

**HEARTWOOD – NATURAL RESOURCES DEFENSE COUNCIL – SIERRA CLUB, BEYOND NATURAL
GAS CAMPAIGN – SOUTHERN ENVIRONMENTAL LAW CENTER – WILD SOUTH – ALLEGHENY
DEFENSE PROJECT – ATHENS CONSERVANCY – ATHENS COUNTY FRACKING ACTION
NETWORK – BUCKEYE FOREST COUNCIL – FRIENDS OF BLACKWATER – FRIENDS OF THE
MULBERRY WATERSHED – OZARK SOCIETY, BUFFALO RIVER CHAPTER – SIERRA CLUB,
ALLEGHENY GROUP – SIERRA CLUB, OHIO CHAPTER – WILD VIRGINIA**

July 17, 2012

Dr. John Lyon
Eastern States Office Director
Bureau of Land Management
7450 Boston Boulevard
Springfield, VA 22153

Re: Oil and gas drilling on National Forests in the eastern United States

Dear Dr. Lyon:

As technology has advanced, interest in oil and gas drilling in the central and eastern United States has dramatically increased. In 2009, for instance, there were more than 378,000 active gas wells in the central and eastern United States.¹ This represents an increase of over 50% from the number of active wells that existed ten years earlier. This development poses numerous risks to the environment and public health. Oil and gas drilling is an industrial activity that can have lasting effects on the character of previously undeveloped land. The process produces hazardous waste, gives rise to air and water pollution, and may fragment wildlife habitat. New drilling and extraction technologies often create even greater impacts on important resources, increasing the footprint of drilling activities and posing heightened risks of air and water pollution.

As you may know, the BLM Eastern States office has leased more than 430,000 acres in National Forests since the start of 2011. Another 32,000 acres of National Forest lands are proposed for lease in the upcoming BLM Eastern States Office September 13, 2012 lease sale. While the number of wells actually drilled on these Forests is not readily available, BLM data show that the number of wells spudded on federal lands in the Eastern U.S. (a large portion of which are National Forest lands) was 71% higher in the five year period ending in 2010 than during the previous five years.² To ensure that these resources are not irretrievably committed to development without proper consideration of the environmental consequences and of reasonable alternatives, further leasing should not go forward without changes in the leasing process.

¹ Energy Information Administration, Number of Producing Gas Wells by State.

² BLM Data: Number of Well Bores Started (Spud) During the Fiscal Year on Federal Lands. 137 wells were spudded from 2001-2005, while 235 wells were spudded from 2006-2010.

On April 16, the Southern Environmental Law Center filed a formal protest on behalf of the Natural Resources Defense Council and Wild South asking BLM to withdraw 36 parcels in Alabama's National Forests from the June lease sale. The protest of the Alabama parcels pointed to numerous deficiencies in the leasing process. Other protests, which raise similar issues, have also been filed recently in regards to proposed leasing in National Forests in Arkansas, Ohio, and West Virginia.³ In a number of these cases, the sale of leases was met with significant public outcry.⁴ This was due, in part, to the lack of any site-specific environmental analysis of leasing particular parcels and the failure to anticipate conflicts with important resources and public uses of the forests that would have been revealed by an opportunity for public input. While BLM has withdrawn some of these parcels, the agency has not yet worked with the Forest Service to fix the problems in the leasing process. Until the two agencies provide the environmental review and public participation required by law, protests and litigation are likely to continue. We outline proposed changes to the leasing process below.

The proposed changes are consistent with the oil and gas leasing reforms BLM adopted in 2010.⁵ At the time, BLM did not apply the majority of the 2010 reforms to areas in which other agencies manage the surface. Yet, similar actions to those taken in the 2010 reforms are needed for BLM to fulfill its legal obligations when leasing federal minerals in the National Forests. The changes proposed below will ensure compliance with the National Environmental Policy Act and other laws. The changes will further BLM's goals of ensuring early public involvement in the decision process, improving the determination of which lands are appropriate for leasing, and reducing lease protests and other conflicts.⁶ The changes will also further the Obama Administration's commitment "to creating an unprecedented level of openness in Government" by working to ensure transparency and public participation in decision-making.⁷ (NOTE: Some of the reforms in the 2010 Instruction Memorandum apply to all leasing. One of these requirements is that all BLM lease notices include a link to NEPA compliance documentation. BLM Eastern States Office does not appear to have included such links, and we ask that it do so for all future lease sale notices.)

Perform a Site-Specific Environmental Analysis with Public Involvement:

The National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321 *et seq.*, requires agencies to evaluate the environmental impacts of all federal actions which may significantly affect the human environment. This analysis must be performed prior to any irreversible or irretrievable commitment of resources. Leasing represents that critical stage of agency decisionmaking which results in an irreversible and irretrievable commitment of resources.⁸ In order to satisfy the legal requirements, the analysis must

³ See, e.g., Buckeye Forest Council et al, *Protest of Wayne National Forest Parcels* (Oct. 7, 2011); Newton County Wildlife Assn. et al, *Protest of Ozark National Forest Parcels* (Apr. 18, 2011); Friends of Blackwater et al, *Protest of Monongahela National Forest Parcels* (March 3, 2010) available at http://www.blm.gov/es/st/en/prog/minerals/protests_information.html.

⁴ In Alabama, for instance over 7,000 concerned citizens signed petitions opposed to the leasing and the State Senate passed a resolution opposing the lease sale. In Ohio, over 30 protests were received. Protesting parties included a range of environmental and community groups, as well as the Athens City Council, the Board of Athens County Commissioners, the Hocking River Commission, the Burr Oak Regional Water District, and Ohio University.

⁵ See Bureau of Land Management, Instruction Memorandum No. 2010-117, *Oil and Gas Leasing Reform – Land Use Planning and Lease Parcel Reviews* (May 17, 2010) available at http://www.blm.gov/wo/st/en/info/regulations/Instruction_Memos_and_Bulletins/national_instruction/2010/IM_2010-117.html.

⁶ See "BLM Director Bob Abbey on Oil and Gas Leasing Reforms," available at http://www.doi.gov/news/video/2010_01_06_video.cfm.

⁷ Transparency and Open Government: Memorandum for the Heads of Executive Departments and Agencies, 74 Fed. Reg. 4685, 4685 (Jan. 21, 2009).

⁸ See *Sierra Club v. Peterson*, 717 F.2d 1409, 1415 (D.C.Cir.1983). Note that BLM may defer a full NEPA analysis until the permitting stage if it disallows all surface disturbing activities by placing a "No Surface Occupancy" (NSO)

evaluate the *site-specific* impacts of oil and gas leasing.⁹ Yet neither the BLM nor the Forest Service has been undertaking the requisite site-specific analysis before leasing has occurred.

For NEPA compliance documentation, the BLM Eastern States Office appears to have relied on the environmental impact statements produced in conjunction with National Forest Land and Resource Management Plans (LRMPs), which usually make decisions regarding the lands open for oil and gas leasing. However, the analysis in these Environmental Impact Statements (EISs) is insufficient to comply with NEPA's requirement of a site-specific analysis. Forest plan EISs merely discuss the overall impacts of potential oil and gas development on a forest. They do not address the potential impacts of leasing on specific lands, habitat, watersheds, recreational opportunities, or species. BLM's obligations exist regardless of any consent to leasing that the Forest Service may provide. This consent does not waive BLM's legal obligations under NEPA.

In order to comply with NEPA in regards to areas where it manages the surface, in the 2010 reforms BLM instituted a policy of conducting an interdisciplinary review of lease parcels. In addition, BLM requires that an environmental assessment (EA), which includes a no action alternative, be performed in most cases.¹⁰ The interdisciplinary review and NEPA compliance process also ensures public participation, so that BLM staff are made aware of potential resource conflicts and other areas of heightened public concern. This process has reduced resource-intensive protests and litigation while ensuring the agency's compliance with the law. BLM Eastern States Office should work with the Forest Service to develop a similar interdisciplinary review process, including a site-specific environmental analysis, for leasing in National Forests.

Analyze Impacts of Unconventional Development and Hydraulic Fracturing When Foreseeable:

As technologies like deep horizontal drilling and high-volume hydraulic fracturing ("fracking") have become widely available, it has become economically feasible to extract oil and gas resources in many areas which had previously been thought to be inaccessible. Using these techniques, extraction of oil and gas from "unconventional" sources like shales has proliferated in many areas of the United States where oil and gas development was previously rare. These new extractive techniques, however, bring new environmental impacts, resource demands, and public health risks along with them. Unconventional oil and gas development has also brought industrial development to many areas which were not previously impacted by such activities.

Many National Forests in the eastern United States are within areas identified as current or potential unconventional oil and gas plays.¹¹ See attached map. When leasing is proposed in these areas, BLM and the Forest Service must take a hard look at the impacts that unconventional development and hydraulic fracturing might have.¹² This is especially true because most Forests' LRMPs and accompanying EISs were created before unconventional oil and gas development was widespread. As noted by the U.S.

stipulation on all parcels, however the agency has not chosen that course. *See also New Mexico ex rel. Richardson v. Bureau of Land Management*, 565 F.3d 683, 718-719 (10th Cir. 2009) (holding BLM was required to conduct NEPA analysis prior to lease issuance); *Southern Utah Wilderness Alliance*, IBLA No. 2000-358, 159 IBLA 220, 241 (Jun. 16, 2003) ("BLM regulations, the courts and our precedent proceed under the notion that the issuance of a lease without an NSO stipulation conveys to the lessee an interest and a right so secure that full NEPA review must be conducted prior to the decision to lease.")

⁹ *See Sierra Club v. Peterson*, 717 F.2d at 1414.

¹⁰ *See* Bureau of Land Management, Instruction Memorandum No. 2010-117, *Oil and Gas Leasing Reform – Land Use Planning and Lease Parcel Reviews* sections III.C & III .E (May 17, 2010).

¹¹ *See, e.g.,* U.S. Energy Information Administration, *Review of Emerging Resources: U.S. Shale Gas and Shale Oil Plays* 6, 33 (July 2011).

¹² *Pennaco Energy, Inc. v. United States Dept. of Interior*, 377 F.3d 1147, 1160 (10th Cir. 2004) (BLM must analyze impacts specific to coal bed methane drilling before issuing leases).

Energy Information Administration, for instance, shale gas development did not become widespread until at least 2006.¹³ Yet of the National Forests in the Eastern U.S. where oil and gas development is foreseeable, no Forest drafted its LRMP and EIS after 2006.¹⁴ None of the EISs provide a detailed analysis of the effects of unconventional oil and gas development or hydraulic fracturing.

It is widely acknowledged that unconventional development and fracking bring additional environmental impacts and allow more extensive oil and gas development than was anticipated prior to the emergence of these technologies. Additional effects include increased land disturbance and habitat fragmentation, impacts to surface and groundwater quality, additional release of air pollutants, and thousands of added truck trips. Additionally, we now know that the assumptions used by many of the EISs about the level of potential development are severe underestimates. Therefore, in order to comply with its obligations under NEPA, BLM must analyze the effects of unconventional development and hydraulic fracturing, or must ensure that such an analysis is prepared by the Forest Service prior to leasing, where it is reasonably foreseeable that these technologies will be utilized.¹⁵

Provide Maps and GIS Data for All Proposed Leasing:

BLM should also provide maps and GIS data for all proposed leasing. Currently, BLM Eastern States Office provides very few maps in its lease sale notices. For instance, in the March 2012 Lease Sale Notice, BLM proposed the leasing of 105 parcels in National Forests. No maps were included for any of these parcels. Likewise, in the June 2012 Lease Sale Notice, no maps were provided for any of the 80 parcels proposed for lease on National Forests. Maps of the National Forest parcels were requested from BLM Eastern States office but the requesters were informed that no such maps existed.

To comply with the Federal Onshore Oil and Gas Leasing Reform Act, BLM must provide maps of all parcels it proposes to lease, as well as all leases already issued in the general area.¹⁶ Its failure to do so is a violation of federal law. BLM also cannot realistically comply with its obligations under NEPA to conduct a site-specific environmental analysis of the effects of leasing without producing maps of the affected areas to inform its own review, as well as review by the public and surface management agencies such as the Forest Service.

In addition to providing maps, BLM offices in western states have developed the practice of making Geographic Information Systems (GIS) data available with lease sale notices.¹⁷ This data can be used by citizen groups to more thoroughly assess the impact of proposed leasing and alert BLM to conflicts that may arise with other forest resources, recreation, habitat, and species. Given BLM's duty to provide maps for all proposed leasing parcels and the ubiquitous use of GIS data in mapping today, the additional burden of providing the GIS files is extremely minimal. BLM should require a map and GIS data as a standard part of all lease parcel nominations. The agency should not move forward with any nominations that do not contain such information.

¹³ See U.S. Energy Information Administration, *Annual Energy Outlook 2011: Prospects for Shale Gas*, available at http://www.eia.gov/forecasts/aeo/IF_all.cfm#prospectshale.

¹⁴ A few forests are currently developing new forest plans, and the forests in Michigan, Ohio, and Indiana all completed their plans in 2006.

¹⁵ In some cases, it may also be necessary for BLM and the Forest Service to supplement the existing environmental analysis based on other new information, such as the level of development that may occur, in order to reevaluate leasing availability decisions in light of new information and circumstances regarding natural gas drilling in the east.

¹⁶ See 30 U.S.C. § 226 (f).

¹⁷ See, e.g., BLM Wyoming Office Competitive Oil and Gas Lease Sale Notices & Results, (providing links to GIS datasets for parcels in past and upcoming lease sales) available at http://www.blm.gov/wy/st/en/programs/energy/Oil_and_Gas/Leasing.html.

Thank you for your consideration of these matters. We look forward to working with BLM to improve the current leasing process to address conflict in uses before public resources are leased.

Sincerely,

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