment-headed-for-virginia-ballot/2012/07/16/gJQAs6uZpW_story.html).
- xxi Virginia Department of Transportation, *Status of Coalfields Expressway and Coalfields Connector*, November 2006, available at: [www.virginiadot.org/project/resources/Coalfields\\_Final\\_Report\\_-\\_VDOT\\_website.pdf](http://www.virginiadot.org/project/resources/Coalfields_Final_Report_-_VDOT_website.pdf).
- xxii Virginia Department of Transportation, Coalfields Expressway PPTA Project, (September 2008), [http://www.virginiadot.org/projects/bristol/coalfields\\_expressway\\_ppta\\_project.asp](http://www.virginiadot.org/projects/bristol/coalfields_expressway_ppta_project.asp)
- xxiii Virginia Department of Transportation, Coalfields Expressway PPTA Project, (September 2008), [http://www.virginiadot.org/projects/bristol/coalfields\\_expressway\\_ppta\\_project.asp](http://www.virginiadot.org/projects/bristol/coalfields_expressway_ppta_project.asp)

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<sup>xxiv</sup> VDOT and FHWA Environmental Assessment, June 13, 2012, *available at:*  
[http://www.virginiadot.org/projects/resources/Bristol/CFX\\_SectionII\\_Environmental\\_Assessment\\_June2012.pdf](http://www.virginiadot.org/projects/resources/Bristol/CFX_SectionII_Environmental_Assessment_June2012.pdf)

<sup>xxv</sup> Stephen Igo, *Pound Residents protest Coalfields Expressway route*, (September 11, 2008), <http://www.timesnews.net/article.php?id=9008106>