July 31, 2013

Tony Herrell  
Associate State Director  
BLM Eastern States Office  
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Springfield, VA 22153  
therrell@blm.gov


Dear Associate State Director Herrell,

The undersigned local business and conservation organizations respectfully request that BLM reopen its comment period for the Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) that your office issued for Ohio’s Blue Rock State Forest this year. We believe you have violated NEPA by failing to make diligent efforts to involve the public in the Blue Rock project. As a result, BLM must reopen the comment period. Further, we believe you are currently in violation of the Endangered Species Act (ESA) and must immediately begin consultation under the Act with the U.S. Fish and Wildlife Service (FWS) to assure that the actions approved in the Record of Decision do not jeopardize threatened or endangered species.

The opening of an entire state forest for oil and gas leasing and development, including high volume unconventional fracking, is a significant decision and a matter of great public interest. Unfortunately, the public is only now finding out about BLM’s plans for Blue Rock – months after the apparent April 25, 2013 close of BLM’s comment period. In late July of this year, a representative of the Buckeye Forest Council found an inconspicuous and expired listing for the project on the BLM-ES website. Until that point, conservation groups, citizens, and the press were completely unaware of BLM's Blue Rock NEPA process.

NEPA and its implementing regulations require BLM to diligently seek public involvement in its NEPA processes, including the EA process. 40 C.F.R.1506.6(a) (“Agencies shall [...] [M]ake diligent efforts to involve the public in preparing and implementing their NEPA procedures.”). It is clear that BLM did not make diligent efforts to involve the public in its EA process as required by NEPA. It appears that BLM did not invite the public to comment as part of the scoping process for the Blue Rock project. It also appears as though no newspaper or letter/email notice was provided for the EA phase of the project. Moreover, Blue Rock’s surface owner, the Ohio Department of Natural Resources (ODNR), issued a statement to the press on or about July 30, 2013 that states: “The Bureau of Land Management has not shared their environmental assessment with us, nor did they notify us of their public comment period.” A July 30, 2013 article appearing in the Columbus Dispatch states that the Blue Rock comment period closed April 25, 2013 with no comments submitted. Moreover, ODNR states in a July 31, 2013 Columbus Dispatch article that the agency has never given its consent to BLM to proceed
with a lease sale, noting that BLM, “never asked for it, [...] [t]here was a miscommunication.” Per NEPA, BLM must reopen the comment period and provide reasonable notice for this project.

On top of these NEPA shortcomings, BLM has also thwarted both the spirit and letter of the ESA. Under the Act, BLM has a duty to consult with FWS, at the earliest possible time, to assure that any action authorized by the agency is not likely to jeopardize threatened or endangered species. 16 U.S.C. § 1536(a)(2). The definition describing which agency actions require consultation is very broad and certainly includes the action at issue. See 50 C.F.R. § 402.02. The Blue Rock EA did not list FWS as an agency consulted, strongly suggesting BLM is in violation of the consultation requirement. Further, the EA makes plain that at least one endangered bat and three endangered mussel species are likely present in the action area. Nonetheless and completely inexplicably, despite BLM’s recognition of the likely presence of these species, the EA totally fails to analyze impacts to these species. This is another clear violation of NEPA.

Given the significance of the Blue Rock project, Blue Rock’s status as a state-owned public forest, the apparent failure of any notice to timely reach the public, and the public and press’ substantial interest in this story, the undersigned respectfully request a new formal opportunity for public comment on BLM’s Blue Rock EA and immediate initiation of consultation on the impacts to species from this project.

Sincerely,

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