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Randy Moore, Chief of the Forest Service

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Dear Chief Moore:

We are citizens who are greatly concerned about the continued deceptions and secrecy by officials at the Land Between the Lakes National Recreation Area. Since the events surrounding the handling of the Tornado Salvage, we have found a continued pattern of troubling actions from this district and are still unable to bring many of them to resolution.

In our longstanding attempt to bring to light the workings of the agency during the Tornado Salvage, we inadvertently learned of the Farm Bill Insect and Disease Treatment Area Designation for Region 8 authorization for the LBL, an authorization of tremendous significance that had been around for over a year and had been kept essentially secret from the public and the Land Between the Lakes NWR Advisory Board.

This authorization was promulgated on March 18, 2022. We learned only about the 86,167-acre emergency authorization in April after an attorney for the Center for Biological Diversity found it researching in the greater Forest Service's database for the drafting of a formal complaint by several organizations that was eventually sent to this office in April Of 2023. We were stunned to discover this document and found it ironic that its discovery only happened as part of a long campaign for transparency in the Tornado Salvage. Unfortunately, ironies such as this are part of the history of the LBL.

This authorization for undefined treatments is justified in the letter as follows:

I have determined the areas you requested under Section 602 meet one or more of the following criteria:

- *The area is experiencing decline of forest health based on annual forest health surveys;*

- *The area is at risk of substantial tree mortality over the next 15 years based on the National Insect and Disease Risk Map; or*
- *The area is one in which hazard trees pose imminent risk to public infrastructure, health, or safety.*

We were surprised at these stated categories, as none of them fit conditions on the ground. The LBL is a healthy second growth forest that is gradually taking on the high biodiversity values that are characteristic of an old growth forest. If the agency will simply allow these natural processes to take place i.e. passage of time, the LBL will be a shining exemplar. The Core Areas stand as a testament to the importance of the LBL as a forest that emphasizes its wild characteristics.

Beyond that, we have no further information on what is far and away the largest potential acreage of agency action since its takeover of the LBL in 1996. We could go into the basic standards of public accountability that is expected of this agency- this list is well covered our original letter to you on May 4, 2023 regarding the Tornado Salvage: duty to post important agency documents on its site, adequate communication with the public, public comment, information in depth, and more.

However, there is another disturbing aspect to this lack of communication in that the Advisory Board was kept in the dark. This is a violation of the principles of the Federal Advisory Committees Act (FACA) and it is an outrage that over a year and a half since this authorization that neither they nor the public has basic information about such a major decision.

We first raised concerns about this in writing in our May complaint attached here. We also requested through email and in person to find out more. Specifically, we want to know

- What are the conditions that triggered this “emergency authorization”?
- What are the studies or field work that justified it?
- Where are these areas specifically located? Where’s the map?
- What are the criteria for logging? The conditions, levels of “unheathiness”, volumes of logging, etc?
- How long is this authorization granted for?
- What public reporting standards are in place?
- What mitigation standards are required?

Our June 1 meeting with then Supervisor Whalen and Ranger Westbrook yielded no information, beyond a statement from Ranger Whalen, “Just because we have an authorization doesn’t mean we have to use it.” Ranger Westbrook, who has been essentially the functioning officer for the last seven years across numerous interims, gave no explanation.

The agency finally published the authorization on its website this summer.

here: <https://landbetweenthelakes.us/wp-content/uploads/2023/04/2022-Designation-Letter.pdf>

Concerns about the authorization have continued through a Freedom of Information Act (FOIA) request in April to get to the bottom of the salvage. Over the course of the following months the agency has sent three releases of material. The only significant mention about the source of the 86,167 acre authorization is an email from Whalen asking staff for an answer to our entreaties regarding the authorization. The replay does nothing more than restate that this is an HFRA authorization and divides the acreage by state in a table.

This authorization is a blank check that this agency is sitting on.

The agency has used all kinds of rationales in the past to justify logging, such as the “oak decline” reasoning that dates back to the 2006 Land Resource Management Plan. We can assure that oak decline is not an issue at the LBL: after years of requesting, we have recently received the FSVEG maps and data for the forest after years of trying and by putting up their data on a CSV/Excel spreadsheet, their own data shows that 80% of the forest is classified as one of the FSVEG system -classified oak dominant or oak co-dominant forest types. We are happy to send this data if needed. We are not familiar with any other forest in the region where oak is so overwhelmingly dominant. This “decline” argument really is nothing more than a transferring of an argument and its corresponding silvicultural and restoration agendas from other forests in Region 8 where there may be some applicability to one that is a “poor fit”. Attempts to put this argument to use in the aborted Pisgah Bay sale were rightly met with tremendous public opposition from locals who could see with their own eyes what the current conditions of the forest are.

The agency has also faced embarrassing public backlash over its failed 8600 Oak Grassland project, which after years of attempts, little success, and poor Monitoring and Evaluation, is another example of how the agency’s interpretation of land conditions and needed prescriptions come up short. It is also an example of how concealing its intentions from the public can invite mistrust: even while the agency was publicly saying that there were no plans to expand the 8600 experiment in 2015, a Freedom of Information Act (FOIA) request by Kentucky Heartwood found evidence that the agency was wanting to expand its open habitats experiments project areas of 10,000 acre size - an embarrassment to the agency that did much to prompt reforms and amendments to the Land Between the Lakes Protection Act.

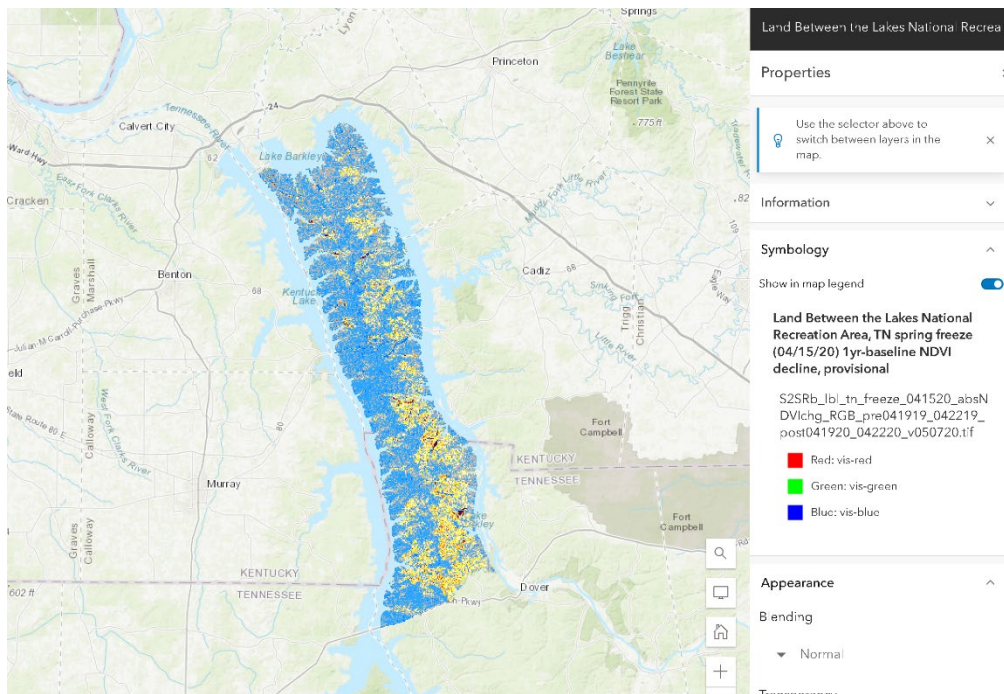
Then there is the 2020 late winter frost that nipped tree buds in parts of the forest that Ranger John Westbrook called possible “oak decline”. An occasional seasonal event is not a long-term trend or a crisis. However, Ranger Westbrook sent an email to Jim Scheff of Kentucky Heartwood detailing the agency’s alarm at this event.

Something has just been brought to my attention and I wanted to share. It appears that we have so[me] type of oak decline or pathogen affecting large areas of oak forest types. I have no idea.. what it is at this point nor what needs to be done. But if it is truly a pathogen, we will need to act rapidly to conserve the remaining forest. Please give me a call or email me so we

can begin to come up with a collaborative plan to deal with this. I'm sure whatever that plan may be, it will have to include large scale harvesting and other methods to buffer the impacted areas.

Mr. Scheff shared the letter of concern with several of us, and a few of us went to the areas of concern days later. We observed what appeared to be simply the effects of late frost, and sent a letter to Ranger Westbrook, which also sought to clarify what our understanding of "oak decline" is- a theory of long-term forest composition shift based a supposed confluence of land use and ecological changes at a landscape scale- something that is certainly not happening at the LBL. (Even Ranger Whalen in our spring meeting found the argument of oak decline at the LBL to be wrong)

We did not get a response to the letter, but sometime later, a search of maps published on ArcGIS Online and found this Normalized Difference Vegetation Index or NDVI rendering from that spring. This map was apparently generated by agency staff:



Archive of this layer here:

<https://tnheartwood.maps.arcgis.com/home/item.html?id=d79923f886654d419f38ee2f1edc1295>

We do not know if this snapshot of vegetative conditions shortly after the frost is somehow one of the supposed reasons that initiated the Emergency Declaration request. If so, we can assure the agency that no catastrophic decline has happened to this forest from the 2020 frost and the

three springs that have followed have given ample time for these trees to recover, as shown by a July 31, 2023, Vegetation Index rendering on Sentinel Hub. Aside from what is a mosaic of stand replacement and mixed intensity canopy openings from the December 2021 tornado – an unfortunate but natural forest regeneration driver- there is no forest health emergency encompassing the thousands of acres that this authorization designates. We would like to know what role, if any, this frost event has played in the declaration.



The Legitimacy of “Emergency”

We are addressing the past actions of this district to highlight a pattern of increasingly implausible attempts to legitimize logging under the abuse of “forest health” and “restoration” provisions and continues with the current attempts to undertake a massive end-run around NEPA itself. NEPA has warnings about invoking emergency to avoid traditional legal processes for significant agency actions:

40 USC CFR § 1506.12 *Where emergency circumstances make it necessary to take an action with significant environmental impact without observing the provisions of the regulations in this subchapter, the Federal agency taking the action should consult with the Council about alternative arrangements for compliance with section 102(2)(C) of NEPA. Agencies and the Council will limit such arrangements to actions necessary to control the immediate impacts of the emergency. Other actions remain subject to NEPA review.*

The legitimacy of the “emergency” claim here has been undermined by a lack of temporal “immediateness”, but perhaps more by the sheer scale of concealment surrounding the authorization itself despite the exhaustive attempt by the public to convince this agency to show its cards indicate that the agency has something to hide. It is trying to run out the clock either in hopes of exhausting public attempts at transparency and/or is post-hoc trying to generate a credible “science” narrative to justify the designation that it never had in the first place.

And while we must be speculative at this point because we don’t know yet what “treatments” are in mind for this authorization, we can assume that it involves logging of “undesirable” trees, whether due to being “off site” or “damaged”. If this is indeed the case, even if we dispense whether this is a good thing or not, this is no more pressing than the rationales behind hundreds of EA and EIS level projects that undergo full NEPA analysis and processes.

What Is the Future of this Authorization?

Returning to then-Supervisor Whalen’s statement that an authorization does not mean that it will necessarily be used, the public still needs to know the basic information about this document’s origin, status, mandate, and breadth. **We request that the following questions receive clear, definitive answers to us and be published on the district’s website:**

- What are the conditions that triggered the request for this authorization?
- What is supposedly problematic about the current forest conditions of the LBL? This **MUST** be supported by substantive on the ground data that reflects long-term Monitoring and Evaluation trends. This is particularly important, *as the agency has been deficient for years in its own M and E*. Without serious research and evidence of such depth, an authorization of this breadth cannot go forward. Considering that the agency has been unable to provide either demonstrable success or adequate M and E of the 8600 Project over the course of 25 years, our concerns here are more than warranted. **It is on the agency** to justify action rather than no action.
- Who requested it and when?
- What are the supporting pieces of evidence for the conditions at the LBL that satisfied in the agency’s mind that such an authorization was warranted?
- What actions are mandated by this authorization?
- What guidance, criteria, and limitations are given to the local officers who implement such actions?
- What public communications are required if such actions are planned?
- What public comment/participation is required if such actions are planned?
- What are the reporting procedures to the agency and the public are mandated if actions take place under this authorization?
- What monitoring and evaluation standards are required?

- What is the “sunset” for this authorization i.e. What is the time limitation or conditions that end this authorization?
- If it is a condition- based “sunset”, what procedures of monitoring and reporting are required of local officials so that the agency can determine that the “emergency” has ended?
- What is the status of the Core Areas in this authorization? As we have addressed in our communications regarding the Tornado Salvage, the Core Areas are designated in the LRMP as serving as ecological baseline where natural processes are the governing “land management”.

And we must ask that two more questions be answered:

- ***Why was this authorization withheld from the public and the Advisory board when it was promulgated?***
- ***Why has the basic information that would accompany any declaration of this stature been continuously withheld for months and continues to be long after the public has been requesting it?***

To be blunt, there is no compelling ecological catastrophe requiring an emergency authorization for what is over a third of the acreage of this forest. While we can argue about the necessary extent of Tornado Salvage, this authorization is a different matter altogether. **We demand that this authorization be rescinded.**

The continued unwillingness of this agency to disclose its motivations for this authorization is troubling and leads to speculation that these motivations and judgement are not sound. Emergency declarations used in the matter become controversial when they are neither communicated well nor grounded in justifiable reasoning. When they aren’t, the public sees them as nothing more than a disingenuous way of getting around NEPA processes that otherwise maintain professionalism and accountability.

Reforms Are Needed Now

The Revolving Interim Door

It is impossible for the qualities of good leadership to take place with a revolving door of interim supervisors that typically do not last a year, particularly if they are cycling out of their tenure in the agency. The reasons are obvious: the learning curve for an unfamiliar district, a preordained eye to an exit, and an inability to plan and implement the increasingly long-term management commitments that are supposed to be part and parcel of agency buzzwords like sustainability and adaptive management.

And to be frank, accountability remains a tremendous problem at the LBL. When Ranger Westbrook came to the district during the tenure of yet another interim, he assured several of us that he was the true person in charge with authorization from the top. We have since taken him at face value that he is indeed the true line of authority. All significant communications with this district have been with him until this year when following increased public scrutiny, Ranger Westbrook told us to start communicating to whomever is the Supervisor. As this is perennially a position in flux, such communications can be of limited effectiveness.

It is time for the Forest Service to give more resources and seriousness to the Land Between the Lakes if this forest is to remain on the agency's jurisdiction. The constant rotation of interims perpetuates a climate with little accountability. There is a crisis of leadership at the LBL. The LBL needs good leadership- both in title and fitness for that title. That leadership needs to include transparency, accountability, the ability to follow NEPA and other federal directives, commitment to ecological science that goes beyond boilerplate, and to properly implement the LBL Protection Act and FACA mandates.

We have been told that the new Superintendent is meant to be more or less permanent. We'll see how this tenure unfolds. We strongly encourage you and the Regional Forester to work with the new superintendent to bring in a new professional culture to the LBL.

Transparency

As we have addressed earlier in this letter, transparency is a long-standing problem. Locals and conservationists have been kept in the dark for years about everything from projects to the Core Areas to cultural heritage sites. As we have detailed in earlier communications with local and regional offices, the level of transparency and disclosure is low compared to most other districts. This includes maintaining a clear SOPA (Schedule of Proposed Actions), sufficient information on its website that follows standard procedures of public comment time periods, access to information, quality records of its meetings, and more.

As we have mentioned earlier, if the Forest Service is to comply with its FACA/Advisory board commitments, it must have consistent meetings and communications with its members, and this includes things of real substance. Being kept in the dark about the emergency authorization is a serious infraction- and it still has not been truly amended to the public or the Board, as we still are in the dark about what prompted it.

Professionalism

As we have said, effective leadership is needed at the LBL. The district does not need interims who are incentivized to simply mark time until their tenure ends. It also needs leadership who conducts agency business in a professional manner. Irresponsible statements like Ranger

Westbrook's at a February 2023 meeting that he would get rid of every poplar and maple if he could from the forest do not build confidence in the public that serious engagement is happening. This was underscored by his threat that participants not record the meeting as it was "not an Advisory Board meeting" - either a misuse or misunderstanding of public engagement and of Advisory Boards. The LBL is long overdue for stable leadership who takes the agency's NEPA commitments seriously, understands the complexities of the LBL as a National Recreation Area, rather than as a National Forest, and holds high ethical standards.

It is long overdue for this agency to have an honest discussion at the national, regional, and forest level about its commitment to administering this forest by federal and agency standards. The "mistakes were made" and "we have heard you" defenses ring hollow by their sheer repetition coupled with inaction. It is time for leadership.

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