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**Subject: Draft Programmatic Environmental Impact Statement on Mountain Top Mining/Valley Fill (MTM/VF) in the Appalachian region of the eastern United States.**

Dear Mr. Forren,

We write on behalf of the undersigned groups, representing thousands of citizens across Tennessee and Kentucky who are concerned about the harmful impacts that mountaintop mining/valley fill has on aquatic and terrestrial wildlife habitat. We feel that the alternatives presented in the Draft Programmatic Environmental Impact Statement are inadequate to address these impacts and that pertinent information was not considered in the formulation of this document. It is our opinion that these inadequacies are sufficient to require a new draft EIS and that a moratorium on new mountaintop mining permits be imposed until a final EIS is adopted with an environmentally acceptable alternative.

**The DEIS Fails to address MTM/VF impacts on High Priority Forest Bird Species.**

Figures from the draft EIS project that an additional 380,000 acres of forest will be lost from the study area in the next 10 years. This number is based on the numbers of acres of forest that were lost between 1992 and 2002 from permitted mountaintop mining activities. We feel that this will cause an unacceptable loss of habitat required by the entire suite of mature forest birds of high conservation concern. The Cerulean Warbler, Louisiana Waterthrush, Worm-eating Warbler, Kentucky Warbler, Wood Thrush, Yellow-throated Vireo, Acadian Flycatcher are all at or nearly at their maximum breeding density within the study area (USGS 2003). They are all listed as priority species by Partners in Flight and all are also classified as Birds of Conservation Concern by the U. S. Fish and Wildlife Service (USFWS 2002) within the Appalachian Bird Conservation Region, which overlaps the area considered in the draft EIS. We consider this level of habitat loss, in one of the most heavily forested areas in the country to be unacceptable, and especially so for the Cerulean Warbler, the forest species of highest concern in this area. Figures presented in the draft Northeast Partners-in-Flight letter (NEPIF 2003, attached with permission) indicate that habitat for roughly 9% of the world's ceruleans was lost to permitted mining activities between 1992 and 2002 and another 9% is projected to be lost between 2003 and 2012. We find this level of habitat loss for Cerulean Warblers and other terrestrial bird species to be unacceptable and we are disappointed that the draft EIS does not address this extremely important and significant environmental impact.

**The DEIS omitted available data showing large potential Cerulean Warbler losses from mining impacts.**

The Cerulean Warbler is the bird species we are most concerned with because it has suffered drastic population declines over the last several decades and more than any bird species in the study area, their nesting habitat will be the impacted by mountaintop mining/ valley fill activities. Not

only do Cerulean Warblers prefer to nest on ridgetops, on mesic slopes and in cove forests at the head of valley streams (Rosenberg et al. 2000) but the core of its breeding range coincides very closely with the EIS study area (USGS 2003, Rosenberg et al. 2000). This species has been petitioned for listing under the Endangered Species Act and is also on the USFWS' National List of Birds of Conservation Concern (USFWS 2002).

Recent research indicated that the average density of Cerulean Warblers territories in intact forest near mined areas in West Virginia was 0.46 pairs/hectare (ha) (Weakland and Wood 2002). If this density estimate is accurate for the entire study area, then habitat for over 100,000 Cerulean Warblers was lost in the last 10 years and that number is projected to be lost in the next 10. In addition, this estimate does not include population loss from the reduced breeding densities in forest fragmented by mining and in forest adjacent to mined sites that Drs. Weakland and Wood found. This further increases the impact on the breeding population. We feel that this represents an unacceptable loss to a species whose population is roughly half or less than it was in the 1960s. We also feel that the omission of Drs. Weakland and Wood's Cerulean Warbler research from this draft EIS, when we know that it was made available to those involved in its development, to be sufficient to trigger a revision of the document.

#### **The DEIS fails to address Executive Order 13186**

Executive Order 13186: Responsibilities of Federal Agencies to Protect Migratory Birds, January 10, 2001, is specifically applicable in Tennessee because the agency issuing mining permits is the Office of Surface Mining. This Executive Order instructs federal agencies to integrate bird conservation principles and practices into agency activities and to avoid or minimize adverse impacts on migratory bird resources when conducting agency actions. Federal agencies are to "identify where unintentional take reasonably attributable to agency actions is having, or is likely to have, a measurable negative effect on migratory bird populations, focusing first on species of concern, priority habitats, and key risk factors. With respect to those actions so identified, the agency shall develop and use principles, standards, and practices that will lessen the amount of unintentional take, developing any such conservation efforts in cooperation with the Service. The agency also shall inventory and monitor bird habitat and populations within the agency's capabilities and authorities to the extent feasible to facilitate decisions about the need for, and effectiveness of, conservation efforts."

The bird species most directly impacted by mountaintop mining: Cerulean Warbler, Louisiana Waterthrush, Worm-eating Warbler, Kentucky Warbler, Wood Thrush, Yellow-throated Vireo, Acadian Flycatcher, are all listed as Birds of Conservation Concern by the U. S. Fish and Wildlife Service (USFWS 2002) within the Appalachian Bird Conservation Region. These are specifically the species that this Executive Order was issued to protect. The list of Birds of Conservation Concern was mandated by Congress under 1988 amendments to the Fish and Wildlife Conservation Act and denotes species that without additional conservation actions are likely to become candidates for listing under the Endangered Species Act. We consider the draft EIS to be incomplete without addressing Executive Order 13186 and the impacts of mountaintop mining activities in Tennessee, and possibly throughout the study area, on these bird species.

#### **The DEIS fails to identify effective mitigation measures to reduce impacts on terrestrial communities.**

While the draft EIS reports on studies that have shown that a post mining change of habitat can provide habitat for declining grassland species, we find it inappropriate to consider replacing forest habitat with grassland habitat. "Rare" eastern grassland species are rare because their habitat is historically rare in this region. Recovery and habitat restoration efforts for these species should be targeted towards ecosystems and landscapes where they occurred historically, not on eastern mountaintops that currently support high quality forest habitats.

The only mitigation offered in the draft EIS for the destruction of large areas of hardwood forest habitat by mining operations is a suggestion that the mine sites could be reforested after operations cease. While recent research indicates that some forest species may be reestablished on reclaimed mine sites (Holl et al. 2001), we agree with statements in the draft EIS that these investigations have only recently begun and "that it would be premature to attempt to evaluate the success of these efforts at this time". Furthermore, the draft EIS concedes that "as post-mined sites will likely lack the requirements of slope, aspect and soil moisture needed for cove-hardwood forest communities, it is unlikely that these particular communities can be re-established through reclamation". Surface mining completely removes the topsoil, seed source and root stock of the forest communities on the site and the re-contoured post mining fill material will be substantially different hydrologically than the original ridge or mountain top. Convincing evidence that a hardwood forest, essentially the same as the one removed during mining, can be reestablished in a reasonable amount of time, needs to be presented before this method can be offered as mitigation for the loss of hundreds of thousands of acres of biologically diverse hardwood forest habitat.

#### **DEIS projections may underestimated forest loss**

The draft EIS does not take into consideration the anticipated increase in future demand for Appalachian coal in the study area due to the planned construction of flue gas desulfurization units (scrubbers) at some of the existing coal-fired generating plants owned by the Tennessee Valley Authority (TVA 2002) and other electric utilities in the region. This increase in mining activity has already begun in Tennessee. The draft EIS projects that Tennessee will issue permits causing the loss of 9,154 acres of forest between 2003 and 2012 based on permits issued between 1992 and 2002. However, between December 2002 and October 2003, over 5,000 acres of surface mining permits have already been approved (Siddell 2003). This potential underestimate of future mining impacts is substantial and needs to be investigated and incorporated in the analysis of cumulative impacts in a revised draft EIS.

#### **DEIS fails to provide adequate alternatives to avoid environmental impacts**

We feel that the three alternative presented in the draft EIS are inadequate to reduce the impacts of mountaintop mining. The U.S. Fish and Wildlife Service apparently supports this view. In an interagency memo (USFWS 9/20/02), the FWS warns that publication of the draft EIS as written, "will further damage the credibility of the agencies involved." It states that the proposed actions offer "only meager environmental benefits" and criticizes the draft EIS for not considering "at least one alternative to restrict, or otherwise constrain, most valley fills to ephemeral stream reaches...As we have stated repeatedly, it is the service's position that the three 'action' alternatives, as currently written, cannot be interpreted as ensuring any improved environmental protection ... let alone protection that can be quantified or even estimated in advance. . .The reader is left wondering what genuine actions, if any, the agencies are actually proposing." We find that the draft EIS offers alternatives that would only streamline the permitting process for approval of new mountaintop-

removal permits and thereby fails to comply with both the letter and the intent of the NEPA EIS process.

**A moratorium should be placed on new mining permits until the DEIS is revised and reissued for public comment.**

We propose that a moratorium be placed on new mountaintop mining permits until a new draft EIS is written that will:

- 1) Include all relevant research and provide for the avoidance of key Cerulean Warbler habitat and provide significant environmental protection for other PIF priority species and FWS Birds of Conservation Concern,
- 2) Address the requirements of EO 13186,
- 3) Review and revise forest loss estimates and the analysis of cumulative impacts,
- 4) Provide environmentally sound alternatives that will reduce the impacts of mountaintop mining on aquatic and terrestrial communities.

This moratorium should continue until a final EIS is adopted with an environmentally acceptable alternative.

We appreciate the opportunity to comment on this Draft Environmental Impact Statement. This letter is being submitted via email. A paper version will follow.

Respectfully submitted,

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#### References:

Executive Order 13186. January 10, 2001. Responsibilities of Federal Agencies to Protect Migratory Birds. (Attached)

Holl, K. D., C. E. Zipper and J. A. Burger. 2001. Recovery of native plant communities after mining. Virginia Cooperative Extension Publ. 460-140. [Online version available at <http://www.ext.vt.edu/pubs/mines/460-140/460-140.html>. A copy of this paper was sent to Mr. Forren, January 2004, with the comments prepared by the American Bird Conservancy Policy Council.]

Northeast Working Group of Partners in Flight, Steering Committee. April 2003. Draft Comments for the EIS on Mountaintop Removal Mining/Valley Fills draft EIS. (Attached)

Rosenberg, K. V., S. E. Barker, and R. W. Rohrbaugh. 2000. An atlas of Cerulean Warbler populations: Final report to the U.S. Fish and Wildlife Service. December 2000. [Online version available at <http://birds.cornell.edu/cewap/cwapresults.htm>. A copy of this report was sent to Mr. Forren, January 2004, with the comments prepared by the American Bird Conservancy Policy Council.]

Siddell D. 2003. Recent Tennessee Permits. Supervisor, Technical Group, Office of Surface Mining, Knoxville, TN email communication 11/04/03 [A copy of this memo was sent to Mr. Forren, January 2004, with the comments prepared by the American Bird Conservancy Policy Council.]

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U.S. Fish Wildlife Service. 2002. Birds of conservation concern 2002. Division of Migratory Bird Management, Arlington, Virginia. 99pp. [Online version available at <<http://migratorybirds.fws.gov/reports/bcc2002.pdf>>. A copy of this paper was sent to Mr. Forren, January 2004, with the comments prepared by the American Bird Conservancy Policy Council.]

U.S. Fish Wildlife Service. 9/20/02. Comments on Draft MTM/VF EIS of Chapter IV (Alternatives). [A copy of this memo was sent to Mr. Forren, January 2004, with the comments prepared by the American Bird Conservancy Policy Council.]

USGS. 2003. The North American Breeding Bird Survey Results and Analysis, 1966 - 2002. <<http://www.mbr-pwrc.usgs.gov/bbs/bbs.html>>. Relative abundance maps. [See Figure 1 in comments sent to Mr. Forren, January 2004, by the American Bird Conservancy Policy Council]

Weakland, C. A. and P. B. Wood. 2002. Cerulean Warbler (*Dendroica cerulea*) microhabitat and landscape-level habitat Characteristics in southern West Virginia in relation to mountaintop mining/valley fills. Final Project Report submitted to USGS Biological Resources Division, Species-At-Risk Program. [Available online at <http://www.forestry.caf.wvu.edu/pWood/>>. A copy of this paper was sent to Mr. Forren, January 2004, with the comments prepared by the American Bird Conservancy Policy Council.]