



Friends of Blackwater Canyon

March 3, 2010

via FACSIMILE: 703-440-1551

Juan Palma
United States Department of the Interior
Bureau of Land Management
Eastern States
7450 Boston Boulevard
Springfield, VA 22153

Re: Protest of the Bureau of Land Management's Notice of Competitive Oil and Gas Lease Sale Concerning Parcels in Pendleton and Randolph Counties, West Virginia

Dear BLM,

The Wilderness Society (TWS), the Friends of Blackwater (FOB), the Center for Biological Diversity (CBD), the Friends of Beautiful Pendleton County (FOBPC), the West Virginia Wilderness Coalition (WVWC), the West Virginia Highlands Conservancy (WVHC), the Friends of the Allegheny Front (FOAF), the Stewards of the Potomac Highlands (SOPH), and the Laurel Mountain Preservation Association, Inc. (LMPA) hereby protest the agency's planned offering of parcels ES-080-03/10 (WVES 56279 ACQ) in Pendleton County (herein after called

the Pendleton County parcel) and ES-081-3/10 [(WVES 56280 ACQ) *(WVES 55214)] in Randolph County (herein after called the Randolph County parcel) at the March 18, 2010 lease sale in accordance with 43 C.F.R. § 3120.1-3.

THE PROTESTING PARTIES AND THEIR INTERESTS

The Wilderness Society, the Friends of Blackwater, the Center for Biological Diversity, the Friends of Beautiful Pendleton County, the West Virginia Wilderness Coalition, the West Virginia Highlands Conservancy, the Friends of the Allegheny Front, the Stewards of the Potomac Highlands, the Laurel Mountain Preservation Association, Inc, and many of our individual members, have a long-standing, well-documented involvement in public lands issues, and the Monongahela National Forest (MNF) in particular.

The Randolph County parcel for lease in this auction (totaling 2,479.771 acres) is located adjacent to the Spruce Knob – Seneca Rocks National Recreation Area (NRA). We have had a long-standing interest in the Spruce Knob - Seneca Rocks area. Our organizations and members have provided numerous written comments on issues specific to the Spruce Knob - Seneca Rocks area, including the Forest Service's inventory and evaluation of the wilderness qualities of the Spruce Knob - Seneca Rocks area through the various roadless reviews and the wilderness evaluation for the 2006 Revised Land Management Plan (Forest Plan). In addition, we have submitted specific proposals depicting the wilderness character of Seneca Creek (contained in the Randolph County lease parcel) and the need for its protection throughout these processes.

So too have we had a long-standing commitment to roadless areas and their protection on the Monongahela National Forest. The Pendleton County lease parcel (totaling 1,916.783 acres)

is partially located in one such roadless area. In addition, our organizations have a long-standing documented interest in the protection of cultural resources, including National Register of Historic Places listed or eligible properties as occur in a number of locations in the Pendleton County lease parcel.

Our organizations have long-standing interest and involvement in threatened, endangered and sensitive (TES) species management. TES species are found in both lease parcels. We also have long-standing interest in water and aquatic resource management concerns, which are also at issue in both lease parcels.

Finally, we have also submitted comments on other related matters that apply to these lease areas, including site-specific projects and the Monongahela NF Land Management Plan and Environmental Impact Statement (LMP/EIS) in general.

The Wilderness Society (TWS), founded in 1935, works to protect America's wilderness and wildlife and to develop a nationwide network of wild lands through public education, scientific analysis and advocacy. Our goal is to ensure that future generations will enjoy the clean air and water, wildlife, beauty and opportunities for recreation and renewal that pristine forests, rivers, deserts and mountains provide. TWS has over 2200 West Virginia members and supporters and more than 525,000 members and supporters nationwide. Our members have a long-established history of involvement and interest in the protection and management of public lands in West Virginia, particularly in potential wilderness areas and roadless areas, and are especially concerned about the impacts of mineral leasing and development on West Virginia's wildlands. TWS was instrumental in advocating for and achieving the passage of the Wilderness Act of 1964 (and in the designation of millions of acres of wilderness across the nation since

then) and has a continuing interest in ensuring the protection of wilderness quality lands under the jurisdiction of the Forest Service. TWS members use the disputed lease lands for hunting, fishing, hiking, backpacking, photography, wildlife viewing, and other recreational, aesthetic, and educational purposes. TWS is also a member of the West Virginia Wilderness Coalition. In addition, TWS has a long standing interest in the West Virginia northern flying squirrel, Indiana bat, and Virginia big-eared bat whose habitat occurs on these parcels. TWS participated in the recent delisting process for the flying squirrel, filing comments at every stage of the Fish and Wildlife Service process, and is a party to the litigation filed over the delisting.

Friends of Blackwater (FOB) is a not-for-profit West Virginia membership organization devoted to preserving wilderness and wildlife; protecting West Virginia's forests, parks, rivers, wild lands, unique habitats and endangered species; and fostering a West Virginia land preservation ethic. FOB has over 10,000 members and supporters. FOB also has a long-standing interest in the West Virginia northern flying squirrel, *Glaucomys sabrinus fuscus*. FOB has supported studies of the flying squirrel; staff of FOB has communicated with scientists from a number of states and Canada on the squirrel's natural history and status and collected a large library of information of this squirrel. FOB also works to protect West Virginia's endangered bats both on and off the Monongahela National Forest. We have collected information on the Indiana and Virginia big-eared bat from the Forest Service, Fish and Wildlife Service and the West Virginia Department of Natural Resources. We have challenged these agencies to protect these bats on private land in the Cheat Canyon, the Blackwater Canyon and on the Ned Power Project in Grant County. We have commented on endangered bat protection in the Lower Clover Timber Sale, in relationship to the Berry Energy gas drilling in the Fernow Experimental Forest

and road building along the Blackwater Canyon River Trail under the proposed AWP Easement. We raised concerns about the Monongahela National Forest's management of all of its endangered species in our comments on the Threatened and Endangered Species Amendment to the Forest Service Plan in 2003. This includes the West Virginia northern flying squirrel, and the Indiana and Virginia big-eared bats. We have filed a 60-Day Notice of Intent to Sue the Forest Service and other federal agencies unless they change management plans and decisions related to bats. This is due to the new and devastating effects of White Nosed Syndrome (WNS) on bats in National Forests across the eastern United States. WNS has now been found in five caves in Pendleton County and one in Virginia just across the state line. The most significant of these caves is Hellhole Cave in Pendleton County, WV which holds over 200,000 hibernating bats, including 9,000-12,000 Indiana bats and 5,000 Virginia big-eared bats. This single cave contains more than 45% of the world's entire hibernating population of Virginia big-eared bats. We educate our 10,000 members and supporters about these issues through newsletters, our website and comments to the press.

Center for Biological Diversity (CBD) is a national non-profit organization with over 255,000 members and online activists. CBD's mission is to secure a future for all species, great and small, hovering on the brink of extinction. We do so through science, law, and creative media, with a focus on protecting the lands, waters, and climate that species need to survive. CBD has made climate change a primary focus of its work nationally, focusing on the needs of species imperiled by rising temperatures and changing climatic regimes, as well as defending crucial habitat threatened by fossil fuel extraction, especially on public lands. Because society needs to rapidly reduce greenhouse gas emissions and shift to renewable, less harmful energy

sources in order to avoid catastrophic climate change, and because many stressors on species are intensifying, including shifting climate, public lands are more vital than ever as refugia for biodiversity. CBD is very concerned about any fossil fuel energy project on public land that may harm endangered species or their habitat. Endangered bats are among the species CBD has given particular attention, and since January 2008, CBD has worked to gain stronger protections for eastern bats threatened by the deadly white nose syndrome. Among the bats at risk from this disease in West Virginia are the federally listed Indiana bat and Virginia big-eared bat. Critical hibernacula for both species are found in Pendleton County, not far from the proposed oil and gas lease areas.

Friends of Beautiful Pendleton County, Inc. (FOBPC) is a citizen organization in Pendleton County, West Virginia dedicated to preserving the rich heritage, protecting the natural environment and insuring that the residents and landowners of Pendleton County receive responsible, factual information. FOBPC works to inform the residents and landowners about the potential affects on the natural environment, including the ecosystem on which our wildlife biodiversity depends, the potential economic affects on the county, its residents and landowners and the potential affects to the infrastructure of the county on which its economy, visitors, residents and landowners depend. FOBPC maintains a website, sponsors public meetings, and suggests or publishes newspaper articles and notices through which this information is made available to the public (excluding sensitive species locations) for educational purposes. FOBPC is not a membership organization, but has over 500 supporters.

The West Virginia Wilderness Coalition (WVWC) is a grassroots endeavor coordinated by the West Virginia Highlands Conservancy, the Sierra Club - West Virginia

Chapter, The Wilderness Society and Campaign for America's Wilderness. We are supported by many other organizations, civic bodies and businesses across the state. The goal of the Coalition is to secure permanent protection for West Virginia's wildest places on federal, public lands through wilderness designation.

The West Virginia Highlands Conservancy (WVHC) through its Forest Watch program is a leader in protecting the Monongahela National Forest. The Highlands Conservancy provides West Virginians a strong voice for protecting this public resource from the exploiting and destructive forces of industry. We also give back to the Monongahela through trail maintenance projects as well as helping with forest restoration and other conservation efforts.

The Friends of the Allegheny Front (FOAF) is an organization whose purpose is to protect the natural beauty of the Allegheny Mountains.

The Stewards of the Potomac Highlands (SOPH) is an organization whose purpose is to “preserve open spaces, forests, farmland, and rural communities and foster stewardship of the Potomac Highlands.”

The Laurel Mountain Preservation Association, Inc., is a non-profit organization, approved by the IRS as a 501(c)(3) organization, and has over 70 members. As stated in our Articles of Incorporation, our purposes include preserving and protecting areas of particular scenic, geologic, biologic, historic, wilderness, and / or recreational importance in West Virginia and other states. Our purposes also include advocating governmental policies for the conservation and wise management of energy and natural resources of West Virginia and other states.

STATEMENT OF REASONS

The proposed lease parcels ES-080-03/10 WVES 56279 ACQ in Pendleton County (consisting of 3 tracts totaling 1,916.783 acres), and ES-081-03/10 WVES 56280 ACQ *(WVES 55214) in Randolph County (consisting of one tract totaling 2,479.771 acres) are located to the south and west of the Spruce Knob - Seneca Rocks National Recreation Area. Most of the Randolph County lease parcel consists of an area that the Forest Service (FS) identified and has officially recognized as having wilderness character (Seneca Creek). The Pendleton County parcel contains an Inventoried Roadless Area. Both parcels also contain populations of and habitat for imperiled species, including the Endangered Species Act listed Virginia big-eared bat and the Indiana bat. The Randolph County lease parcel contains populations and habitat for the recently delisted West Virginia northern flying squirrel. Exploration and development on these proposed leases would threaten significant harm to the wilderness and roadless characters of these lands, the sensitive species that reside there, and the multitude of other resources, many of which are described below.

Were the Bureau of Land Management (BLM) to offer these leases for sale, the agency would violate the National Environmental Policy Act, 42 U.S.C. §§ 4321 *et seq.* (“NEPA”); the National Forest Management Act, 16 U.S.C. § 1600 *et seq.* (“NFMA”); the Endangered Species Act, 16 U.S.C. §§ 1531 *et seq.* (“ESA”); the Clean Water Act, 33 U.S.C. § 1251 *et seq.* (“CWA”); WV Code of State Rules Title 47 Series 2 Requirements Governing Water Quality Standards; WV Code of State Rules Title 60 Series 5 Antidegradation Implementation Procedures; the National Historic Preservation Act, 16 U.S.C. § 470 *et seq.* (“NHPA”), and the Bureau of Land Management memorandum dated February 13, 2009 because the BLM and the

FS have failed to, inter alia: (1) adequately analyze the threat of harm to the wilderness character, sensitive species, and other resources found on these lands and consider alternatives that would prevent some or all of these harms; (2) analyze and take measures to prevent harm to these resources; and (3) consult under Section 7 of the ESA with the U.S. Fish & Wildlife Service (“FWS”) regarding these leases. Accordingly, BLM should withdraw these lease parcels from sale until the agency has fully complied with the aforementioned laws.

I. The BLM and FS Will Violate NEPA If They Offer These Leases For Sale.

It is the official position of the Departments of Interior and Agriculture, which positions comport with federal caselaw, that the BLM and the FS must fully analyze the impacts arising from oil and gas exploration and development on leases before leasing. *See, e.g., Southern Utah Wilderness Alliance*, 159 IBLA 220, 240-43 (2003); *Pennaco Energy, Inc. v. U.S. Dep’t of the Interior*, 377 F.3d 1147 (10th Cir. 2004); *Conner v. Burford*, 848 F.2d 1441 (9th Cir. 1988); *Sierra Club v. Peterson*, 717 F.2d 1409 (D.C. Cir. 1983).

In fact, recent changes announced by the BLM make clear that they intend to take a much closer look at lease parcels before leasing occurs. Internal direction will be forthcoming in the very near future that will make this a requirement.

It is our understanding that the FS (and BLM) are relying on the analysis contained in the 2006 Monongahela NF Forest Plan, Record of Decision and Final EIS for the site-specific pre-leasing NEPA analysis necessary to assess the impacts arising from oil and gas exploration and development on these leases. However, none of these documents contain the site-specific

analysis necessary to satisfy NEPA's requirements, especially that for a "hard look" at the impacts.

Secondly, the 2006 MNF Forest Plan tiers to a 1992 Forest Plan amendment (Amendment #4) identifying federally owned oil and gas available for lease on the Forest. This would be inadequate under NEPA and arbitrary and capricious. The 1992 Plan Amendment did not adequately consider the impacts of oil and gas leasing, and, moreover, circumstances have changed and new information has arisen since then, necessitating further analysis. See 40 C.F.R. § 1502.9(c)(1) (supplemental EIS must be prepared when there are significant new circumstances or information).

The MNF decision to make land available to BLM for oil and gas leasing necessitates a full environmental analysis of the likely post-leasing impacts of oil and gas development before any leases are issued. The Forest Service has stated that "once a lease is issued the opportunity to deny access is irreversible for the life of the lease or the life of the producing field." February 2003 FEIS on Oil and Gas Leasing in Bridger-Teton at 3-192. The Forest Service is consenting to lease with surface occupancy in parts of the lease areas and no surface occupancy (NSO) in other parts. Even for NSO areas, the Forest would likely permit surface operations somewhere else in or near each lease area, necessitating impact assessment. Oil and gas lease rights severely constrain the agency's options to limit or prohibit development on an existing lease to protect other natural resources.

Overall, the Forest Plan data is far too stale for use under NEPA and should have been updated. Changes in a number of resource conditions, the lack of analysis of the effects of climate change, proposed development well above that considered and evaluated in the Forest

Plan, as well as the presence of threatened, endangered and sensitive species since the 1992 analysis render this data moot. No other updated site-specific analysis was included in the Forest Plan. Given the absence of an underlying NEPA document or analysis that adequately considers the impacts of these leases on area resources the leases cannot be sold without violating NEPA.

Pennaco, 377 F.3d 1147; *Conner*, 848 F.2d 1441; *Peterson*, 717 F.2d 1409.

Specific resource concerns that must be addressed under NEPA include the following:

A. Wilderness

In failing to prepare any pre-leasing analysis under NEPA, the BLM and FS have failed to consider the adverse impacts oil and gas development will likely have on the Seneca Creek proposed wilderness area. Most of the Randolph County lease parcel lies within this proposed wilderness area. The Seneca Creek proposed wilderness is one of the Monongahela National Forest's most unique mountain treasures, with diverse vegetation, unparalleled scenic vistas and pristine native trout streams found within the area. This area was proposed for wilderness designation by the West Virginia Wilderness Coalition (WVWC) in a broadly backed proposal. Although the area was omitted from the Wild Monongahela Act, Wilderness designation for Seneca Creek was broadly backed by hunting and angling interests, organized labor groups and hundreds of businesses, among other diverse constituencies statewide. The WVWC is still intent on pursuing Wilderness designation for the proposed Seneca Creek Wilderness area.

Situated on the Allegheny Front, the area's alpine ecosystem contains high elevation Red Spruce, Balsam Fir and Mountain Ash as well as heath barren plants such as blueberries, huckleberries and reindeer and sphagnum mosses. Black bear, turkey, whitetail deer and other

wildlife species thrive in the wild forests of the Seneca Creek area. Also present is the endangered West Virginia Northern Flying Squirrel, and a wide variety of birds.

Outstanding scenic vistas are common from high points along the area's vast hiking trail system, which descends approximately 1400 feet into the valley of Seneca Creek. The area drains into two major watersheds: the North Fork of the South Branch of the Potomac at its headwaters on the Virginia state line and Gandy Creek into the Dry Fork of the Cheat. The area contains many high-quality streams, home to Native Brook and wild Rainbow Trout, providing some of the best backcountry angling opportunities in the Mid-Atlantic.

The lack of current NEPA analysis means impacts to the proposed Seneca Creek Wilderness area have not been analyzed or disclosed. Finally, while the Mineral Leasing Act requires the BLM to hold regular lease sales, it does not (as the agency has acknowledged) require the sale of any particular parcels and the BLM and FS retain the discretion to determine whether a particular parcel is appropriate for sale. In this case, given the Forest Service's determination of the suitability of these lands for wilderness and the outdated analysis of suitability for oil and gas development, the agencies should have exercised their discretion to withhold this parcel.

B. National Recreation Area

In failing to prepare any pre-leasing analysis under NEPA, the BLM and FS have failed to consider the adverse impacts oil and gas development will likely have on the Spruce Knob - Seneca Creek National Recreation Area. Spruce Knob - Seneca Rocks NRA was established by an act of the U.S. Congress on September 28, 1965 as the first National Recreation Area on a National Forest in the country. The NRA protects two prominent West Virginia landmarks:

Spruce Knob, the highest point in West Virginia (and the highest of the Allegheny Mountains) with a summit elevation of 4,863 feet (1482 m), and Seneca Rocks, a 900 foot (270 m) high rocky rampart popular with rock climbers. Both the Pendleton County lease site and the Randolph County lease site are just five miles from famous Spruce Knob and can be seen from its Observation Tower and from many trails on its summit. Noise from road building and gas drilling will also disturb visitors to this famous recreation area and those using the trails that fan out from Spruce Knob coming as close as two miles above drill sites on Gandy Creek in Randolph County.

C. Laurel Fork Special Management Area on the George Washington NF

In failing to prepare any pre-leasing analysis under NEPA, the BLM and FS have failed to consider the adverse impacts oil and gas development will likely have on the Laurel Fork Special Management Area on the George Washington NF. The Pendleton County proposed gas lease abuts the George Washington National Forest to the south across the state line in Virginia impacting the headwaters of Laurel Fork. Surrounding the Laurel Fork watershed is a 10,000 acre Special Management Area designated in the George Washington National Forest Land Management Plan. The area contains biological features not commonly found in the State of Virginia, with elevations ranging to 4,000 feet. Laurel Fork contains one of the finest examples of Northern Boreal natural community complexes in Virginia and is the only representative of the Alleghany Plateau Ecoregion within the commonwealth. At least 25 species of plants and animals have their only known occurrences in Virginia within this area. The Laurel Fork Area is a remote area with high precipitation and a large beaver population.

D. Wildlife

In failing to prepare any pre-leasing analysis under NEPA, the BLM and FS have failed to consider the adverse impacts oil and gas development will likely have on wildlife populations and habitat within the lease parcels in Randolph and Pendleton Counties. The MNF Forest Plan and Final EIS (2006) address habitat impacts to Cerulean Warbler, West Virginia northern flying squirrel, wild turkey, whitetail deer and black bear from oil and gas drilling and exploration. Other species of particular interest include wood warblers, snowshoe hare, rock vole, northern water shrew, timber rattle snake, ruffed grouse, raptors, the bald and Golden eagles, and non-endangered bat species that inhabit the area in and around this parcel. While the Plan addresses negative impacts to the Cerulean Warbler and WVNFS, it fails to address potentially negative impacts to other wildlife species particular to these parcels. This must be corrected.

The failure to prepare pre-leasing analysis under NEPA has left impacts to these species unanalyzed and undisclosed. This must be corrected before a sale of these lease parcels proceeds.

E. Threatened and Endangered Species

In failing to prepare any pre-leasing analysis under NEPA, the BLM and FS have failed to consider the adverse impacts oil and gas development would likely have on threatened and endangered species. Proper NEPA analysis must consider both direct impacts of oil and gas activity at the lease sale sites, as well as the cumulative impacts of potential gasfield and pipeline development, brine and oil pits, and other related and unrelated activities in the area surrounding the lease parcels. Species potentially at risk include the federally-listed endangered Indiana bat and endangered Virginia big-eared bat (VBEB), and the recently delisted West Virginia northern

flying squirrel. (While the flying squirrel has been delisted, the Monongahela NF agreed as part of the delisting process to continue to monitor and provide appropriate habitat for the squirrel.)

The failure to prepare pre-leasing analysis under NEPA has left impacts to these species unanalyzed and undisclosed. This must be corrected before a sale of these leases proceeds.

The Randolph County lease area (ES-081-03/10 WVES 56280) lies roughly 10 miles from primary range for the federally-listed Indiana bat (*Myotis sodalis*) on the Monongahela NF. The Pendleton County lease area (ES-080-03/10 WVES 56279), is approximately 15 miles from Indiana bat primary range. Primary range “includes summer foraging, roosting, and fall swarming areas, [and] is defined as all areas within 5 miles of hibernacula.” Monongahela NF Forest Plan Revision FEIS 2006, at 3-242. In total, there are 26 Indiana bat hibernacula and associated primary range sites, as well as one or two known Indiana bat maternity sites, within the Monongahela NF. U.S. Fish and Wildlife Service Final Biological Opinion, at 48-49. Several of these Indiana bat hibernacula are in Pendleton County, and several more are in Randolph County. FWS WNS cave database 2008-09, from 1/11/10 FOIA Response to Center for Biological Diversity.

The famous Sinks of Gandy and Stillhouse caves are located within three miles of the Randolph County parcel. Key Hole Cave is on the lease site and Nelson Cave is just north of it. There are at least six caves within 15 miles of this same site that are known to have the Indiana Bat. At least 11 caves within 15 miles of this site are also known to have the endangered Virginia big-eared bat.

Back Ridge Cave and Warners No 2 Cave are four miles from the Pendleton County lease site. There are at least ten 10 caves within 10 miles of this lease site known to have Virginia big-

eared bats.

One of the hibernacula in the vicinity of the lease sale sites is Hellhole Cave. Hellhole is designated critical habitat for both the Indiana bat and the Virginia big-eared bat. Approximately 9,000-12,000 Indiana bats winter in Hellhole; it is the largest hibernaculum for the species in the mid-Atlantic region. Hellhole is the largest hibernaculum in the world for the Virginia big-eared bat. Approximately 45 percent of all hibernating bats of this species are found in Hellhole.

Bats are vulnerable to a variety of impacts associated with oil and gas drilling. Two years ago, Forest Service biologists reviewing the proposed Berry Energy project on the Fernow Experimental Forest on the Monongahela NF expressed serious concern about the threat posed by potentially toxic slurry pits to Indiana bats. Letter to Michael Rains, Northern Research Station, USFS, 1/22/08, from M.B. Adams, W.M. Ford, and T.M. Schuler, NRS Timber and Watershed Lab.

Bat mortality in oil and brine separation pits has been documented elsewhere. The Five-Year Status Review for the Virginia big-eared bat states:

Oil and brine separation pits can become *a death trap for bats* that enter these structures and come in contact with the contents. For example, in 1992 and 1993, oil pits in the well fields of southwestern Indiana were surveyed for dead animals, and *hundreds of dead birds and bats were found*. (USFWS Bloomington Field Office, unpubl. Data 1993-1994 *in* USFWS 2007). [Emphasis added]. FWS WVFO, Virginia Big-Eared Bat 5-Year Status Review 2008, at 14.

Bat biologists theorize that the decline of the oil industry in West Virginia contributed to a substantial increase in the numbers of Virginia big-eared bats in the late 1980's. In the 15 years prior, active oil and gas drilling caused a variety of harms to Virginia big-eared bat habitat:

In the 1970's and early 1980's, the oil industry was very active...and established numerous functioning oil wells, small scale oil pipelines, and oil storage tanks there. Many area streams, including Big Sinking Creek and Little Sinking Creek, were heavily polluted by oil and brine, partly due to drilling, partly due to crude oil leaking from cracked or broken pipelines, and partly due to overflow or leakage from holding pits for oil and/or brine...One oil pit was located next to a series of oil storage tanks within a few hundred feet of Plecotus Pit (a VBEB maternity cave that was not known at the time). Overflowing oil from the pit flowed through an adjacent old field and disappeared into a sinkhole, polluting the air in a nearby cave and eventually entering Big Sinking Creek...Ibid, at p. 15.

With declining prices for crude oil in the late 1980's, drilling activity in West Virginia subsided. Streams gradually recovered, and "the winter population of VBEB in Stillhouse Cave began increasing significantly." Ibid.

However, as oil and gas drilling picks up once more, bats will again be exposed to the multiple harms of toxic pollutants, stream and groundwater contamination, and other ills associated with fossil fuel development. The authors of the 2008 Virginia big-eared bat status review write: "With petroleum costs rising, the number of new permits for the pits is expected to

rise, and these types of issues have the potential to resurface.” Ibid.

Both Indiana bats and Virginia big-eared bats have declined across their range, in part, because of human disturbance of cave habitat, including modification of delicately balanced air flow and temperature regimes. Drilling into karst layers has the potential to alter air flow in caves, which can in turn change humidity and temperature patterns. Indiana bats, in particular, can only hibernate successfully within a very narrow, specific temperature range, and have been known to abandon hibernacula when structural or other changes to the caves resulted in unsuitable temperatures. The proximity of multiple caves to the lease sale sites could result in alteration of cave conditions with sub-surface drilling activity. These changes could be harmful to bats. The interconnected nature of the karst systems throughout this part of West Virginia could lead to modification of water flow, humidity, and other vital cave environment parameters, at some considerable distance from the site of oil and gas drilling.

The Virginia big-eared bat (*Corynorhinus townsendii virginianus*) is an endangered subspecies of the Townsend’s big-eared bat, with a very limited range in the central Appalachians. On the Monongahela NF proper, there are 23 known occupied hibernacula for this species, including Cave Mountain Cave, designated as critical habitat and located in Pendleton County, north and east of the proposed oil and gas developments. Virginia big-eared bats are not migratory, and most tend to stay in close proximity to summer roosting and maternity caves (sometimes the same as winter hibernating sites) for foraging. Monongahela NF Forest Plan Revision FEIS 2006, at 236-8. Thus, Virginia big-eared bats in Cave Mountain Cave, Hellhole Cave, and other caves within the vicinity of the lease sale sites may be vulnerable to the direct, indirect, and cumulative impacts of the proposed oil and gas drilling.

The potential harm of oil and gas activity must be considered in light of and in addition to white-nose syndrome, the greatest threat to ever confront North America's hibernating bat species. This newly emerging disease has decimated bats throughout the Northeast United States since late winter 2006. It was confirmed by lab analysis in four caves in Pendleton County in 2009—the first known cases in West Virginia. FWS WNS cave database 2008-09. All four of these caves host Virginia big-eared bats, and two also host Indiana bats. Trout Cave, on private land within five miles of the national forest proclamation boundary, is a major hibernaculum for Indiana bats. MNF FPR 2006, at 244. It also has some Virginia big-eared bats. West Virginia DNR Section 6 FY09 Bat report. Nearby Hamilton Cave also has Virginia big-eared bats. Both of these caves are within ten miles of the Pendleton County lease sale site. Another white-nose affected site is Cave Mountain Cave, which, as stated above, is a major hibernaculum for Virginia big-eared bats located on the national forest.

Indiana bats are one of the species that have been impacted by white-nose syndrome since it appeared in upstate New York in 2006. As a consequence, the Northeast population of Indiana bats has declined by 30 percent in the last two years. Prior to the onset of the disease, the Northeast population had been growing in recent years, unlike Indiana bat populations in other parts of the species range. Prospects for this species have quickly turned much dimmer as they continue to die in states affected by white-nose.

Worse news for bats came this year, when white-nose syndrome was confirmed at Hellhole Cave in late February. Biologists estimate that approximately one percent of the Indiana bat segment of the Hellhole bat colony is now dead, due to white-nose syndrome. Pers. comm. C. Stihler.

It is unclear whether Virginia big-eared bats will be affected by white-nose syndrome, as none have been discovered with the telltale fungus yet. However, to date six different bat species, including those from different genera, have died from the illness, so it is quite possible that Virginia big-eared bats will be affected as well. Last year, the prospect of this gravely endangered species being hit by white-nose syndrome prompted the initiation of the first-ever captive breeding program for the species. The success of the program is far from clear, and if Virginia big-eared bats die in large numbers in Hellhole, it may be a blow that they can never recover from.

Scientists have been stating clearly and publicly that white nose syndrome has the potential to bring about the extinction of one or more species of bats in the near future. Biologists have documented mortality rates well over 90 percent in affected areas. For this reason alone, any activity in bat habitat, especially near winter hibernacula, that has the potential to further stress individual bats or render their habitat less suitable, must be considered with extreme caution and thorough analysis.

Oil and gas drilling as proposed for the Monongahela has surface and subsurface impacts, some occurring on the national forest, and some off the forest. Both surface and sub-surface impacts have the potential to harm bats and their habitat. The cumulative impacts of the proposed drilling in combination with the overwhelming threat of white-nose syndrome to endangered bats must be analyzed prior to any decision to auction oil and gas leases.

F. Fisheries

In failing to prepare any pre-leasing analysis under NEPA, the BLM and FS have failed to consider the adverse impacts oil and gas development will likely have on the Randolph and

Pendleton gas lease areas' fisheries populations and habitat. The watersheds involved contain both native and stocked trout. Fisheries could be negatively impacted by gas drilling and associated activities on these parcels. In Pendleton County, Laurel Fork tributaries Vance Run, Little Low Place Hollow, and Owl Knob Hollow are all cold water fisheries located on the proposed gas leasehold. Other cold water fisheries streams on the leasehold are Middle Ridge Hollow, Bud Hollow, and Teeter Camp Run which flow into Big Run before it joins the North Fork of the South Branch of the Potomac. Trout Unlimited says of these streams, "This area drains into the Laurel Fork watershed of the North Fork of the South Branch of the Potomac. This is our brook trout Conservation Success Index's highest rated watershed south of New York State". The Forest Service acknowledges that the streams here make up a cold water trout fishery. These streams are the pristine headwaters of the Potomac and contribute valuable water quality to the Chesapeake Bay area.

In Randolph County, the proposed lease sale is south of Little Italy along nine miles of Gandy Creek with potential impacts to the main stem and its tributaries: Taylor Run, Swallow Rock Run, Bee Run, Elza Run and Falls Run. Gandy Creek and these tributaries make up a cold water trout fishery. There are many springs in this area including Elza Spring and Ray Mullenex Spring which feed into these high mountain streams. The DNR stocks trout in the lease area. Gandy Creek is stocked from Lower Two Springs upstream 9 miles to near Grants Branch at the old CCC camp. It is stocked once in January, twice in February, and weekly March through May. Gandy Creek is a tributary of the Dry Fork which joins the Blackwater in Tucker County to form the Black Fork before joining the Shavers Fork to form the Cheat flowing

north and west to the Ohio River at Pittsburgh. These streams would be damaged by sedimentation and other potential pollution from gas drilling and exploration in this watershed.

In its 2006 Forest Plan and Environmental Impact Statement, the MNF states in Appendix E, Table E-2 that 84% of all lands in this watershed (North Fork South Branch Potomac) are highly erosive. Additionally, the MNF regards native brook trout as a Management Indicator Species and states in its Management Direction for Fish and Wildlife that one of its objectives is to “Maintain at least 560 miles of coldwater stream habitat capable of supporting wild, naturally producing brook trout, a Management Indicator Species.”

The North Fork South Branch of the Potomac would also be negatively affected as turbidity and pollutants moved downstream from Laurel Fork and Big Run to the North Fork South Branch (NFSB) of the Potomac. The NFSB Potomac contains many aquatic species that are identified by the MNF as aquatic species of concern, including: American Eel (S2), Common Shiner (S1,2), Pearl Dace (S3,4), Potomac Sculpin (S3), Torrent Sucker (S3). Additionally portions of the NFSB Potomac have been nominated for Wild and Scenic River Status.

Negative impacts to these fisheries would have far reaching consequences including loss of reproducing native brook trout habitat and the socio-economic effects related to the potential loss of this recreational resource. All of these factors must be analyzed under NEPA.

G. Water Resources

In failing to prepare any pre-leasing analysis under NEPA, the BLM and FS have failed to consider the adverse impacts oil and gas development will likely have on the water resources in the Pendleton County and Randolph County lease parcels, as well as areas downstream potentially affected by said development. According to the 2006 MNF Forest Plan, site-specific

NEPA analysis is to take place to insure that proposed management activities and mitigation measures are analyzed for potential effects to the watershed, riparian, and aquatic resources by alternative. Effects are to be disclosed to the public for review and comment. To date this has not occurred for the parcels proposed for auction.

The Randolph County parcel bears particular attention. The Gandy Creek flood plain is one of the few flat portions of the parcel, but would be inappropriate for well pad or brine pit development. Much of the rest of the parcel is subject to No Surface Occupancy (NSO) restrictions. The areas not subject to NSO stipulation are in the steepest sections of the parcel and hence poor sites for gas development infrastructure.

Additionally the MNF Forest Plan states that, "In general, standards and guidelines are established to protect water quality and aquatic ecosystems on the Forest. The standards and guidelines are designed to:

- ❖ Prevent or reduce sedimentation related to management activities,
- ❖ Protect riparian areas and streamside vegetation,
- ❖ Protect water quality and quantity,
- ❖ Maintain or improve habitat for native brook trout and species of concern, and
- ❖ Restore or rehabilitate watershed and aquatic conditions to support their designated uses."

Development of oil and gas on these parcels, whether through horizontal or vertical drilling, regardless of the actual location of surface disturbance, must take into account these standards and guidelines, with particular emphasis on maintaining or improving habitat since many of the lease parcels' streams contain naturally reproducing native brook trout populations.

As such there is particular need for site-specific environmental analysis not only for these parcels but any adjoining parcel(s) that would be considered for access for horizontal drilling.

In addition, as we point out in the socio-economic and recreation sections of our protest, there are a number of residences and campgrounds in the general lease areas whose drinking water is provided via well. These drinking water sources must be protected from degradation and adverse effects.

H. Geology: Karst

In failing to prepare any pre-leasing analysis under NEPA, the BLM and FS have failed to consider the adverse impacts oil and gas development will likely have on this karst region of the Monongahela National Forest. The Spruce Knob area is within the geomorphic province referred to as the High Allegheny Plateau. The Spruce Knob area is underlain by the Pottsville sandstone. The units below the Pottsville sandstone consist of the Mauch Chunk sandstone and shale and, below this, the Greenbrier limestone. Numerous caves occur in the Greenbrier limestone. Because the limestone is part of the karst area which is more soluble, it is likely that there are abundant fractures and solution cavities which serve as conduits for groundwater issuing as springs into numerous creeks in the area. Numerous streams receiving water from the Greenbrier Formation are well known trout streams.

The gas drilling would penetrate to rock units well below the Greenbrier limestone. The concern is that the drilling can intercept fractures through which groundwater flows and ultimately issues as springs into the streams that support trout. Wherever there is blasting, hydraulic fracturing or drilling that intercepts the fractures through which groundwater is flowing, this can change the direction, quantity and quality of water that flows toward springs

(and, therefore, trout streams). Overall concerns include the quantity and flow pattern of the groundwater. Additionally, radioactive gas from the Marcellus and other rock units could rise through rock fractures and contaminate groundwater.

Pendleton County has sixty named caves in the karst or limestone geology, twenty of them in the famous Germany Valley area, a National Natural Landmark, which is in close proximity to the proposed Pendleton County lease area. Germany Valley is the location of famous Seneca Caverns, a local tourist attraction. Hellhole Cave and Schoolhouse Cave in this Valley house thousands of endangered bats. The area of Parcel ES-080-03/10 WVES 56279 ACQ is underlain by karst.

Randolph County also has numerous karst formations including the Sinks of Gandy and multiple lesser known formations. Within close proximity to the Randolph County parcel are the Sinks of Gandy, Keyhole Cave, Nelson Cave and Stillhouse Cave. As with the caves in Pendleton County, these caves also provide habitat for numerous types of bats.

The effects of oil and gas development on these karst resources must be analyzed and disclosed under NEPA.

I. Recreation

In failing to prepare any pre-leasing analysis under NEPA, the BLM and FS have failed to consider the adverse impacts oil and gas development will likely have on the Spruce Knob - Seneca Rocks area recreation resources. This area of the Monongahela National Forest is famous for nature study and birding, rock climbing, fishing, canoeing, kayaking, hiking, biking, tent camping, and car camping.

Additional recreation opportunities are located at the Spruce Knob Summit

Situated atop Spruce Knob summit is the Spruce Knob Tower, a 900-foot observation tower that offers visitors a 360-degree view of the surrounding landscape, including Big, North Fork, Shenandoah, and Hunting Ground mountain ranges. Next to the observation tower parking lot, there are picnic tables and grills available to enjoy lunch while taking in the beautiful West Virginia mountain landscape.

The Whispering Spruce National Recreational Trail is a 0.5 mile loop that begins and ends at Spruce Knob summit. The trail provides an easy walk through blueberry and huckleberry bushes, mountain ash, and red spruce that are one-sided because of the strong westerly winds that blow year-round. During spring and summer months, beautiful blooming azaleas, mountain laurel, and rhododendron line the Whispering Spruce National Recreational Trail.

Spruce Knob Hiking Trails

There are approximately 70 miles of hiking trails located within Spruce Knob which offer visitors an opportunity to see West Virginia's scenic landscape, foliage, and various native wildlife such as white-tailed deer, wild turkey, songbirds, squirrels, and black bear. The terrain can be tricky to navigate on some of the hiking trails due to the rugged terrain and because snow is seen any time during the months of October through April.

Camping at Spruce Knob

Spruce Knob Lake Campground offers 43 camping sites and includes various amenities such as picnic tables, grills, solar-powered water pumps, and tent pads. While many of the camping sites can be reserved either online or via telephone, some of the camping sites located at Spruce Knob Lake Campground are on a first-come, first-serve basis, and campers can stay up to 14 days. Spruce Knob Lake Campground is open mid-April through December. Nearby Spruce

Knob Lake provides the angler with a 25 acre impoundment regularly stocked with trout by the West Virginia Department of Natural Resources. A wood pier provides level, easy access for all visitors and is close to the parking area. Anglers may also enjoy stream fishing for rainbow, brown and brook trout in the Gandy Creek and Seneca Creek drainages.

The Spruce Knob - Seneca Rocks National Recreation Area contains 60 miles of hiking trails. The NRA contains the Seneca Rocks Discovery Center which is located at the base of Seneca Rocks. It has an outstanding and majestic view of the vertical wall of Seneca Rocks dominating the scene. Interpretive programs are offered on weekends throughout the busy season (Memorial Day through Labor Day). Traditional Appalachian crafters and artisans are on hand demonstrating their techniques. Time-honored music of the West Virginia Mountains is offered on Saturdays. Special living history events, such as civil war reenactments, frontier living history, flint knapping and blacksmithing is offered during the summer. There is much information on the history and geology of the area and interactive displays and computers for the public to use.

The Visitor's Center draws thousands of tourists each weekend who come to enjoy the spectacular scenery and to rock climb, hike, bike, boat, and fish in the surrounding area. The parking lot is packed with visitors from West Virginia and all over the mid-Atlantic Region. The Center was damaged during the flood of 1985 and recently replaced by a beautiful structure made possible by funding obtained by Senator Robert C. Byrd for the Monongahela National Forest. These visitors explore the surrounding recreation areas including the Randolph and Pendleton lease parcel areas.

A Canoeing and Kayaking Guide to West Virginia edited by Charlie Walbridge and reprinted in 2003 says of boating in the North Fork of the South Branch of the Potomac. “Unquestionably this is some of West Virginia’s finest canoeing. This river is a solid, continuous Class 2+ run at medium water levels with a touch of Class 3 when the water comes up. ... Some of the state’s most breathtaking scenery can be seen from this section of the Potomac. Seneca and Champe Rocks are in the immediate vicinity, while the imposing majesties of the Allegheny Front and North Fork Mountain loom in the distance on either side of the river which provides a splendid backdrop for canoeing. Trout and bass fishing are available on this clear unpolluted river.” The Seneca rocks area also contains camping facilities. Seneca Shadows Campground, owned by the Monongahela National Forest, is the newest campground in the Spruce Knob - Seneca Rocks National Recreation Area. This campground is a popular base camp for visitors while traveling through the Potomac Highlands.

The Randolph County lease parcel is along the southeast base of Middle Mountain. The proposed lease sale area borders the Spruce Knob Unit of the Monongahela National Forest National Recreation Area on the western side of the NRA on Allegheny Mountain. It has concentrated recreation use year round including dispersed camping, cross country skiing, rock climbing, hiking, biking, fishing and nature study but under the Forest Service stipulations these activities would be curtailed by drilling allowed from September through May.

There are many trails on this leasehold including Swallow Rock Trail, Bee Trail, Elza Trail, Leading Ridge Trail, and North Prong Trail, all of which make loops to the trail at the top of the ridge, the Allegheny Mountain Trail on the NRA. There are many camping sites and the area is covered with natural springs which supply drinking water. The trails in this area have

fantastic views from the 4000 foot high western flank of Allegheny Mountain. These views would be impaired by gas drilling in the valley below. The dispersed camping area along Gandy Creek is heavily used. The Randolph County lease parcel is just three miles from Spruce Knob, the highest point in West Virginia with its spectacular viewing platform and 360 degree view of West Virginia's highest mountains. It is eight miles from Seneca Rocks and its well used Visitors Center.

Gandy Creek is a whitewater stream that runs through the Randolph county lease parcel.

Gandy Creek disappears into a cave in a high meadow on the west side of Spruce Knob. A mile and a half away over the ridge, Gandy emerges as a whitewater stream. During flood periods when there is enough volume for paddling, it's a sporty run. Wildwater WV, Charlie Walbridge et al. Menasha Ridge Press 1985.

This section of Gandy Creek in Randolph County is 13.6 miles long and is according to American Whitewater, a class III section of whitewater. Gandy Creek provides the majority of flow to the Dry Fork of the Cheat at its confluence. It thus enjoys similar levels to the section of the Dry Fork of the Cheat that follows it. The Gandy Creek section, however, is more scenic because it is part of the National Forest, with a forest road paralleling it for most of its length. This stretch is long enough for an overnight trip. There are campgrounds quite near Gandy Creek. Mary Elza Spring and Ray Mullenex are near these camping areas on the mountainside in the lease area.

Recreation in the Pendleton County lease parcel includes kayaking, hiking, biking, and particularly trout fishing. Visitors can follow Mon NF Forest Service Trail 526 through this area. It connects with trails coming from Locust Springs on the George Washington NF

including FDT 450, the Laurel Fork trail. The lease adjoins the Locust Spring Picnic Area in Virginia and the Slabcamp Run/Locust Spring circuit hike which is part of the Laurel Fork wilderness area. Laurel Fork is one of the few very secluded backcountry forests left in Virginia. With high meadows, wetlands, and the fast running Laurel Fork on the valley floor, this is one of the best backpacks in the region. The 1930's Era Adirondack Shelter, located at the Locust Spring Picnic area, can be used for camping. There is a hand operated water pump, picnic tables, fire rings and a vault toilet in the area around the Shelter. The Laurel Fork area has a high Beaver population. The many shallow ponds created by the Beaver are used by a host of other wetland species such as mink, muskrat and waterfowl. The largest Beaver population is west of Laurel Fork.

The Laurel Fork of the North Fork of the South Branch of the Potomac is a whitewater kayaking river both in Virginia and West Virginia. Kayaking and canoeing continue down the North Fork to Cherry Grove, Circleville, Seneca Rocks and beyond.

All of these resources would be affected by gas development in the area. Recreational amenities, as well as the dollars accruing to the local community through their use would be adversely affected. This must be analyzed under NEPA. Consultation with the George Washington National Forest about impacts to their special places should also be completed prior to leasing.

In addition, lease stipulations to ensure implementation of Forest Plan standards are required. Stipulations should be developed for the following Forest Plan standards:

Standard MG27

Gas pipelines and gas well sites are not allowed within developed recreation areas.

Standard MG28

Gas well sites are not allowed within 300 feet of a developed recreation area or Scenic Area.

Standard MG29

No new gas/oil road construction is allowed within developed recreation areas. Road use by construction and gas drilling and development vehicles shall not be allowed during the primary recreation use season, which is determined for each developed recreation area.

Standard MG30

Within 500 feet of the boundary of developed recreation areas or any designated Scenic Area, construction and gas drilling and development activities are not allowed during the primary recreation use season, which is determined for each developed recreation area.

Routine and emergency maintenance of gas developments is allowed.

Standard MG31

Construction, gas drilling, and development are not allowed within concentrated use areas designated by Forest Supervisor Order during the primary recreation use season, which is determined for each concentrated use area. Routine and emergency maintenance of gas developments is allowed.

The failure to prepare pre-leasing analysis under NEPA has left impacts to recreation resources unanalyzed and undisclosed. This must be corrected before a sale of this lease proceeds.

J. Socio-Economic Effects

In failing to prepare any pre-leasing analysis under NEPA, the BLM and FS have failed to consider the adverse impacts oil and gas development will likely have on visitors to the area and on the local communities in Pendleton and Randolph Counties in the leasehold areas.

Spruce Knob- Seneca Rocks and Sinks of Gandy socio-economic resources and conditions.

The official Monongahela National Forest website describes the National Recreation Area (NRA) located in the lease area: “Encompassing 100,000 acres, the scenic Spruce Knob-Seneca Rocks NRA contains the highest peak in West Virginia, some of the best rock climbing on the east coast, outstanding views and a chance to enjoy America's great outdoors.” Many local businesses such as local restaurants, motels, rock climbing schools, grocery store and gas stations depend on the recreational visitors to this area. Fishing guides and star gazing clubs benefit from the resources. The non-profit Mountain Institute on private land next to Spruce Knob takes thousands of school children on hiking trips into the watersheds in the leasehold area, an education experience that would be degraded by gas drilling in this area. The Institute has ten employees at their Spruce Knob Campus.

In addition to impacts on visitors to the Spruce Knob Seneca NRA and surrounding area of the Monongahela National Forest, gas drilling would impact local communities. The Pendleton County community on the NF inholding along Sam’s Run and FS road 48 would be impacted by road building and potential degradation of water resources. Those living along Route 28 in the lease hold area would be impacted by large vehicular traffic, impacts to water, noise, construction and road degradation. The hundred or more dwellings along Route 29 in Job,

Whitmer, Horton, and Little Italy in Randolph County on the route to the gas drilling site would experience similar impacts.

Large tanker trucks, drill rigs and tractor trailers with generators and the resultant disturbance to county roads would negatively impact the quality of life of these residents. Drilling in these areas might change the quantity and flow pattern of the groundwater impacting the water wells of those living here. Additionally, radioactive materials and gas from the Marcellus and other rock units could rise through rock fractures and contaminate the groundwater, residential wells and residences. The radioactive gas could accumulate and concentrate in the wells and also in the basements of residences as radon gas (one of the daughter elements of the Radium 226 and 228 that occurs in the Marcellus Shale). These potential effects must be analyzed under NEPA. This must be corrected before a sale of these lease parcels proceeds.

K. Cultural Resources

In failing to prepare any pre-leasing analysis under NEPA, the BLM and FS have failed to consider the adverse impacts oil and gas development will likely have on cultural resources in the area of the Randolph and Pendleton County gas leases. This area is home to an extensive history. Cultural resource sites, many known and many yet undiscovered, are abundant in the area.

There are cultural resources that would be affected by development of the Randolph County lease parcel. There is an historic CCC Camp on Gandy Creek near Grants Branch. On Route 29 leading to the Gandy Creek section of the leasehold are the towns of Little Italy, Whitmer, Gandy and Job, historic towns left over from the timber boom of 110 years ago with

charming homes representative of the era. Creating an industrial site here with attendant road building, site preparation, drilling and pipelines would degrade these historic resources.

On the Pendleton County lease parcel there are approximately 28 acres of known National Register of Historic Places-eligible or unevaluated heritage sites including 20 sites from the pre-historic and historic period. The first European settlers in the region appeared around 1746. At that time, West Virginia (or western Virginia as it was known then) was the edge of the great wilderness. George Washington surveyed in this area in the 1750's as he looked for locations for frontier forts during the French and Indian Wars. The Pendleton County lease parcel is near the historic Staunton Parkersburg Highway and Camp Allegheny Civil War Battlefield and the historic recreation area at Locust Springs is just yards away from the Pendleton County lease sale parcel over the state line in Virginia.

The Staunton Parkersburg Turnpike dates from the 1840's. After decades of inaction on the part of the government in Richmond, Virginia finally acceded to demands from its western citizens and began to construct a turnpike into the interior. The road was initially authorized in 1826, and planned and laid out by the state engineer of Virginia, Claudius Crozet. It was not actually built until the 1840's, however, with completion of the main roadway in 1848. This road, traveling over the high mountains near the birthplace of rivers, was an engineering marvel, and opened up large sections of western Virginia to settlement and commerce.

One of the earliest campaigns of the Civil War was fought for control of this turnpike, and the access it provided to the B&O Railroad. The [Battle of Rich Mountain](#) gave the Union Army control of the turnpike, of the Tygarts Valley, and all of the territory of western Virginia to the north and west, including the railroad. Union General George McClellan's victory brought

him promotion to command the Army of the Potomac. The Union Army then fortified at Cheat Summit, and the Confederates established fortifications at Bartow and Allegheny. There they faced each other over the turnpike through the fall 1861 and over the winter. General Robert E. Lee's attempt to attack Cheat Summit Fort, and Union Army attempts to attack Camp Bartow and Camp Allegheny, all failed to dislodge the enemy.

Camp Allegheny is located on the Monongahela NF off U.S. 250 at the Virginia-West Virginia border. A dirt road, part of the original route of the Staunton-Parkersburg Pike, takes the visitor back to the site of fortifications and the camp occupied by Col. Edward Johnson's Confederates during part of the winter of 1861. Union attacks here on December 13th failed to dislodge Johnson, but the Southerners soon withdrew near Staunton due to long supply lines and inclement weather. Experienced Civil War historians and travelers marvel at this wonderfully preserved site. The chimney stones have fallen in place from the Confederate huts and the scenery is breathtaking. Additionally, local families engaged in these historic activities and may have had homesites on the Pendleton County lease parcel.

Furthermore, Native American use of the area is evidenced by their use of the Seneca Rocks area and the Seneca Trail nearby. There has been constant movement through this area by Native Americans during both prehistoric and historic times as they followed the famous Seneca Trail along the Potomac River, which allowed the Algonquin, Tuscarora, and Seneca tribes to trade and make war. A branch of the Seneca Trail follows up Seneca Creek and across the Allegheny crest to the site of Elkins. There is evidence of Native Americans in the Seneca Rocks area that dates from the archaic period several thousand years ago. Before the building of the current Visitor Center at Seneca Rocks, the site was excavated and archaeologists found

evidence that two villages had occupied the site with the most recent dating from 600 years ago. Evidence of supporting posts revealed as many as a dozen dwellings with an estimated population of 150. These facts make it very likely that cultural remains from this era are present on the Pendleton and Randolph County lease parcels.

Just yards away from the Pendleton County lease parcel is the Locust Spring Picnic Area in Virginia on the George Washington National Forest. It has a 1930's Era Adirondack Shelter, located at the Locust Spring Picnic area used for camping. There is a hand operated water pump, picnic tables, fire rings and a vault toilet in the area around the Shelter. These George Washington NF historic resources that have not been properly protected in the leasing process or stipulations by the Monongahela NF or the BLM.

These and other cultural resources in the area must be identified, protected and evaluated for inclusion on the National Register of Historic Places prior to lease development activities. The failure to prepare pre-leasing analysis under NEPA has left impacts to these resources unanalyzed and undisclosed. This must be corrected before sale of these leases proceeds.

L. Climate Change

NEPA analysis of the proposed oil and gas lease sale parcels must include the climate change implications of the likely development. The Forest Service issued policy direction on this issue in 2008, 2009 and again in 2010. The Forest Service has created a Global Change Research Strategy for 2009-2019 to effectively deal with the issue. It is one of the Forest Service Chief's Emphasis Areas. Both the Chief and Agriculture Secretary Vilsack share a commitment to responding effectively to climate change. Given agency emphasis on this issue, it is nonsensical to fail to consider it at the leasing and development stages.

Two types of climate issues must be considered in project analysis. First, the effect of a proposed project on climate change (GHG emissions and carbon cycling): “Examples include: short-term GHG emissions and alteration to the carbon cycle caused by hazardous fuels reduction projects, GHG emissions from oil and gas field development, and avoiding large GHG emissions pulses and effects to the carbon cycle by thinning overstocked stands to increase forest resilience and decrease the potential for large scale wildfire.” See January 13, 2009 Forest Service memo on climate change.

Secondly, the effect of climate change on a proposed project: “Examples include: effects of expected shifts in rainfall and temperature patterns on the seed stock selection for reforestation after timber harvest and effects of decreased snow fall on a ski area expansion proposal at a marginal geographic location, such as a southern aspect or low elevation.”

Neither of these requirements has been met either now in any kind of site-specific analysis or in the previous oil and gas suitability decision upon which the agency relies. This must be corrected.

II. The FS and BLM Will Violate The ESA If They Offer These Lease Parcels For Sale.

The FS and BLM would also violate the ESA were they to offer these lease parcels for sale. The proper conclusion if listed species exist in the area is that leasing “may affect” those listed species, which triggers the requirement that the BLM and / or FS engage in consultation with the U.S. Fish and Wildlife Service (FWS). The BLM and FS, as far as protesting parties have been able to determine, has not consulted on this lease sale. This violates the ESA.

As discussed above, species that may be affected by the proposed oil and gas drilling

include the Indiana bat and the Virginia big-eared bat. In particular, in light of the new information and devastating threat of white nose syndrome to hibernating bats, the BLM and FS are bound by law and the tenets of careful, science-based management, to consult with the FWS on this specific project. Given that white nose syndrome is now confirmed in five hibernacula in Pendleton County, some of which are designated critical habitat for two federally listed bats, extreme caution with any activity affecting bat habitat is warranted. This is especially true for an action, such as oil and gas drilling, that will affect both the surface environment, where bats forage, swarm, mate, and roost, and the sub-surface, karst environment, where bats hibernate and some, such as the Virginia big-eared, also roost and birth young.

In addition, the production and consumption of fossil fuel-based energy sources has known impacts on global climate. The impacts of global climate change include threats to species both close to the site of development and those far removed, all of whom in varying ways are harmed by increasing temperatures and/or other rapid shifts in climatic patterns that make their present habitat less suitable. Climate change has been cited as one potential cause of bat declines in North America, and scientists have speculated it may be a factor in white nose syndrome. Climate change is also threatening to shrink the already limited habitat of high elevation species, such as the West Virginia northern flying squirrel and the rare rock vole. Thus, the BLM and FS need to consult with FWS on the climate impacts associated with the proposed oil and gas drilling, energy production and consumption, as they may affect federally-listed species.

The ESA requires federal agencies to consult with the FWS regarding the impacts of proposed federal actions on threatened and endangered species. 16 U.S.C. § 1536(a)(2).

Further, as the ESA's implementing regulations make absolutely clear, "[e]ach federal agency shall review its actions *at the earliest possible time*" to determine whether an action may affect protected species, and, if so, to engage in the appropriate level of conferral. 50 C.F.R. § 402.14(a) (emphasis added); see also Wilderness Soc'y v. Wisely, 524 F. Supp. 2d 1285, 1301 (D. Colo. 2007) ("the BLM's duty to confer with the FWS arises as of the time that it was possible for the two agencies to engage in meaningful conference regarding the decision to be made"). Thus, the BLM and FS must consult with the FWS over the impacts to Indiana bats and Virginia big-eared bats on the proposed oil and gas lease sale parcels. The BLM's and FS' failure to initiate consultation with FWS violates the ESA.

Further, because the oil and gas development will exacerbate global climate change, the BLM and FS must consult with FWS over the impacts that the proposed oil and gas development and consumption will have on other protected species that are threatened by global climate change.

III. The BLM and FS Will Violate NFMA If They Offer These Lease Parcels For Sale.

Forest Plan Standards

The BLM and FS would also violate the National Forest Management Act (NFMA) were they to offer these leases for sale. Under the NFMA, "Resource plans and permits, contracts and other instruments for the use and occupancy of National Forest System lands shall be consistent with the land management plans." 16 U.S.C. § 1604(i). All oil and gas development activities and other site-specific projects must be consistent with the Forest Plan. Id. Courts uniformly enforce this consistency requirement. See Northwoods Wilderness Recovery, Inc. v. USFS, 323

F.3d 405, 407 (6th Cir. 2003) (“Implementation of the forest plan is achieved through individual site-specific projects, and all projects must be consistent with the forest plan.”); see also Cherokee Forest Voices v. USFS, Case No. 05-6570, 2006 U.S. App. LEXIS 13214, * 11-12 (6th Cir. May 25, 2006) (unpublished); Sierra Club v. Martin, 168 F.3d 1, 4-5 (11th Cir. 1999); Friends of Southeast’s Future v. Morrison, 153 F.3d 1059, 1068 (9th Cir. 1998); National Audubon Society v. Hoffman, 132 F.3d 7, 19 (2nd Cir. 1997).

Lease stipulations implement Forest Plan standards. Failure to include them here means leasing activities would proceed that were not consistent with the Forest Plan. Missing lease stipulations that should have been addressed in the current lease sale include stipulations implementing Forest Plan standards for the endangered Virginia big-eared bat, threatened and endangered plant species, the effects on coldwater fisheries, and the effects on wetlands, among others.

Lease stipulations for the protection of bats should include Forest Plan standards prohibiting surface and sub-surface disturbance within close proximity of bat habitat. For example, for Virginia big-eared bats, Standard TE 19: “Seismic exploration is prohibited within 200 feet of hibernacula, maternity colonies, or bachelor colonies unless it can be demonstrated that it would not have an adverse impact on bat populations or habitat.” Also, Standard TE 21, “New road or trail construction is prohibited within 200 feet of hibernacula, maternity colonies, or bachelor colonies.” Monongahela LRMP 2006 at II-23.

For Indiana bats, stipulations for lease should include standards intended to protect maternity habitat, primary range, key areas, and hibernacula. For example, Standard TE 38, “Special use permits and federal mineral exploration and development may be allowed within

the primary range if they are compatible with Indiana bat management.” Emphasis added. And Standard TE39, “Explosives may be allowed within the primary range if it can be demonstrated that this activity will not have an adverse effect on bat populations or habitat.” Emphasis added. Id. at II-25.

The Forest Plan should have been examined closely and lease stipulations written to cover all applicable Forest Plan standards before the lease sale notice was posted. The parcels proposed for leasing should be withdrawn until this occurs.

Forest Plan Analysis and Need for Supplemental EIS to the Forest Plan

The Monongahela NF (MNF) Forest Plan and EIS analyzed likely mineral development activities (including oil and gas development) over the plan period on the Forest. The Biological Opinion for the MNF plan, said, "Over the next 10 years, the [Forest Plan] FPR anticipates that 740 acres of land within the MNF proclamation boundary may be affected by federal and private mineral development activities." (p. 57, FWS BO 2006 FPR for MNF). The Forest Plan itself assumed and analyzed the impacts from 130 acres for gas wells, 138 acres for roads to access oil and gas developments and 473 acres for pipelines over the 10-15 year life of the plan. Analysis of direct, indirect and cumulative effects under NEPA for the Forest Plan assumed these 741 acres as the maximum development acreage.

The lease parcel for Pendleton County totals 1,916.783 acres. The Randolph County parcel is 2,479.771 acres in size. This is almost six times the anticipated amount of mineral operations analyzed in the Forest Plan. Other mineral development has already taken place on the Berry Energy well and pipeline in and around the Fernow Experimental Forest on the MNF. Other parcels have been proposed for leasing and likely will be in the future. Split estate

development activities will only increase this total. Before leasing of these parcels takes place the Forest Service must prepare a supplemental EIS for the Forest Plan to examine the environmental impacts of significantly increased mineral development.

The NEPA regulations require agencies to supplement draft and final EISs if the “agency makes substantial changes in the proposed action that are relevant to environmental concerns,” or when “[t]here are significant new circumstances or information relevant to environmental concerns and being on the proposed action or its impacts.” 40 C.F.R. § 1502.9(c)(i-ii).

By proposing mineral development almost six times more than the Forest Plan total in just this one lease auction, the MNF has essentially changed the action (the Forest Plan) analyzed in the FEIS without documentation of any kind, much less environmental analysis. Because mineral development can have significant adverse impacts to Forest resources (and have already in the Fernow Experimental Forest), this increase in acreage is substantial, significant and highly relevant to environmental concerns. Therefore, an SEIS is required. See Northwoods Wilderness Recovery, Inc. v. USFS, 323 F.3d 405 (6th Cir. 2003) (logging more acres than projected in the Forest Plan and analyzed in the plan EIS violated NEPA and NFMA); Hodges v. Abraham, 300 F.3d 432, 446-447 (4th Cir. 2002) (“If ‘the environmental impacts resulting from the design change are significant or uncertain, as compared with the original design's impacts,’ then the DOE must complete additional NEPA documentation.”) (quoting Price Rd. Neighborhood Ass'n v. United States DOT, 113 F.3d 1505, 1508-1509 (9th Cir. 1997); Dubois v. USDA, 102 F.3d 1273, 1292-93 (1st Cir. 1996) (Forest Service decision to increase water withdrawal beyond amount analyzed in draft EIS required supplemental draft, as did changes to proposed ski trails and access roads, among other alterations), cert denied sub nom., Loon Mt.

Rec. Corp. v. Dubois, 521 U.S. 1119 (U.S. 1997); Piedmont Env'tl. Council v. United States DOT, 159 F. Supp. 2d 260, 280 (W.D. Va. 2001) (SEIS required for change in highway terminus which enlarged its footprint).

This situation is closely analogous to Northwoods Wilderness Recovery, Inc. v. USFS, 323 F.3d 405 (6th Cir. 2003). In Northwoods, the Ottawa National Forest already had exceeded certain logging levels projected in the Plan and analyzed in the Plan's EIS, and the project at issue would exceed them still further. Id. at 408, 411. The Sixth Circuit ruled the project violated NEPA because the impacts of that additional logging never were analyzed, and, under NEPA, "meaningful analysis and public comment were required prior to the approval of the additional . . . logging." Id. at 412. In response, the Ottawa "drastically reduce[d]" that type of logging so that, by the end of the Plan's second decade, the total harvest would be within the Plan's projections. Northwoods Wilderness Recovery, Inc. v. USDA Forest Service, 192 Fed. Appx. 369, 373, 375-76, 2006 U.S. App. LEXIS 19459, **8-10, 17-18 (6th Cir. 2006).

The MNF must now supplement the FEIS to disclose how many acres are likely to be impacted for mineral development, analyze the effects, and provide an opportunity for public comment. This lease auction and any others cannot go forward unless and until this is done.

IV. The BLM and FS Will Violate West Virginia State Antidegradation Water Standards (Tier 3) If They Offer These Lease Parcels For Sale.

The Clean Water Act establishes guidelines for States to regulate discharges into State waters and mandates that they develop an anti-degradation policy to further protect waters. West Virginia's anti-degradation implementation rule assigns waters a classification based on many

factors. "Tier 3" protection affords the highest levels of protection to Outstanding National Resource Waters (ONRW) which are defined as Waters Located in Federal Wilderness Areas, Waters Located in State Parks, National Parks and National Forests, Specifically Designated Federal Waters and High Quality and Naturally Reproducing Trout Waters. Tier 3 waters cannot be degraded, but can be improved. Additionally, discharges upstream of a Tier 3 segment are prohibited from degrading the water quality of Tier 3 water.

West Virginia §47-2-2 Subsection 4.1.c. states that waters to be included in a Tier 3 determination are defined in part as "waters in national parks and forests which are high quality waters or naturally reproducing trout streams". Whereas both Gandy Creek, located in the Randolph County parcel and Big Run and Laurel Fork, located in the Pendleton County parcel and most smaller tributaries of these streams have been determined to have naturally reproducing populations of native brook trout, all sections of these streams that transect areas of the Monongahela NF are to be classified as Tier 3 streams for the purposes of determining the standards of water quality that must be maintained. Additionally, the intervening sections of these streams, which flow through privately held tracts, are determined to be Tier 2 streams based on the same standards, with the only limiting factor being the ownership of the surrounding land.

The statute further states in §60-5-6 Subsection 6.1 that Tier 3 waters "are to be maintained, protected and improved where necessary. Any proposed new or expanded regulated activity that would degrade (result in a lowering of water quality) a water body that has been designated an Outstanding Natural Resource Water (ONRW), other than temporary lowering of water quality, is prohibited." All activities related to any and all new uses within and in fact near

the riparian boundaries and prescribed buffer zone that would result in any impact including but not limited to, non-precipitation related sedimentation and discharge would adversely affect this stream.

Accordingly, regarding the protection of Tier 2 level streams the same Rule in subsection 5.6.b. states that “In allowing any degradation, the agency shall assure water quality adequate to protect existing uses fully.” Since these streams are known to be naturally reproducing trout streams, they must be maintained as such. Any impact could potentially affect their current standing as trout fishing streams and therefore affect economic benefits to the outlying communities. Additionally, subsection 5.6.c states that “Degradation for Tier 2 shall be deemed significant if the activity results in a reduction in the water segment’s available assimilative capacity (the difference between the baseline water quality and the water quality criteria) of ten percent or more at the appropriate critical flow condition(s) for parameters of concern. Baseline water quality must be established before any such determination of affect can take place and these very critical points should be considered in depth before any leasing action is taken.”

We believe any lease development activities in these areas would result in degradation of water quality given the proximity of water resources and the karst topography.

V. The BLM and FS Will Violate the Clean Water Act (CWA) and State of West Virginia Category B2 Trout Stream Protection Requirements If They Offer These Leases For Sale.

In accordance with the federal Clean Water Act, the State of West Virginia designates uses for every stream, river, and lake. The designated use of particular concern here is Category B-2, “trout waters”. Category B provides for the propagation and maintenance of fish and other

aquatic life. Category B-2 or “trout waters” are defined by Title 47 Legislative Rule West Virginia Department of Environmental Protection, Water Resources Series 2 Requirements Governing Water Quality Standards in section 2.19 as waters which sustain year-round trout populations. Excluded are those waters which receive annual stockings of trout but which do not support year-round trout populations.

Both Gandy Creek, located in the Randolph County parcel and Laurel Fork, located in the Pendleton County parcel, with their naturally reproducing native brook trout populations, are classified as B-2 Trout Streams. B-2 Trout Streams are held to a higher standard for Water Quality than other fisheries because of the sensitivity to change in turbidity, temperature and other environmental factors that can so easily affect brook trout. Among those things for which the acceptable standard is more stringent are: aluminum, dissolved aluminum, ammonia, dissolved hexavalent chromium, dissolved oxygen, iron, nitrate, silver, temperature, total residual chlorine and turbidity.

We believe any lease development activities in these areas would result in degradation of these trout fisheries given the proximity of Gandy Creek and Laurel Fork, other threats to the water quality described above and the karst topography.

VI. The BLM and FS Will Violate the NHPA If They Offer These Leases For Sale.

Section 106 of the National Historic Preservation Act (NHPA) requires federal agencies to take into account the effects of their undertakings on historic properties and afford the Advisory Council on Historic Preservation (ACHP) a reasonable opportunity to comment on such undertakings. 36 CFR § 800.1. To satisfy the Section 106 compliance requirement, the

Responsible Agency Official must also consult with the State Historic Preservation Officer(s) (SHPO), and appropriate Tribes and/or Tribal Historic Preservation Officer(s) (THPO).

In waiting to fulfill Section 106 responsibilities until after lease parcels have been auctioned, the Forest Service and BLM abrogate their responsibilities under the NHPA. The ACHP, SHPO and THPO(s) are left to consult not on whether oil and gas development activities take place, but on how to potentially mitigate these effects on National Register listed or eligible properties. Federal agencies should engage in consultation under Section 106 before lease auctions.

VII. The BLM Will Violate Its Own February 13th, 2009 Memorandum from the Acting Director to State Directors If It Offers This Lease For Sale.

The BLM would also violate its own recent internal direction were it to offer these leases for sale. On February 13, 2009 the acting Director of the Bureau of Land Management issued a Memorandum to all State Directors (see attached) requiring certain steps be followed to “allow for a full review of parcels prior to an oil and gas lease sale.” These steps include preparation of an initial briefing paper to the Washington Office of the BLM 50-55 days prior to the lease sale (approximately one week prior to the date the notice of lease sale is posted).

Information to be provided in this initial briefing paper includes discussion of roadless characteristics, whether any of the parcels are in citizen proposed wilderness and whether any of the parcels involve any Endangered Species or BLM-sensitive species issues. Clearly, these lease parcels meets these conditions.

This direction was issued well before this lease sale advertisement period started. We believe the BLM must withdraw these parcels from consideration at this time and prepare the required briefing paper(s) for consideration for future leasing.

REQUEST FOR RELIEF

TWS, FOB, CBD, FOBPC, WVWC, WVHC, FOAF, SOPH, and the LMPA request that BLM withdraw the protested parcels from the March 2010 Competitive Oil and Gas Lease Sale until such time as the BLM and FS have complied with NEPA, NFMA, ESA, CWA, WV Code of State Rules Title 47 Series 2 Requirements Governing Water Quality Standards, WV Code of State Rules Title 60 Series 5 Antidegradation Implementation Procedures, NHPA and the requirements of the recent BLM memorandum dated February 13th, 2009. In addition, the BLM should not accept any more parcels for lease auction until 1) the FS has updated their oil and gas suitability decision under NEPA and the NFMA and 2) the BLM has issued direction for their comprehensive parcel review process that will take a site-specific approach to individual lease sales (per Department of Interior and BLM policy announcements on January 6, 2010).

This protest is brought by The Wilderness Society, the Friends of Blackwater, the Center for Biological Diversity, the Friends of Beautiful Pendleton County, the West Virginia Wilderness Coalition, the West Virginia Highlands Conservancy, the Friends of the Allegheny Front, the Stewards of the Potomac Highlands, and the Laurel Mountain Preservation Association.

A handwritten signature in black ink that reads "Mary C. Krueger". The signature is fluid and cursive, with the first letters of each word being capitalized and prominent.

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A handwritten signature in blue ink that reads "Judith Holyoke Schoyer Rodd". The signature is cursive and elegant, with the first letters of each word being capitalized and prominent.

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March 3, 2010



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March 3, 2010

A handwritten signature in cursive script that reads "Arthur W. Dodds Jr.".

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