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Environmental  
Law Center

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### FAX COVER SHEET

DATE: March 15, 2010

TO: Juan Palma, Eastern States Office Director, United States Department of the Interior, Bureau of Land Management, Eastern States

FAX NUMBER: 703-440-1551

FROM: Sarah Francisco, Senior Attorney

RE: Mar. 18 Oil & Gas Lease Sale, Concerns re Parcels in Pendleton & Randolph Counties, WV

Total number of pages (including cover sheet):

8

IF YOU HAVE RECEIVED THIS FAX IN ERROR, OR IF YOU ENCOUNTER PROBLEMS IN RECEIVING THIS TRANSMISSION, PLEASE CALL US IMMEDIATELY AT 434-977-4090.

Thank you,

Amy Day  
aday@selcva.org

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# SOUTHERN ENVIRONMENTAL LAW CENTER

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March 15, 2010

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

VIA FAX 703-440-1551 AND U.S. MAIL

Re: Mar. 18 Oil & Gas Lease Sale, Concerns re Parcels in Pendleton & Randolph Counties, WV

Dear Mr. Palma:

The Virginia Wilderness Committee and the Southern Environmental Law Center want to express our concerns about several parcels in the upcoming Bureau of Land Management's (BLM) oil and gas lease sale on March 18. Of the 81 parcels in six states offered for sale, four parcels contain inventoried roadless area currently protected by the 2001 Roadless Area Conservation Rule: two parcels in the Monongahela National Forest in West Virginia and two in the Ozark National Forest in Arkansas. We are particularly concerned about the parcels in the Monongahela and believe leasing and drilling would jeopardize these areas' roadless and other outstanding natural qualities. These parcels should be withdrawn from the lease sale, as requested by the three protests filed by The Wilderness Society, Friends of Blackwater Canyon, Center for Biological Diversity and others, by Trout Unlimited, and by The Mountain Institute. We believe your office is considering those protests now.

Parcels in the Monongahela National Forest:

(1) Pendleton County (Laurel Fork) parcel, ES-080-03/10 WVES 56279 – 1,917 acres in Pendleton County, WV, containing 355 acres of the Monongahela portion of the Laurel Fork inventoried roadless area (IRA). The Laurel Fork roadless area in West Virginia is about 1,172 acres in size and is adjacent to the larger 9,938-acre Laurel Fork IRA in the George Washington National Forest (GW) in Virginia (see attached maps from FEIS for 2001 Roadless Rule). Laurel Fork is one of the finest roadless areas in Virginia. Under the current 1993 GW forest plan, it is designated as a Special Management Area and, in 1997, the GW withdrew its consent to oil and gas leasing there.<sup>1</sup> The pristine Laurel Fork watershed crosses the state line and tributaries to Laurel Fork are located within the proposed lease parcel. The Laurel Fork

<sup>1</sup> See U.S. Forest Service, GW Final Revised Land and Resource Management Plan at 3-109-111 (1993) (hereinafter "LRMP" or "forest plan"); Amendment #4 to the GW Revised LRMP (1997); FEIS for Revised LRMP, App. C, C-83-89 (1993), all available at [www.fs.fed.us/r8/gwj/forestplan/index.shtml](http://www.fs.fed.us/r8/gwj/forestplan/index.shtml) (incorporated herein by reference).

watershed supports naturally reproducing native brook trout and, according to the organization Trout Unlimited, is the highest quality brook trout watershed south of New York State. In fact, Laurel Fork, Gandy Creek in the Randolph County parcel discussed below, and most of their tributaries within the lease parcels are naturally reproducing native brook trout streams designated as Tier 3 "Outstanding National Resource Waters" (ONRW) under West Virginia state law.

The Forest Service has described the Laurel Fork area as unique in Virginia, due to its location on a high plateau in the Allegheny Mountains. See FEIS for Revised LRMP at App. C-84. The area contains excellent northern hardwood and spruce forests which are important wildlife habitat and support 25 species of plants and animals identified as rare by the Virginia Division of Natural Heritage, including snowshoe hare and West Virginia northern flying squirrel. *Id.* As part of the ongoing second revision of the GW forest plan, the Forest Service is considering whether to recommend the Virginia portion of Laurel Fork for wilderness designation. The Virginia portion also is the subject of a citizen wilderness proposal being advanced by the Virginia Wilderness Committee and others.

The roadless portion of the parcel is subject to a "no surface occupancy" (NSO) stipulation which is contingent on the injunction in California ex rel. Lockyer v. USDA remaining in effect. See BLM Notice of Competitive Lease Sale, Oil and Gas, at 85, 93 (1/30/2010).<sup>2</sup> Given the current Administration's commitment to protecting roadless areas consistent with the provisions of the 2001 Roadless Rule, any lease issued in an inventoried roadless area should contain a lasting NSO stipulation, not a contingent one. Two of the parcels in the Ozark National Forest, which contain about 62 acres of roadless area, are subject to the same uncertain, contingent stipulation. See BLM Notice at 33, 36 (re ES-031-03/10 ARES 56230 and ES-032-03/10 ARES 56231).

(2) Randolph County (Seneca Creek) parcel, ES-081-03/10 WVES 56280 – 2,480 acres in Randolph County, WV. At least half of this parcel is located in the Seneca Creek inventoried roadless area.<sup>3</sup> The 24,974-acre Seneca Creek area is the largest IRA remaining in West Virginia. About 12,000 acres of the roadless area actually lies within the Seneca Rocks National Recreation Area. The Seneca Creek area was proposed for wilderness designation by the West Virginia Wilderness Coalition in a broadly backed citizen proposal and, although it was not included in the Wild Monongahela Act in 2009, the Coalition is still intent on securing wilderness designation for the area. While the roadless area portion of the proposed lease parcel is subject to an NSO stipulation imposed by the Monongahela forest plan, prescription 6.2, nowhere in the lease sale notice did BLM acknowledge that the lease is proposed in an IRA. Inventoried roadless areas should be explicitly considered and their protection assured.

Beyond the surface occupancy issue, however, gas drilling in both parcels has the potential to significantly and adversely affect water quality, fish and wildlife habitat, rare and endangered species, and outdoor recreation, particularly if hydro-fracturing drilling techniques

<sup>2</sup> Note that the BLM Notice references the district court's injunction, but the 2001 Rule and the injunction reinstating it were upheld by the Ninth Circuit in California ex rel. Lockyer v. USDA, 575 F.3d 999 (9th Cir. 2009).

<sup>3</sup> See BLM Notice of Competitive Lease Sale, Oil and Gas (1/30/2010), Map Attachment 19 (portion of parcel east of Gandy Creek, in Monongahela forest plan prescription 6.2, is within the Seneca Creek inventoried roadless area).

are used, yet these effects have not been adequately considered, as described in detail in the protests. For example, in addition to the important natural resources discussed above, a number of caves within 10-15 miles of these parcels are known habitat for the federally endangered Indiana bat and Virginia big-eared bat. Gas drilling may affect cave environments in ways that harm bats. Indiana bat populations already are facing great pressure from white nose syndrome, which has decimated their populations in the Northeast by 30% in the last two years and which has been discovered in West Virginia. Yet, as we understand it, the BLM and the Forest Service have not consulted with the U.S. Fish and Wildlife Service regarding this lease sale.

Finally, it appears that the BLM may not have briefed its Washington Office on these proposed leases, including on potential controversies such as parcels in roadless areas, citizen proposed wilderness areas, and endangered species issues, and on protests, as required by the February 13, 2009 direction of Acting Director Ron Wenker (attached). We are unaware of any such briefing. At a minimum, these parcels should be withdrawn from this lease sale in order to conduct the requisite review.

Thank you for your consideration. Please contact us if you have any questions or if we can provide more information.

Sincerely,



Sarah A. Francisco  
Senior Attorney  
National Parks and Forests Program Leader  
Southern Environmental Law Center

Laura Neale, President  
Virginia Wilderness Committee  
423 Sheep Creek Lane  
Fairfield, VA 24435  
(540) 460-9237

Enclosures:

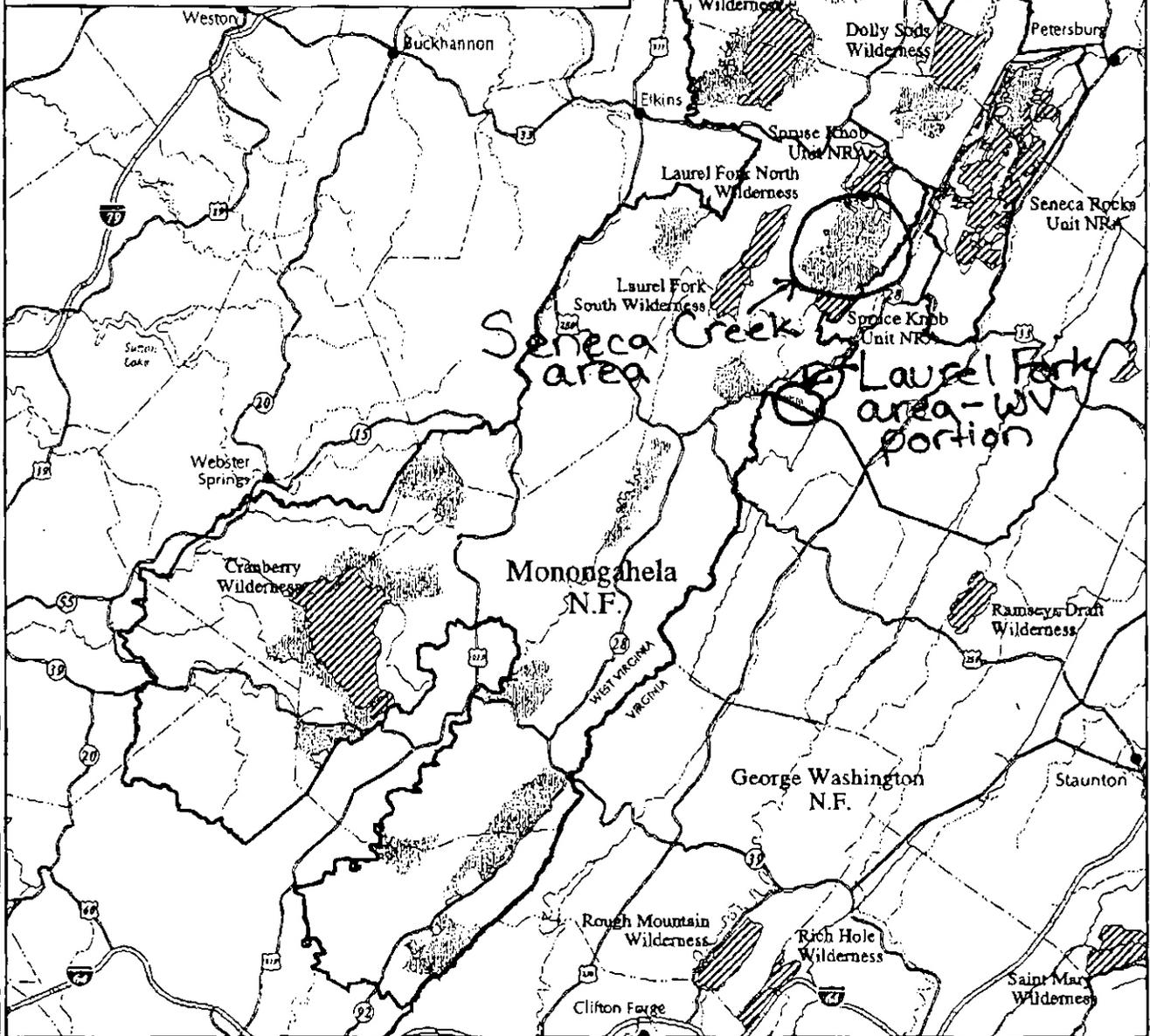
1. U.S. Forest Service, Maps of Monongahela National Forest and George Washington National Forest Inventoried Roadless Areas, from Final Environmental Impact Statement for Roadless Area Conservation Rule [of 2001], Vol. 2, at 208 and 210 (FEIS 11/2000; maps dated 9/15/2000) (Laurel Fork and Seneca Creek areas marked by hand by SELC).
2. Memorandum to State Directors from Ron Wenker, Acting Director, U.S. Dept. of the Interior, Bureau of Land Management, Washington, D.C. (2/13/2009).

West Virginia

### MONONGAHELA NATIONAL FOREST Inventoried Roadless Areas

**Categories of National Forest System Lands within the Monongahela N.F.**

IRA, allows road construction and reconstruction	20% (181,000 acres)
IRA, does not allow road construction & reconstruction	0% (0 acres)
DRA, recommended wilderness	0% (0 acres)
Designated Areas outside of IRAs	13% (117,000 acres)
All Other National Forest System Lands	67% (511,000 acres)



Seneca Creek area  
Laurel Fork area - WV portion



The USDA Forest Service uses the most current and complete data available. GIS data and product accuracy may vary. Using GIS products for purposes other than those for which they were intended may yield inaccurate or misleading results. The USDA Forest Service reserves the right to correct, update, modify, or replace GIS products without notification.

September 15, 2000  
Data Supplied by Monongahela National Forest  
Contact: Monongahela N.F.  
USDA Bldg. 200 Sycamore Street  
Elkins, WV 26241-3962  
(304) 636-1800



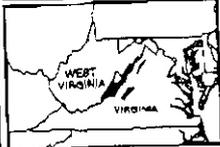
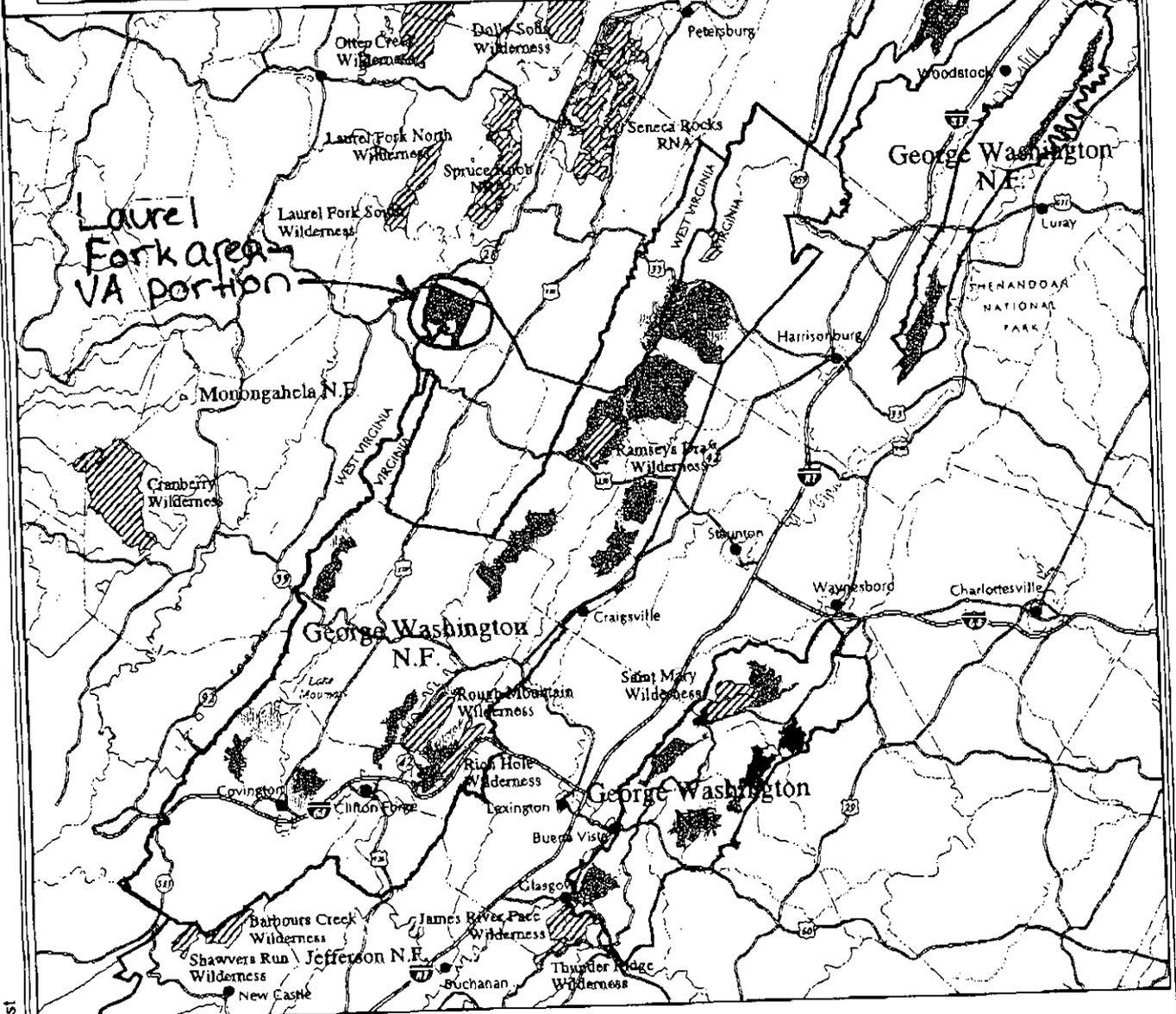
- Inventoried Roadless Area where road construction or reconstruction is allowed
- Inventoried Roadless Area where road construction or reconstruction is not allowed
- Inventoried Roadless Area where road construction or reconstruction is not allowed, and the forest plan recommends as wilderness
- Designated Areas outside of Inventoried Roadless Areas
- National Forest System lands outside of Inventoried Roadless Areas - not all private land is shown on the map
- Interstate Highway
- Other Highways
- County boundaries

Monongahela National Forest

### GEORGE WASHINGTON NATIONAL FOREST Inventoried Roadless Areas

Categories of National Forest System Lands within the George Washington N.F.

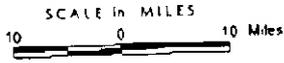
IRA, allows road construction and reconstruction	3% (30,000 acres)
IRA, does not allow road construction & reconstruction	21% (219,000 acres)
IRA, recommended wilderness	1% (12,000 acres)
Designated Areas outside of IRAs	1% (34,000 acres)
All Other National Forest System Lands	72% (770,000 acres)



The USDA Forest Service uses the most current and complete data available. GIS data and product accuracy may vary. Using GIS products for purposes other than those for which they were intended may yield inaccurate or misleading results. The USDA Forest Service reserves the right to correct, update, modify, or replace GIS products without notification.

September 15, 2000  
Data Supplied by George Washington National Forest  
Contact: George Washington N.F.  
5162 Valleypointe Pkwy  
Roanoke, VA 24019-3050  
(540) 263-5100

- Inventoried Roadless Area where road construction or reconstruction is allowed
- Inventoried Roadless Area where road construction or reconstruction is not allowed, and the forest plan recommends as wilderness
- Designated Area outside of Inventoried Roadless Areas
- National Forest System lands outside of Inventoried Roadless Areas - not all private land is shown on the map
- Interstate Highway
- Other Highways
- County boundaries





## United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Washington, D.C. 20240

<http://www.blm.gov>

FEB 13 2009

## Memorandum

To: State Directors

From: Ron Wenker  
Acting Director

I am requesting your assistance in establishing a consistent procedure that will allow for a full review of parcels prior to an oil and gas lease sale. Please provide the following information in a briefing paper that is updated during the timeframes provided below.

**Timeframe:**

- **50-55 days prior to lease sale/approximately one week prior to the date the notice of lease sale is posted:** Initial briefing paper is provided to the Washington office
- **During the protest period:** Initial briefing paper is updated, providing any information on potential controversy or issues that have arisen or may arise
- **After the protests are received and at least 5 days before the lease sale:** Briefing paper is further updated to include analysis of protests

**Information to be included in the Briefing Paper:**

## Data:

- Outline of proposed parcels – number and location
- Date of lease sale notice
- Date protest period ends
- Date of lease sale

## Analysis:

- In the initial briefing paper and with subsequent updates, please identify any potential controversies associated with the proposed parcels. The discussion should include the following:
  - Do any of the parcels have citizen proposed wilderness?
  - Are any of the parcels subject to proposed legislation that would protect the parcels from further development?
  - Do any of the parcels involve any Endangered Species Act or BLM-sensitive species issues?
  - Do any of the parcels have roadless characteristics?

- Are any of the parcels located in a municipal watershed?
- Are there likely to be concerns expressed by the state/Governor?
- Will these parcels be controversial with the local community?
- Are there likely to be concerns expressed by other federal agencies?
- In the briefing paper that is updated after the protests have been received, please discuss the following:
  - Which parcels have been protested?
  - Who filed the protests?
  - What are the reasons for the protests?

Please provide these briefing papers to Janet Lin, Celia Boddington, and Craig Leff. If you have any questions, please contact Janet Lin at (202) 208-3801.