



Friends of Blackwater Canyon

March 28, 2011

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Re: Comments on the draft Environmental Assessment (EA) for the Upper Greenbrier North (UGN) Project on the Greenbrier Ranger District of the Monongahela National Forest (MNF)

Dear District Ranger Tribble and Ms. Vollmer,

Please accept these comments on the draft Environmental Assessment (EA) for the Upper Greenbrier North (UGN) Project on behalf of the Wilderness Society (TWS) and the Friends of Blackwater (FOB). Both TWS and FOB have had a long-standing interest in the management of the Monongahela NF and in actions affecting the West Virginia northern flying squirrel (WVNFS or flying squirrel) and its habitat. Both organizations are plaintiffs in the lawsuit against the U.S. Fish and Wildlife Service (FWS) over the delisting of the squirrel. Both organizations participated actively in the revision of the Monongahela National Forest (MNF) Land Management Plan (Forest Plan) and have been actively involved in numerous projects proposed to implement the plan since its revision.

More generally, 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 2,200 West Virginia members and supporters and more than 525,000 members and supporters nationwide. Our staff, members and supporters 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, endangered species management and oil and gas development. TWS members and supporters use the proposed project lands for hunting, fishing, hiking, backpacking, photography, wildlife viewing, and other recreational, aesthetic, and educational purposes.

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 educate our 10,000 members and supporters about these issues through newsletters, our website and comments to the press.

While there are a number of activities proposed as part of the UGN Project which we very much support, overall there are such significant problems that we cannot support this project as proposed. There are significant legal issues, including failure to comply with the National Environmental Policy Act (NEPA), the National Forest Management Act (NFMA) and the Endangered Species Act (ESA). There are at least two violations of the Forest Plan which demand forest plan amendments or modification of the project. The scope, scale and length of the project are excessive and the Forest cannot possibly adequately disclose the effects or significance of their proposed actions. The budget requirements for these activities are not likely to be satisfied at any time in the reasonably foreseeable future given current federal budget constraints, which calls into question the ripeness of this pending decision under NEPA.

Finally, the court's ruling this past Friday (March 25, 2011) vacating the FWS delisting of the flying squirrel would seem to require that this project be withdrawn immediately. Given this development that will at minimum require that the ESA section 7 consultation be followed for the squirrel, the Forest Service should suspend consideration and defer public review while that process is undertaken; in the meantime, we are submitting these comments based on the prior

proposal out of an abundance of caution. Each of our issues and concerns with the project are detailed in the pages that follow.

The FWS Decision to Delist the WVNFS Has Now Been Vacated

This past Friday, March 25, 2011, U.S. District Court Judge Emmet G. Sullivan vacated the Delisting Rule of the FWS [Friends of Blackwater v. Salazar, Civ. No. 09-212 (D.D.C. March 25, 2011)], which had resulted in the flying squirrel being removed from the Endangered Species List and its protections. The squirrel is once again listed as endangered. Since many of the project elements, including proposed even-aged hardwood timber harvest in squirrel habitat would by definition adversely affect the squirrel and its habitat (and would likely not have been approved by the FWS when the squirrel was previously listed), the Forest Service must engage in formal consultation with the FWS. Though the Forest Service claims in the EA that they completed a Biological Assessment (BA) (see below for more information on this), which would require a corresponding Biological Opinion (BO) from the FWS, it is almost certain that any BA prepared (or in preparation) did not treat the flying squirrel as a listed species. A new BA will have to be prepared once consultation with the FWS in light of the court's ruling has begun.

The Upper Greenbrier North Project should be withdrawn immediately. The proposed action itself will likely have to be changed and opportunity for public comment under NEPA offered again. The direct, indirect and cumulative impacts, and any actions (i.e. terms and conditions) required by the FWS to protect the flying squirrel from "take" under the ESA have not been adequately disclosed in the current draft EA. As such the public has not been afforded the opportunity to comment in a meaningful manner.

Failure to Comply with NEPA

Council on Environmental Quality (CEQ) regulations implementing the National Environmental Policy Act (NEPA) (40 CFR Parts 1500-1508) contain a number of requirements to insure that federal agencies meet their obligations to comply with procedures and achieve the goals of the Act. The Code of Federal Regulations at 36 CFR 220 contains the Forest Service's procedures for complying with both the NEPA and CEQ's regulations. We believe the Forest Service has failed to comply with a number of these requirements and is in violation of the NEPA. The various ways in which the agency has done so are detailed below.

An EIS Should Have Been Prepared and Failing That Should Now Be Prepared

We believe the agency should have prepared an EIS. Now that an EA has been prepared we believe it is clear that a FONSI cannot be issued and an EIS must be prepared.

Forest Service NEPA regulations at 36 CFR 220.6(c) state,

“Scoping. If the responsible official determines, based on scoping, that it is uncertain whether the proposed action may have a significant effect on the environment, prepare an EA. If the responsible official determines, based on scoping, that the proposed action **may** have a significant environmental effect, prepare an EIS. (emphasis added)

We believe the responsible official should have determined after scoping that preparation of an EIS was warranted. This is based on the size of the project area, the scale and intensity of the project activities, consideration of the significance factors under the CEQ regulations and their role in defining the severity of impacts, the timeframe the agency identified to accomplish these activities and the overall cost for these activities when viewed through the lens of typical MNF budgets.

In order to determine “significance”, it is necessary to turn to the CEQ Regulations at 40 CFR 1508.27. Significance under NEPA requires consideration of both context and intensity. In the case of context, “significance varies with the setting of the proposed action. For instance, in the case of a site-specific action, significance would usually depend upon the effects in the locale rather than in the world as a whole. Both short and long-term effects are relevant.” 40 CFR 1508.27(a). Intensity refers to the severity of the impact.

In the case of the UGN Project, at 69,800 acres, this project would be one of, if not the biggest project(s) ever on the MNF. Other aspects of the project speak to its significance in terms of context and intensity:

- At 69,800 acres, this project area constitutes over 7 ½ % of the entire MNF.
- The UGN Project would occur across five 6th HUC level watersheds.
- Vegetation treatments are proposed in 273 units across 25 different compartments.
- Commercial timber harvest of over 20 million board feet (mmbf) on over 3800 acres is proposed. This is more than a 100% increase over the volume proposed in the original scoping letter and more than a 70% increase over the other alternatives proposed in scoping.
- Herbicide treatments are proposed for over 1,900 acres without the EA ever disclosing specific locations for these treatments.

- These projects are proposed to be carried out over a 10-12 year period, though given the lack of available federal funding and timing considerations for various activities, this timeline is likely to be much longer. (The Forest Service can't possibly disclose impacts across this timeframe as required under NEPA, a topic discussed in more detail below.)
- The project would cost almost \$24 million dollars, money unlikely to be appropriated to the Forest for this one project set even over the course of a number of years.

The fact that the Forest didn't even list the proposed activities in the EA itself, but instead disclosed them in a series of 12 Appendices in order to avoid confusion given the large number of actions, speaks volumes about the size and intensity of this project. We note too that Forest Service NEPA regulations at 36 CFR 220.7(b)(3)(iii) require that the MNF, "shall describe the impacts of the proposed action and any alternatives in terms of context and intensity as described in the definition of "significantly" at 40 CFR 1508.27" when preparing an EA. This does not appear to have been done.

Several other elements of the CEQ regulations under intensity come into play. 40 CFR 1508.27(b) lists ten factors that should be considered in evaluating intensity. Almost all of them pertain to the UGN Project and should have been considered and disclosed in evaluating the significance of the proposed action and whether to prepare an EIS. Examination of a few of them is instructive.

(1) Impacts that may be both beneficial and adverse. A significant effect may exist even if the federal agency believes that on balance the effect will be beneficial.

This certainly applies to the UGN Project. The Forest Service is arguing that it can create a beneficial effect (increase in the red spruce vegetative component as potential squirrel habitat), while acknowledging activities to create this habitat will be adverse. See inconsistency of commercial hardwood harvest and road construction under Alternative 2 in suitable WVNFS habitat discussed below.

(5) The degree to which the possible effects on the human environment are highly uncertain or involve unique and unknown risks.

The agency believes it can create this red spruce habitat and that the squirrel will (eventually) occupy it. But the extent to which the squirrel could survive the impacts and time duration of the habitat creation is itself highly uncertain.

(9) The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973.

Of course, now that the squirrel is again listed as endangered, these actions could (and seemingly would according to the Forest Service) adversely affect an endangered species. See effects of commercial hardwood harvest and road construction under Alternative 2 in suitable WVNFS habitat. It's also important to remember that even before the squirrel's recent relisting, this area is home to Indiana and Virginia big-eared bats which could be adversely affected by the cumulative effect of the project activities and white nose syndrome.

We believe the scope, scale and impacts of the proposed project are such that an environmental impact statement (EIS) should have been prepared. Given the information presented above and impacts described below, we believe the responsible official had the information necessary to determine that the proposed action may have a significant environmental effect at the conclusion of the scoping process. That the project then increased so much in size and scope between the end of scoping and the EA issuance makes this failure to prepare an EIS all the more problematic.

Forest Service regulations allow the agency to prepare an EA before preparing an EIS:

“An environmental assessment (EA) shall be prepared for proposals as described in §220.4(a) that are not categorically excluded from documentation (§220.6) and for which the need of an EIS has not been determined (§220.5).”

36 CFR 220.7(a)

Now that the draft EA had been completed, we believe it is clear for the reasons stated above and the impacts addressed below that a Finding of No Significant Impact (FONSI) cannot be issued and the need of an EIS has been determined and must be prepared.

The EA is No Substitute for an EIS

The MNF cannot argue that the EA because of its length is a substitute for an EIS. In fact, its length and complexity should have been a sign to Forest staff that they should have more thoroughly investigated the need for an EIS under 36 CFR 220.6(c). CEQ has instructed that “[i]n most cases... a lengthy EA indicates that an EIS is needed” because at minimum “it is extremely difficult to determine whether the proposal could have significant environmental effects.” Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act

Regulations. “An EA and an EIS serve very different purposes” (Sierra Club, 769 F.2d at 875). The courts have in fact held that an EA cannot be accepted “as a *substitute* for an EIS” regardless of the “time, effort and analysis that went into [the EA’s] production.” *Id.* at 875 (emphasis in original). EAs help decisionmakers determine whether to prepare an EIS. Consistent with their different legal functions, there are much more stringent requirements on the preparation of EISs. We believe the Forest Service must prepare an EIS in this case.

The Timeframe of the Project

The Forest Service is proposing a large number of activities that would take place over many years. We believe too many years. This timeframe is far too long for the agency to adequately analyze and disclose the cumulative impacts of this project. The UGN Project EA states that the projects would take 10-12 years to implement and that many of the activities need to be staged in relationship to each other. Unfortunately, not enough information is provided to understand exactly what these staging needs would do to the implementation schedule.

What we do know is that even a 10-12 year schedule is too long to adequately disclose impacts. For instance, there is just no way that the Forest Service can do species surveys now and trust that they would be accurate for the next decade. In fact we already know that the disclosure of impacts is inaccurate because the agency disclosed that after they conducted field survey in 2008 the Shriver’s frilly orchid was described and instead of resurveying for this Regional Foresters Sensitive Species (RFSS) they choose to disclose in the EA all the ways it might be wiped out by the project activities since they hadn’t bothered to go back and look for it. EA, Chapter 3 at pg. 86 of 203. It leaves us to question how the agency is preventing a trend toward listing under ESA.

It is also clear from the project description that the MNF intends that this decision cover both stages of a shelterwood harvest despite the fact that these treatments are by their very nature a number of years apart. The Forest Service seems to describe this as 4-5 years (it’s a bit unclear) but our experience with the agency’s ability to finance and return for the second stage entry is that it could take many times that number before the agency finishes the second stage. Even leaving aside the shelterwood harvests, the sheer volume of timber harvest involved, and the preparatory activities described make it likely that a number of these sales wouldn’t even be proposed until well into the 10-12 year time period. Add in the fact that timber sales can legally be extended up to 10 years and the possibility exists that these project activities could still be being implemented two decades from now. That is longer than the fifteen year period covered by a Forest Plan, and far too long to adequately disclose effects.

Finally, the sheer scale and cost of the proposed project almost guarantees that the effects will be inadequately disclosed over the life of the project. There are many activities in the UGN

Project which we support (road decommissioning and aquatic stream restoration come immediately to mind), but given current federal budget constraints and the likely size of the budget on the MNF over the next 10-12 years we don't see a very high likelihood that the UGN Project would ever be implemented over that time period, or even one much longer. We also note that the costs of preparing NEPA and conducting field surveys have not been included in the project budget calculations. This both understates the costs and removes the excuse that NEPA costs drive up project implementation.

All of this results in the approval of activities many of which in the later stages of the project will almost certainly be based on stale scientific information and have adverse effects. The courts have found that, "Reliance on stale scientific evidence is sufficient to require re-examination of an EIS. *Seattle Audubon Society v. Espy*, 998 F.2d 699, 704-705 (9th Cir.1993)." *City of Carmel-by-the-Sea v. U.S. Dept of Transportation*, 95 F.3d 892, 900 (9th Cir. 1995). *Lands Council v. Powell*, 379 F.3d 738 (9th Cir. 2004), as amended (9th Cir. 01/24/2005) No. 03-35640 - 6-year-old species survey not good enough -- "stale habitat data" -- citing SAS.

As the CEQ has stated:

“As a rule of thumb, if the proposal has not been implemented, or if the EIS concerns an ongoing program, EISs that are more than 5 years old should be carefully reexamined to determine if the criteria in Section 1509.2 compel preparation of an EIS supplement.

If an agency has made a substantial change in a proposed action that is relevant to environmental concerns, or if there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed ... impacts, a supplemental EIS must be prepared for an old EIS so that the agency has the best possible information to make any necessary substantive changes in its decisions regarding the proposal.”

46 Fed. Reg 18026, 18036 (March 23, 1981).

Obviously, this is even more true of an EIS that is over 10 years old. *See Oregon Natural Resources Council Action v. U.S. Forest Service*, 445 F. Supp. 2d 1211, 1232 (D. Or. 2006) (finding this provision particularly applicable when dealing with EAs over ten years old, *citing, inter alia*, the CEQ language above); *see also Portland Audubon Society v. Espy*, 998 F.2d 699, 70304 (9th Cir. 1993) (overturning decision which "rests on stale scientific evidence").

This is all even more of a problem when relying on an EA that was never prepared to the rigor required of an EIS. We strongly recommend that the Forest Service go back and review the

UGN Project based on a realistic assessment of their likely budget, timing considerations and what can reasonably be accomplished over a shorter time period than 10-12 years and recalibrate the project proposal accordingly. A decision under NEPA can only be thought of as “ripe” when there is a reasonable expectation that the project can be implemented. Anything less certainly violates the letter and spirit of NEPA.

Alternatives Dropped from Consideration

We note the alternative dropped from consideration which would have implemented all the project activities in a five-year time period. This represents a misunderstanding of our scoping comment and a seeming misunderstanding of NEPA. The timeframe for a project to be implemented is not an issue driving creation of alternatives. It is a function of the impacts of a project and whether direct, indirect and cumulative impacts can be adequately disclosed over a long project implementation schedule in a single NEPA document.

Failure to Disclose Effects

FWS Concurrence

One of the purposes of NEPA is to “insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken”. 40 CFR 1500.1(b). In the case of the UGN Project, the Forest Service stated that it had prepared a Biological Assessment (BA), “a biological assessment (BA) was completed to determine the effects of the Proposed Action and alternatives on federally listed and proposed threatened and endangered species...” (EA, Chapter 3, pg 139 of 203). As mandated by Section 7 consultation requirements under the Endangered Species Act (ESA), the FWS must then prepare a Biological Opinion (BO) in response with any terms and conditions necessary to protect threatened and endangered species and prevent a trend toward listing for non-listed species.

We asked for a copy of the BA and were told on March 23, 2011 by Greenbrier District Ranger Jack Tribble that, “We will complete the BA in a week or so.” (personal communication via email between Judy Rodd and Jack Tribble). This is problematic on a couple of fronts. First, we are not sure what was used to determine the effects of the Proposed Action and alternatives as stated in the EA if the BA has not actually been completed. Secondly, this means that the FWS has not prepared their BO; in fact they have yet to receive the Forest Service’s BA. “I will send it to you as it goes to the Fish and Wildlife Service” (ibid). Unfortunately, this means the public is being asked to comment on the Forest Service’s guess as to what the FWS will say and the terms and conditions they will require in their BO. As this is the last opportunity for the public to comment before a decision would be rendered, we have not been provided the opportunity to review critical environmental information nor to comment meaningfully. The BA must be

completed and the BO received, incorporated into the Forest Service environmental document (EA or EIS) and available for public review, during the EA comment period when this information is most relevant to our legal right to meaningful participation under NEPA.

Environmental Impacts

Impacts on the West Virginia Northern Flying Squirrel under the ESA and NEPA

Now that the flying squirrel is once again listed as endangered, a number of protections apply. We believe that significant activities proposed in the UGN Project will be found by the FWS to result in harm to the squirrel.

Under the ESA, a species is listed as “endangered” when it is “in danger of extinction throughout all or a significant portion of its range,” 16 U.S.C. § 1532(6), and listed as “threatened” when it is “likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range,” 16 U.S.C. § 1532(20). Once listed, a species is entitled to a number of protections, including prohibitions on harm and harassment and affirmative duties to promote the species’ conservation and recovery.

Section 9(a)(1) of the ESA makes it “unlawful for any person subject to the jurisdiction of the United States to” . . . “take any such [endangered] species within the United States or the territorial sea of the United States” or to “take any such species upon the high seas.” 16 U.S.C. §1538(a)(1)(B)–(C). It is a violation of the ESA for “any person subject to the jurisdiction of the United States to attempt to commit, solicit another to commit, or caused to be committed” any such offense. *Id.* § 1538(g).

The ESA defines the term “take” as meaning “to harass, harm, pursue, hunt, shoot wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.” 16 U.S.C. § 1532(19).

The FWS has defined the term “harm” to mean “an act which actually kills or injures fish or wildlife. Such an act may include significant habitat modification or degradation which actually kills or injures fish or wildlife by significantly impairing essential behavioral patterns, including breeding, spawning, rearing, migrating, feeding or sheltering.” 50 § 17.3 (FWS definition).

The FWS has defined the term “harass” as meaning “an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering.” *Id.* § 17.3.

It is clear from language in the EA that the squirrel would be subject to harassment, harm and (overall) take as defined above:

“Potential direct effects include the felling of cavity trees containing squirrel nests...Furthermore, while data is lacking in West Virginia as to the response of a WVNFS if an occupied den tree was disturbed, it is assumed that an adult, mobile WVNFS would flee so as to avoid lethal take if a den tree was disturbed.

This assumption is supported by Dr. Andrew Carey, a research biologist for the northern flying squirrel in the western United States. According to his experiences (Andrew Carey, personal communication, Pacific Northwest Research Station), adult flying squirrels generally flee at any disturbance of an occupied den tree. Disturbances would include pounding an occupied tree with a stick, or cutting it with a chainsaw. Northern flying squirrels are even known to flee as a result of someone trying to quietly climb the tree. ... Therefore, it is predicted that an adult, mobile WVNFS would successfully flee from a tree before incurring serious injury or death.

Impacts to Immobile Young WVNFS. Because of the reasons previously discussed, adults are assumed to escape injury if an occupied den tree is disturbed. However, northern flying squirrel litters have been recovered from fallen trees, which suggests that very young squirrels may not flee (Andrew Carey, personal communication, Pacific Northwest Research Station). Therefore, if immobile nestlings were present in trees cut during commercial spruce restoration activities, they may be killed because of their inability to flee.”

EA, Chapter 3 pages 168-169 of 203

Harassment, harm and take would also result from the commercial hardwood harvest and road construction in suitable squirrel habitat under Alternative 2 (see below).

The EA also fails to adequately disclose impacts to the squirrel and its habitat under NEPA. We question whether the squirrel's use of northern hardwood stands has been adequately assessed in the context of the project activities proposed. The EA states, “Over the last 20 years, over 1,050 nest boxes have been placed at 95 locations throughout the project area and checked for at least two years to determine WVNFS use (see project file). ... Results of the nest box monitoring show there have been 186 WVNFS captures at 29 locations throughout the project area.” This statement from Chapter 3, page 161 of the EA shows that the project area has been used by flying squirrels. Impacts to WVNFS in the project area could be significant if harvest of northern hardwoods is carried out as proposed. Reference Jennifer Menzel's Dissertation WVU,

2003, Forest Resources, which states on page 58, “results from my research suggest that the (W)VNFSs may not be as specialized in their local habitat selection as previously thought ... My findings indicate that the Virginia Northern Flying Squirrel in West Virginia not only uses spruce habitats but other spruce-northern hardwood habitats as well as pure northern hardwood habitats” (emphasis added). The Forest’s own statements in the EA on commercial hardwood harvest and road building would seem to indicate agreement that these activities would likely be detrimental to the squirrel and result in take. Clearly, these activities will need to be reassessed.

We also found minimal discussion of the impacts of project activities, particularly herbicide use, the potential take that would be caused by its application, the effects of increased light on the forest floor from thinning activities and their potential drying effects on squirrels, their habitat, food and nesting materials. The EA stated, “Food habits of WVNFS indicate reliance primarily on hypogeous fungi (truffles) and lichens, rather than upon hard mast (Maser et al. 1986; Maser and Maser 1988; Maser et al. 1978; Carey et al. 1999; Loeb et al. 2000, Mitchell 2001)”. EA, Chapter 3, pg 160 of 203. Discussion of effects on these resources is missing. Thinning and even-aged harvest activities increase owl predation and increase the chances of harm to squirrels, especially immobile young. Secondly, the chemical hazard rating for the proposed herbicides are based on effects on humans, not on squirrels. A more thoroughly discussion of these effects should be included.

Impacts on Endangered Bats

Adverse impacts are likely to endangered bats and must be considered in Section 7 consultation with the FWS. Caves within 6 miles of the project area known to harbor Virginia big-eared (VBE) bats include Aqua-Terra, Harper Trail, Izaak Walton, Sinks of Gandy, and Stewart Run. The Izaak Walton Cave is also known to harbor the Indiana Bat. A male Indiana bat was captured in 2004 and 2010 at the Buffalo Fork site, located in the south central portion of the project area. Approximately 768 acres of the Upper Greenbrier North project area fall within the 5-mile primary foraging habitat for the Izaak Walton cave. These facts indicate that the project area provides foraging and shelter for these endangered bats. Timbering could harm or kill listed bats. Maternity trees, roosting bats and key foraging areas could be negatively impacted.

In addition, White Nose Syndrome (WNS) is prevalent in this part of West Virginia and has led to significant declines in bat populations in the Monongahela National Forest and surrounding area. Due to this deadly disease, protecting endangered bats and bats in general in this project area is more important than ever. Cutting roost trees and potential roost trees must be avoided.

Impacts on RFSS Plants

We found the efforts to identify and protect at least 2 RFSS plants inadequate: the Shriver's frilly orchid and the blunt-lobed grapefern. The MNF has as much as admitted that impacts will be significant and adverse because surveys were inadequate to detect and identify these two plants. While we appreciate the accurate disclosure of effects, i.e. numbers of these two plants will likely be eliminated, the admission hardly seems sufficient to prevent a trend toward listing. This must be corrected.

Road Impacts Not Disclosed

The EA states, "Because of the nebulous nature of the proposed road decommissioning, and the large amount of woods roads on the landscape that are not mapped, it is difficult to discern potential impacts, be it negative or positive." EA, Chapter 3, pg 165 of 203. It would appear from this and other statements in the EA that an adequate survey of the roads in the project area has yet to be completed. This must be corrected, especially if the Forest intends to direct road and aquatic restoration dollars as effectively and efficiently as possible.

We would like copies of the transportation system analysis completed for the UGN Project and any information on MNF efforts to identify the minimum road system needed.

Maps Provided Are Insufficient

Given the large scale of the project activities proposed we found the five project area-wide maps provided wholly inadequate to assess the nature and location of impacts. This should be corrected.

Failure to Comply with NFMA

Inconsistency with the Forest Plan: Need for Land Management Plan Amendment(s) or Project Modification

The NFMA requires,

"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."

NFMA, Section 6(i)

When proposed projects are inconsistent with land management plans the agency must either modify the project so that it is consistent or amend the land management plan. In the case of the UGN Project the Forest Service acknowledges two cases where the project is inconsistent with the Monongahela Land Management Plan.

Forest Plan Inconsistency 1: Alternative 2 Harvest in Suitable Flying Squirrel Habitat

The EA states, “As designed, the commercial hardwood harvest (including new road construction) proposed under Alternative 2 would be inconsistent with the Forest Plan (Standard TE 64) unless the units were redesigned so as to avoid all suitable WVNFS habitat.” EA, Chapter 3 at pg 174 of 203. The EA proposes design features which would limit potential negative impacts to the WVNFS and its habitat. But limiting potential negative impacts is not the same as complying with the Forest Plan standard. And regardless, the EA discloses that the design features wouldn’t change the NFMA inconsistency and would also result in inconsistency with Forest Service policy for Regional Forester Sensitive Species:

“Consequently, both action alternatives, with the exception of the commercial hardwood harvest proposed under Alternative 2, would be consistent with implementing regulations for the National Forest Management Act (NFMA) under which the 2006 Forest Plan was prepared (36 CFR 219.19). Additionally, both action alternatives, with the exception of the commercial hardwood harvest proposed in WVNFS suitable habitat under Alternative 2, would be consistent with FSH/FSM policy for RFSS species.”

EA, Chapter 3 at pg 174 of 203.

The EA doesn’t seem to address the issue further beyond acknowledging the inconsistency. We believe the Project should be modified to drop these acres of harvest and road building. It is also a topic that must be addressed under Section 7 consultation with the FWS.

Forest Plan Inconsistency 2: Forest Road (FR) 51 Open in MA 6.2

The EA states,

“One of the Forest Plan Goals (6236) for the transportation system in Management Prescription (MP) 6.2 is to reduce the existing road system, when the roads are not needed for management purposes (USDA FS 2006). Overall, roads within MP 6.2 shall be closed to public motorized use (USDA FS 2006).

With one exception (FR 51), all roads within MP 6.2 are currently closed to public motorized use. Approximately 0.5 mile of FR 51 was accidentally included in MP 6.2

during the Forest Plan revision in 2006. An administrative correction is being prepared that will fix this inadvertent error and exclude this section of FR 51 from MP 6.2.

The Forest is not scheduled to have another Forest Plan revision for approximately 10 years. However, MP 6.2 would be the primary area in which Roadless Areas are reviewed for potential Wilderness classification. To qualify as a Roadless Area/Wilderness, the area must contain no more than ½ mile of Forest Service jurisdiction roads per 1,000 acres (USDA FS 2007). Roads no longer needed for management purposes and considered for decommissioning within MP 6.2 should be given high consideration.”

EA, Chapter 3, page 188 of 203

We don't agree that an “administrative correction” is the proper vehicle for this kind of change to the Forest Plan without further information and an analysis of the Forest's minimum road system needs. If a change to the Forest Plan is needed, the Forest should propose an amendment. If it's as non-controversial a change as your administrative correction proposal would seem to indicate, it should be a quick and non-controversial amendment.

NFMA Requirement to Maintain Viable Populations of Native Species

The Forest Service has a responsibility to maintain viable populations of native species under NFMA, in addition to its responsibilities under the ESA. Crucial to that requirement is the need to monitor these species. The Forest is proposing a number of what are termed “short term impacts”, which are actually more akin to the life spans of several generations of squirrels. What science does the agency possess to measure the squirrel's ability to withstand these short-term impacts?

In addition, the Forest Service is proposing to monitor nest boxes to analyze the impacts of the UGN Project on the West Virginia northern flying squirrel. “WVNFS Nest Box Monitoring – Monitor a representative subset (probably 3-5) of spruce restoration areas and adjacent areas via nest box monitoring. Box checks would occur once in the spring and once in the fall annually before, during, and post project implementation. This work would also allow for the potential of future research by academia.” EA, Chapter 2, pg 39. This approach is being taken in spite of the poor track record of this type of monitoring. The same EA states in Chapter 3 on page 161, “the nest box monitoring program has had only a 2 percent average success rate of squirrel occupancy per box checked. These data confirm the difficulty of capturing squirrels via nest boxes and caution against relying on nest box survey results to determine occupied habitat...” That caution should also extend to using nest box monitoring to assess the impacts of the project. A better method to analyze impacts to this rare flying squirrel must be developed.

We look forward to continued discussion of this project. We would like to be kept informed of the progress of the Upper Greenbrier North Project, associated FWS compliance activities and opportunities to comment on the EIS we believe to be required. We request hard copies be sent to each of us at the addresses below and email notification that these materials are on their way. Please do not hesitate to contact us. Thank you for your time and consideration.

Sincerely,



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