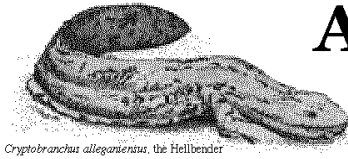


From Jim Kleissler Allegheny Defense Project (814) 223-4997 Wed, Aug 15, 2001
To Kevin Elliott Allegheny National Forest 814726-1465

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Allegheny Defense Project

Protecting and Restoring the Forests of the Allegheny Bioregion

August 15, 2001

BY FACSIMILE

Re: FOIA on "Objections"
Allegheny National Forest Oil and Gas Development

Kevin Elliott, Supervisor
Allegheny National Forest
PO Box 847
Warren, PA 16365
(814) 723-5150

Dear Supervisor Elliott,

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. Section 552, et seq., and on behalf of the Allegheny Defense Project, Inc., and our Supporters we would like to make the following request. All of the following materials are necessary for review of Allegheny National Forest Oil and Gas Developments. Additionally, these documents will be used in our attempts to educate the public in a reliable and factual manner about the Allegheny National Forest Oil and Gas Developments and how the Forest Service has served as a steward over these lands. The developments include all active and proposed development of federal and/or private minerals held within Elk, Forest, McKean, and Warren counties in Pennsylvania.

We request copies of all of the followings records and documents:

- 1) All documents, records, files (and their contents), photographs, video tapes, surveys, reports, memorandum, applications, letters, notices, notes (electronic, handwritten, or otherwise), meeting minutes, media publications, implementation guidelines, graphs, charts, maps, spreadsheets, maps, plats, phone notes, correspondence with the company, correspondence with the U.S. Forest Service, correspondence with the PA Department of Environmental Protection and U.S. Environmental Protection Agency, correspondence with any other publics, agencies, or corporations, data, and all other documents related to "objections" filed pursuant to Section 202 (a) of the 1984 Pennsylvania Oil and Gas Act (58 P.S. § 202 (a)) or filed pursuant to Section 78.21 of the Commonwealth's implementing regulations (25 Pa. Code § 78.21 (a).) Please be sure to include any and all documents describing the reasons for the objection.

We also request that waiver of fees be granted for this request. The Allegheny Defense Project, Inc., is a non-profit tax-exempt corporation based in Clarion, PA. This request is being made pursuant to the Freedom of

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Allegheny Defense Project, P.O. Box 245, Clarion, PA 16214; (814) 223-4996
(814) 223-4997 fax; adp@envirolink.org; www.alleghenydefense.org

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Information Act (FOIA), 5 U.S.C. Section 552, et seq. Our Supporters, Staff, and Board members use the Allegheny National Forest for recreation and aesthetic enjoyment. We have an active interest in the conservation of the environment and all of its components including clean air, clean water, conservation of plants, wildlife, soils, and biodiversity, and the economic benefits reaped from preservation of our forests.

The FOIA provides for a waiver of duplication and search costs incurred during the fulfillment of a FOIA request if the disclosure will be used to further the public interest. We request that all duplication charges and search costs be waived. The information requested will be used to educate the public about the nature of the development of minerals on Allegheny National Forest lands. Currently that activity lies heavily under a cloud of obscurity. We are concerned that the oil and gas industries are severely damaging our publicly owned forests, the habitat that they provide for threatened and endangered species, and the drinking water that they provide for our communities.

The management of Pennsylvania's national forest lands for extractive purposes such as oil and gas, is a primary concern of our organization. The public, however, is mostly unaware of the nature of these activities. Therefore we are requesting these records as part of an effort to learn more about oil and gas activities on the ANF and the actions that the Forest Service does or does not take to protect the public forest lands so that we may assist in providing the public a greater understanding of these activities. Our organization uses a number of outlets to educate the public about the extractive operations on our national forest. All of these outlets have proven effective. These outlets include media releases, a newsletter with a current distribution of 1,200, internet listserves, our web page, presentations at Community Centers, universities, conferences, demonstrations, and other public speaking engagements, special publications geared to educate the public on specific topics of interest, and so forth. One special publication has been distributed to over 10,000 people. We further use these materials to become better involved ourselves in public participation activities as they relate to management in the Allegheny National Forest – in this case to oil and gas exploration impacts on endangered species habitats in the Allegheny.

The ADP has been very successful in the dissemination of information, including media coverage obtained through FOIA. One FOIA request to the Forest Service, for example, resulted in an *Erie Times-News* article that ran on the front page of the Region section of the Sunday paper. A detailed, comprehensive look at media coverage can be found in a FOIA appeal we filed in December of 1999 with the U.S. Forest Service Chief's Office. Recently, the *Philadelphia Inquirer* ran a front page article that included a photo of active road construction related to oil and gas development. Finally we have made previously obtained findings from FOIA requests available in our office and via our web page. In addition, we are highly recognized within the conservation community for our work and as a source of information. As such, we are frequently asked to speak about national forest management issues including oil and gas development at a variety of events. Recently, members of our staff have spoken in regard to oil and gas issues on a panel at a national environmental

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conference as well as at a press conference at the National Press Club in Washington, D.C.. We contributed significantly towards a legislative report on Eastern Forests put together by the American Lands Alliance (http://www.americanlands.org/forestweb/eastern_white_paper.htm). We also recently completed a video documenting issues related to oil and gas development on the Allegheny National Forest.



To specifically address the fee waiver requirements under FOIA we've included the following responses as they relate to regulations adopted by the Department of Agriculture. For these same reasons, we meet the obligations for a fee waiver under the rules of the Department of Interior.

Regarding 7 C.F.R. Part 1, Appendix A Section 6 (a) (1) (i), the operations/activities of the government that are involved here are the activities of oil and gas operators on our federal public lands, the Allegheny National Forest. Of consequence is the manner in which activities on the Allegheny National Forest are managed for the public good. This includes the permitting and green sales of timber for oil and gas operations by the U.S. Forest Service as well as the review of endangered species concerns by the U.S. Fish and Wildlife Service. In this case, the administration of requests to drill is of the utmost importance.

Regarding 7 C.F.R. Part 1, Appendix A Section 6 (a) (1) (ii), the "likely to contribute" standard is easily met here. The media coverage and intensive public interest has been displayed through the *Philadelphia Inquirer* article referenced above. There is another significant article related to oil and gas development in the works. Your office is already familiar with the public interest in this matter. There have been regular news articles in the Allegheny National Forest region on the topic and our organization has shown a competent ability to disseminate this type of information. Recreationists and wildlife lovers on the Allegheny National Forest have been gravely concerned about the negative consequences of oil and gas development on endangered species habitats.

Regarding 7 C.F.R. Part 1, Appendix A Section 6 (a) (1) (iii), the standard of demonstrating our ability to distribute this information is readily satisfied. Besides making the requested information available to the outlets discussed above we will be making it available through workshops, speaking engagements, our offices, and more. We have a very active membership which includes citizens in Ohio, New York, Pennsylvania, New Jersey, and beyond. Many of these folks are in communication with students, professors, ecologists, economists, and other professionals, and American citizens from all walks of life. Our newsletter, the *Hellbender Journal*, which has a current distribution of 1,200 copies, will publish articles relating to these requests. An article (on previously released documents) in the *Hellbender Journal* resulted in an article in the *Erie Times-News* Sunday edition which has a wide distribution. Erie is the fourth largest city in Pennsylvania. Distribution of the *Hellbender Journal* is rapidly picking up. We have also distributed information on the Allegheny National Forest in a world-wide publication with a total of 9,000 subscribers and in a video produced specifically in relation to oil and gas development. Of great concern here is how the Forest Service is responding to private corporate efforts to develop minerals on the national forest.

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Regarding 7 C.F.R. Part 1, Appendix A Section 6 (a) (1) (iv), this standard is easily met. A public which is most unaware of these activities, is also very interested in them. This information will be used to further the public understanding of what actions the Forest Service taking to better conserve our public forest lands.

Regarding 7 C.F.R. Part 1, Appendix A Section 6 (a) (1) (v), the commercial interest standard is easily met here. The Allegheny Defense Project, Inc. is a registered 501 (c) (3) non-profit organization. We have no commercial interests whatsoever. This has been confirmed through our non-profit status with the Commonwealth of Pennsylvania, as well as the Internal Revenue Service. We are registered as a Charitable Organization with Pennsylvania as well.

Regarding 7 C.F.R. Part 1, Appendix A Section 6 (a) (1) (vi), this standard does not apply because the previous standard does not apply. Specifically, the information requested will benefit the citizens of the United States and is for the purpose of public education and to encourage public debate on significant policy issues. The requested information will be made available to the public through the office of Allegheny Defense Project in Clarion, PA. Our office is utilized by university students, grassroots conservationists, journalists, scientists, and the general public. Information available through the Allegheny Defense Project is used in press conferences and releases, media interviews, publications including our newsletter, and reaches a significant number of individuals nationwide. The language of the FOIA clearly indicates that Congress intended fees not to be a barrier to private individuals or public interest organizations seeking access to government records. In addition, the legislative history of the FOIA fee waiver language indicates that Congress intended a liberal interpretation of the phrase "Primarily benefiting the public." This suggests that all fees are to be waived whenever the release of information contributes to public debate on important policy issues. This has been affirmed by the US Court of Appeals for the District of Columbia, in *Better Government Association v. Department of State*, 780 F. 2d 86 (D.C. Cir., 1986). In that case, the Court found that under the FOIA, Congress had explicitly recognized the need for non-profit organizations to have free access to government documents and that government agencies cannot impair this free access by charging duplication or search fees for FOIA information requests (Id. at 89).

In addition to the needs listed above, we need these records to ensure compliance with state, local, and federal laws as oil and gas development increases on the Allegheny National Forest. We will use these records in order to formulate public comments and as sources for information on how these proposed actions may impact our national forest and its watersheds. We also will use this information to develop better solutions to the oil and gas management problem on the Allegheny National Forest and to identify what changes in Forest Service policy are needed before conservation of our national forests is possible.

We anticipate no additional delay in granting this fee waiver request. We anticipate hearing from you within 20 working days or less. If you have any additional questions, please don't hesitate to contact our office. Thank you for your prompt attention to this request.

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For a wild Allegheny,



James Kleissler
Forest Watch Director

Wendy Dobrowolski
Forest Watch Coordinator

Rachel Martin
Outreach Program Director