



Friends of Blackwater Canyon

March 3, 2009

via FACSIMILE: 703-440-1551

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

Re: Protest of Bureau of Land Management's Notice of Competitive Oil and Gas Lease Sale Concerning Parcel(s) in Pendleton County, 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 parcel ES-066-03/09 (WVES 55656 ACQ) at the March 19, 2009 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, the Monongahela National Forest (MNF) and the Spruce Knob - Seneca Rocks area in particular. 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 and the need for its protection throughout these processes. We have also submitted comments on other related matters that apply to the area, 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 800 West Virginia members and more than 310,000 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 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, Virginia big-eared bat and Cheat Mountain salamander 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.

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 Cheat Mountain salamander, 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 four caves in Pendleton County and one in Virginia just across the state line. 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 200,000 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 development.

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

This proposed lease parcel (consisting of 8 tracts) is located entirely on lands within the Spruce Knob - Seneca Rocks area including an area that the Forest Service (FS) identified and has officially recognized as having wilderness character (Seneca Creek). These lands also contain populations of and habitat for imperiled species, including the Endangered Species Act listed Virginia big-eared bat, Indiana bat, Cheat Mountain salamander and the recently delisted West Virginia northern flying squirrel. Exploration and development on the proposed lease would threaten significant harm to the wilderness character of these lands, the sensitive species that reside there, and other resources.

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 This Lease 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).

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 this lease. 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. By consenting to lease without surface occupancy in this case, the Forest would likely permit surface operations somewhere 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, 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 this lease on Seneca Rock's resources, the lease 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. 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 in a broadly backed proposal, but was not included in the Wild Monongahela Act, currently pending in U.S. Congress.

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: Seneca Creek into the North Fork of the South Branch of the Potomac 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. Seneca Rocks is a large crag and local landmark in Pendleton County in the Eastern Panhandle of West Virginia. It is easily visible and accessible along West Virginia Route 28 in the Spruce Knob - Seneca Rocks National Recreation Area. One of the best-known scenic attractions in West Virginia, the sheer rock face of Seneca Rocks is a popular challenge for rock climbers.

C. 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 the Spruce Knob - Seneca Creek wildlife populations and habitat. 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, 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 this parcel. 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 this lease proceeds.

D. 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 will likely have on threatened and endangered species. Species potentially at risk include the federally-listed endangered Indiana bat and endangered Virginia big-eared bat, the endangered Cheat Mountain salamander, 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 this lease proceeds.

Within the lease area is 248 acres of primary range for the federally-listed Indiana bat (*Myotis sodalis*). BLM Eastern States Office Notice of Competitive Lease Sale, Oil and Gas, February 2, 2009, at 56. 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. Thus, it can be concluded that both surface and sub-surface (cave) habitat for the Indiana bat lies within close proximity to the proposed oil and gas development.

In addition, several hibernating caves for Indiana bats are located in Pendleton County, where the proposed oil and gas development is also located. One of these, Hellhole Cave, is a Priority Two Indiana bat critical habitat cave, and it lies within the national forest’s proclamation boundary on private land. Approximately 9,000 Indiana bats winter in Hellhole; it is the largest

hibernaculum for the species in the mid-Atlantic region.

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. Approximately 45 percent of the total global population of Virginia big-eared bat hibernates in Hellhole Cave, designated as critical habitat for the species. On the national forest proper, there are 23 known occupied hibernacula for this species, including another cave designated as critical habitat, Cave Mountain Cave, that is located in Pendleton County, east of the proposed oil and gas development. 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. *Id.*, at 236-8. Thus, it can be expected that energy development activities affecting cave habitat may also affect surface/foraging habitat, and vice versa.

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.

North America's hibernating bat species now face their greatest single threat, white nose syndrome, a newly emerging disease that has decimated bats throughout the Northeast United States since late winter 2006. It was confirmed by lab analysis to have reached hibernacula in

Pendleton County last month—the first known cases in West Virginia. Among the four caves known to be affected to date, Cave Mountain Cave and Trout Cave harbor both wintering Indiana bats and Virginia big-eared bats. Trout Cave, on private land within five miles of the national forest proclamation boundary, is a major hibernaculum for Indiana bats. *Id.* at 244. As stated above, Cave Mountain Cave is a major hibernaculum for Virginia big-eared bats, and is located on the national forest.

While it is unclear whether Virginia big-eared bats will be affected by white nose syndrome, as the disease was only recently discovered within the species' range, Indiana bats have died in large numbers in the northeast portion of their range. Multiple bat species have died from the illness, including bats of different genera, so it quite possible that Virginia big-eared bats will be affected as well.

The cause and means of transmission of white nose syndrome are still not understood by scientists. It is possible that bats themselves, as well as humans entering hibernacula, are carriers of the pathogen, if that is indeed the cause of the illness. What is clear is that white nose syndrome has been devastating to bat populations in areas where it has thus far occurred. Biologists have documented mortality rates well over 90 percent at multiple hibernacula throughout the Northeast.

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. 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.

E. 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 Spruce Knob - Seneca Creek fisheries populations and habitat. Many fisheries could be negatively impacted by gas drilling and associated activities on this particular parcel. Of immediate concern would be Brushy Run, a Tier 3 and B-2 Trout Stream that is known to provide habitat for a reproducing population of native brook trout. 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.”

Additionally, Brushy Run is a tributary of Seneca Creek which was identified as one of the top 100 trout fishing streams in America in 1999 by Trout Unlimited. The East Brook Trout Joint Venture also recognizes this watershed (Lower Seneca Creek) as one of four watersheds

from a total of 434 to be intact with regard to native brook trout. A very popular coldwater fishery, Seneca Creek would be damaged by sedimentation and other potential pollution from gas drilling and exploration in this watershed.

Finally, the North Fork South Branch of the Potomac would also be negatively affected as turbidity and pollutants moved downstream from Brushy Run through Seneca Creek to the confluence of Seneca Creek with 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 Brushy Run and these associated 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.

F. 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 Spruce Knob - Seneca Creek water resources. 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 parcel proposed for auction.

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 this parcel, 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 Brushy Run has a naturally reproducing native brook trout population. As such there is particular need for site-specific environmental analysis not only for this parcel 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 area whose drinking water is provided via well. These drinking water sources must be protected from degradation and adverse effects.

G. 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 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 just a mile

from the proposed drilling 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 Brushy Run is in karst and has three caves in its watershed: Blowhole, Keel Spring and Mystic Cave.

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

H. 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 Creek 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.

Part of the lease sale area is in the Seneca Rocks NRA. 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.

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 near Mouth of Seneca, "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."

Describing Seneca Creek the Guide says: "The lower section of Seneca Creek is a lively little ripsnorter and is a pure delight when there is enough water. Its course traverses pastoral farmlands around the northern edge of Spruce Mountain, then heads east to the imposing majesty of Seneca Rocks."

The 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. Many sites offer outstanding views of the 900 foot Seneca Rocks. This campground is a popular base camp for visitors while traveling through the Potomac Highlands.

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.

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.

I. 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 the Spruce Knob - Seneca Creek 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.”

Seneca Rocks is described thusly: “Purchased by the federal government in 1969, Seneca Rocks is one of the best-known landmarks in West Virginia. These rocks have long been noted as a scenic attraction and are popular with rock climbers. The rocks are a magnificent formation rising nearly 900 feet above the North Fork River. Eastern West Virginia contains many such formations of the white/gray Tuscarora quartzite. Seneca Rocks and nearby Champe Rocks are

among the most imposing examples. The quartzite is approximately 250 feet thick and is located primarily on exposed ridges as caprock or exposed crags. The rock is composed of fine grains of sand that were laid down approximately 440 million years ago, in an extensive sheet at the edge of ancient ocean. Years of geologic activity followed, as the ocean was slowly destroyed and the underlying rock uplifted and folded. Millions of years of erosion stripped away the overlaying rock and left remnants of the arching folds in formations such as Seneca Rocks.”

The identity of the first person to climb Seneca Rocks is unknown. Undoubtedly Native Americans scaled the rocks prior to European settlers reaching the area, but there is no record of their ascents. The historic ascent of Paul Brandt, Don Hubbard, and Sam Moore in 1939 found an inscription of “D.B. Sept. 16, 1908.” This has been attributed to a surveyor named Bittenger who was known to be working in the area (from Seneca, the Climber's Guide by Bill Webster).

The Seneca Rocks Area near the proposed gas lease is home to a private climbing school, several restaurants, motels and cabins for rent as well as a country store. The Monongahela National Forest also has a campground called Seneca Shadows just down the road from Seneca Rocks. Thousands of visitors from all over the east coast come to the Seneca Rocks - Spruce Knob Area every weekend to enjoy an outdoor recreation experience. Gas lease development in an area so popular for its beautiful scenery and quiet ambience will drive away visitors and reduce tourism dollars going into the local economy.

In addition to impacts on visitors, gas drilling in the Brushy Run watershed will impact the local citizens who live along County Road 5-3 which parallels the stream. This narrow country lane has about 40 dwellings and a church alongside it. Large tanker trucks, drill rigs and

tractor trailers with generators and the resultant disturbance to the county road will negatively impact the quality of life of these residents. Drilling in this area may change the quantity and flow pattern of the groundwater impacting the water wells of those living along County Road 5-3. Additionally, radioactive 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 this lease proceeds.

J. 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 Spruce Knob - Seneca Creek cultural resources. This area is home to an extensive history. Cultural resource sites, many known and many yet undiscovered, are abundant in the area. Brushy Run is in the Seneca Creek Watershed. It empties into Seneca Creek just one mile above the Mouth of Seneca where Seneca Creek runs into the North Fork of the South Branch of the Potomac River in the shadow of Seneca Rocks. 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.

The first European settlers in the region appeared about 1746. At that time, West Virginia (or western Virginia as it was then) was the edge of the great wilderness. Within walking distance of the Seneca Rocks Discovery Center is the Sites Homestead. The home was originally constructed as a single-pin, log home in 1839 by Jacob Sites. In the 1860's additions were added by Jacob's son William. Jacob Sites moved into the North Fork of the Potomac Valley during the 1830's. Exterior renovations to the Homestead were completed in May of 1990, using locally available materials and skilled craftsmen.

The documented climbing history of the rocks began in 1935 with a roped ascent of the North Peak by Paul Brandt and Florence Perry. In the 1930's and 40's only a few climbers, mostly from the D.C. and Pittsburgh areas, attempted to climb Seneca Rocks.

In 1943-1944 the U.S. Army used the rocks to train mountain troops for action in the Apennines in Europe. Evidence of their climbing activities can still be found on the rocks. (Webster) Seneca Rocks was used as a training ground in assault climbing for US Army troops as part of the West Virginia Maneuver area. Coming from tent cities outside of Elkins, 100,000 troops were trained at Seneca Rocks in two week rotations.

These and other cultural resources in the area must be identified, protected and evaluated for inclusion in 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 a sale of this lease proceeds.

K. Climate Change

NEPA analysis of the proposed oil and gas lease sale must include the climate change implications of the project. The Forest Service recently released policy direction on this issue in a January 13, 2009 memo, in which Chief Abigail R. Kimbell is quoted as saying that climate change is “one of the most urgent tasks facing the Forest Service” and “as a science-based organization, we need to be aware of this information and to consider it any time we make a decision regarding resource management, technical assistance, business operations, or any other aspect of our mission.”

As described in the memo, 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.”

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 This Lease For Sale.

The FS and BLM would also violate the ESA were they to offer this lease 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 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, Virginia big-eared bat, and the Cheat Mountain salamander. 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 four hibernacula in Pendleton County, not far from the proposed development, 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 Cheat Mountain salamander and the recently delisted West Virginia northern flying squirrel. 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. 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 This Lease For Sale.

The BLM and FS would also violate the National Forest Management Act (NFMA) were they to offer these leases for sale. Under the NFMA, decisions implementing a Land Management Plan (“LMP”) must be consistent with the plan. 16 U.S.C. § 1604(i). 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, endangered snowshoe hare, the endangered Cheat Mountain salamander, 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.

IV. The BLM and FS Will Violate West Virginia State Antidegradation Water Standards (Tier 3) If They Offer This Lease 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 Brushy Run was determined in a stream survey in 1986 to be have a naturally reproducing population of native brook trout, all sections of this stream (three in total and two on the specific parcel up for auction) that transect areas of the Monongahela National Forest 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 section of Brushy Run, which flows through a privately held parcel is determined to be a Tier 2 stream 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 Brushy Run is known to be a naturally reproducing trout

stream, it must be maintained as such. Any impact could potentially affect the current standing as a trout fishing stream 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 this area 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 This Lease 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.

Brushy Run, with its naturally reproducing native brook trout population, is a B-2 Trout Stream. 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 this area would result in degradation of the trout fishery given the proximity of Brushy Run, other threats to its water quality described above and the karst topography.

VI. The BLM and FS Will Violate the NHPA If They Offer This Lease 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 eligible

properties. Federal agencies should engage in consultation under Section 106 before lease auctions. Sale announcements should contain appropriate stipulations to protect eligible resources should leasing move forward. This must be corrected in the case of this lease package given the cultural resources in the area described above.

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, this lease parcel meets these conditions.

This direction was issued after this lease sale advertisement period had started. We believe the BLM should have withdrawn this parcel from consideration at this time and prepared the required briefing paper 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 parcel from the March 2009 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 the FS has updated their oil and gas suitability decision under NEPA and the NFMA.

TWS, FOB, CBD, et al Protest of 3-15-09 Lease Sale
March 4, 2009
Page 37

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.

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TWS, FOB, CBD, et al Protest of 3-15-09 Lease Sale
March 4, 2009
Page 38

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TWS, FOB, CBD, et al Protest of 3-15-09 Lease Sale
March 4, 2009
Page 39

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TWS, FOB, CBD, et al Protest of 3-15-09 Lease Sale
March 4, 2009
Page 40

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