

# FRIENDS of BLACKWATER

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## **Court Ruling Returns West Virginia Northern Flying Squirrel to Endangered Species List**

Washington DC - On Friday, March 25, 2011, Washington, DC Federal Judge Emmet Sullivan vacated an August 2008 rule issued by the United States Fish and Wildlife Service that removed all Endangered Species Act ("ESA") protection from the West Virginia Northern Flying Squirrel. The decision restored federal legal protection for this small nocturnal resident of West Virginia's highest mountains. The lawsuit to restore legal protection for the squirrel was filed by Friends of Blackwater, the Wilderness Society, The Center for Biological Diversity, Wild South, and the Southern Appalachian Forest Coalition on November 12, 2009, and was argued in November of 2010.

The federal court ruled that the Service had not based its ruling on the squirrel's recovery plan, which was created in 1990 and amended in 2001. Judge Sullivan's ruling stated, "The court is not persuaded that the agency's decision to meet only the 'intent' of its Recovery Plan criteria for the Squirrel complied with the ESA. The statute unambiguously requires that criteria must be 'objective' and 'measurable.'"

According to Judith Rodd, Director of Friends of Blackwater, the West Virginia Northern Flying Squirrel, who has been nicknamed "Ginny" by her supporters, shares its habitat with other rare West Virginia wildlife like the Cheat Mountain salamander, the northern water shrew, and the rock vole. Rodd says that Monongahela National Forest managers are currently planning major logging in an area that contains many squirrels. Rodd said, "The Monongahela National Forest's Upper Greenbrier North Project spans almost 70,000 acres with lots of herbicide use and over 20 million board feet of timber harvest. This Upper Greenbrier North project would have devastated flying squirrel habitat. The Forest managers have suggested that Ginny can 'flee' to escape harm. With this new ruling, we expect a better future for our beloved Ginny." (Read more about the decision and listen to the flying squirrel's song at the [Friends of Blackwater Canyon site](#).)

Jessica Almy, attorney for the groups who successfully obtained the federal court ruling, said, "This ruling is important not only to conservation of the flying squirrel, but for the proper implementation of the Endangered Species Act. The ruling means that scientifically-based recovery criteria for endangered and threatened species, once having been adopted in the Fish and Wildlife Service's formal recovery plan, cannot be ignored due to political motivation or simple bureaucratic expediency -- in the Service's haste to remove a species from the protections of the Act. Rather, if the agency believes that such recovery criteria are in need of revision (which was not established for the squirrel) then the agency must do so pursuant to the publicly and scientifically accountable process embodied in the law.

Almy continued, "One would hope that the Obama Administration, which professes an interest in having sound science guide its environmental decision-making, and implementation of the ESA, will accept the wisdom of the court's well-reasoned ruling -- particularly in this era of myriad and unprecedented threats to the survival of at-risk species such as the flying squirrel."