

BY CERTIFIED MAIL

FREEDOM OF INFORMATION ACT REQUEST

September 10, 2006

Fish and Wildlife Service
West Virginia Field Office
694 Beverly Pike
Elkins, WV 26291

Dear Tom Chapman:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and implementing regulations, we request copies of the following records generated, modified, or acquired by the Fish and Wildlife Service at its West Virginia and Virginia field offices, regional offices and the national office since October 2003 concerning the proposed delisting of the West Virginia northern flying squirrel, *Glaucomys sabrinus fuscus*.

ALL memoranda, testimony, reports, opinions, correspondence or other records developed, written, submitted, or compiled describing the proposed delisting of the endangered West Virginia northern flying squirrel, *Glaucomys sabrinus fuscus*.

By records, we mean any and all (whether in draft or in final form) scientific and technical data, reports, analyses, studies, correspondence, electronic or computer mail, memoranda, notes, meeting notes, telephone logs, photographs, maps, diagrams, and other records.

If you determine that portions of any records covered by this request are exempt from disclosure, please separate the exempt portions from the nonexempt portions and provide us with copies of the nonexempt portions. For any records that you determine to be exempt from release, please provide us with a specific description of the record or portion of the record along with a particularized description of the legal basis for withholding it. See *Vaughn v. Rosen*, 484 F.2d 820, 827(D.C. Cir. 1973), *cert. denied*, 415 U.S. 977 (1974).

This request is made on behalf of Friends of Blackwater (FOB). FOB is a not-for-profit West Virginia membership organization devoted to preserving wilderness and wildlife; protecting West Virginia's forests, parks, rivers, wildlands, unique habitats and endangered species; and fostering a West Virginia land preservation ethic. FOB has a long-standing interest in the West Virginia Northern Flying Squirrel, *Glaucomys sabrinus fuscus*. FOB has supported studies of the flying squirrel in Blackwater Canyon, 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 commented on the Habitat Conservation Plan for Snowshoe Mountain Resort, initiated to preserve habitat for the endangered flying squirrel. FOB filed a Notice of Intent to Sue under the Endangered Species Act on the Nedpower's industrial wind turbines due to impacts on the West Virginia Northern Flying Squirrel, *Glaucomys sabrinus*

fuscus and other listed species. FOB worked with the Wilderness Society to track and comment on the Threatened and Endangered Species Amendment to the Monongahela National Forest Management Plan and its application on a number of timber sales and other activities in the Forest. FOB also submitted comments on the proposed draft Forest Management Plan regarding endangered species. We continue to engage in educational activities, administrative appeals, and litigation to protect the endangered species of West Virginia. Further, FOB has and continues to engage in educational activities, and administrative appeals to ensure that all National Forest lands are managed in a manner most consistent with their statutory mandates and in support of FOB's interest in preserving wilderness quality lands and wildlife. FOB's website contains specific information about its activities concerning this work at <http://www.saveblackwater.org>.

The documents requested are of great public interest. West Virginia's unique natural heritage including its rare and endangered species are natural treasures. The fate of these species is inextricably bound up in the hands of those who are charged with their management. There are over 630 million acres of public lands managed by the Federal government for the enjoyment of all Americans. Visitation to National Parks, Monuments, and Forests demonstrate a keen interest by the public in their trusted lands and special habitats. Information concerning the fate of these lands and the unique species that live there is often scattered among numerous sources, and only through a FOIA can the information be collected and disseminated to those most affected. West Virginians are equally interested in their public lands and other habitats where the State's endangered species reside. The state has no endangered species act and therefore the lead agency in protecting federally listed species is the Fish and Wildlife Service which keeps records about state endangered species activities at its West Virginia field office. Our 10,000 members and supporters want to know how protection for these species is being managed.

FOB obtains information regarding the proposed delisting of the West Virginia Northern Flying Squirrel, *Glaucomys sabrinus fuscus* in order to publicize the information to its members, members of the public, the media, members of Congress, and other groups and organizations. FOB will use and disseminate the requested documents for the public benefit. Release of the records described in this FOIA request will contribute significantly to public understanding of and provide background information on the proposed delisting of the West Virginia Northern Flying Squirrel. FOB makes information concerning proposed delisting of the West Virginia Northern Flying Squirrel available to its members and the general public as well as other groups, through action alerts, letters, e-mail, the publication of its newsletters, phone calls, and appeals and litigation, among other means.

FOB will use the requested information in a number of ways. First, it will pursue litigation to enforce the provisions of the Endangered Species Act in coordination with other national, regional, and local groups, and has done so in the past. Second, FOB will provide the documents, expert synopses of the documents, and expert scientific and legal advice based on review of the documents to other interested environmental groups who are concerned about the proposed delisting of the West Virginia Northern Flying Squirrel. In addition to litigation-related uses and advice, FOB will disseminate the information from the documents to the interested community and the general public through its many public education activities. FOB distributes its own quarterly newsletter to its members in addition to providing information for newsletters and action alerts to other public interest organizations, such as the West Virginia Highlands Conservancy, the West

Virginia Environmental Council, the Ohio Valley Environmental Council, the West Virginia Rivers Coalition, the Sierra Club, American Rivers, American Lands, the Rail to Trails Conservancy and the Wilderness Society. FOB is a member of the Endangered Species Coalition and Defenders of Wildlife and has written articles on the squirrel for both these organizations. FOB is also a recognized contact for news media on endangered species issues. In the past several months, members of FOB staff have given interviews on the delisting proposal for the West Virginia Northern Flying Squirrel to newspaper, TV, and radio reporters in West Virginia including the Charleston Gazette and the statewide Metro News. FOB uses such interviews as an opportunity to publicly disseminate information on governmental activities gleaned from the review of FOIA documents and to ensure full and balanced coverage of environmental and land management issues by the news media. Finally, FOB staff members are frequent speakers on public land issues at meetings, trainings, and conferences. In past years, staff members have spoken on endangered species in West Virginia and their protection. FOB staff uses such events to publicly discuss information on public land management and endangered species law compliance and policy, and rely on review of FOIA documents to provide complete and accurate information.

FOB has no commercial interest in the requested records.

Accordingly, we request that you grant a waiver of fees pursuant to 5 U.S.C. § 552(a)(4)(A) and [for DOI, 43 C.F.R. §2.21, for AG, 7 C.F.R. §1.5]. We fully expect that such a waiver will be granted. However, if a waiver is not granted, please inform the undersigned immediately of the cost of disclosing the above-described records if such fees exceed \$15.00.

We look forward to your response as soon as possible, but at least within 20 working days as required by the FOIA. If we do not receive a response within 20 working days, we will deem our request denied.

Please feel free to call me at 304-345-7663 if you have any questions. Thank you for your attention to this matter.

Sincerely,

Judy Rodd, Director
Friends of Blackwater