

Wayne Open House Model Questions

Note: glossary located at end of document

Background:

- Nov. 2011: Wayne pulled parcels from Dec. 2011 gas/oil lease sale based on widespread protest; Wayne undertook an internal review, a Review of New Information (RONI).
- April 2012: Citizens became alarmed that the RONI seemed headed for new leases without an environmental impact study (EIS) and public input as required by federal law.
- May-July 2012: Community rally of close to 200 people, thousands of petition signatures, and dozens of meetings by citizens with Wayne officials indicate Wayne is not listening to public concern, law, or science.

Why we are here: to continue to convey concerns, science, and law to the Forest Service, BLM, ODNR, and OEPA during their “open house for gas and oil development.” Specifically, the National Environmental Policy Act (NEPA) requires that the Wayne consider, in an Environmental Impact Statement (EIS) *with full public input*, any significant impacts to the forest and the *region’s human environment*, including the local *economy*, from proposed actions before significant resources are committed—thus *before leasing*. Leasing is a significant commitment of resources. The EIS must evaluate *whether* to lease. A post-lease EIS obviously cannot consider whether this central question.

Questions:

I. The Wayne is responsible for protecting PUBLIC DRINKING WATER

1. How is the Wayne doing site-specific inventorying, delineating, and evaluating of groundwater and groundwater-dependent ecosystems, especially since Athens County groundwater is not mapped?

2. How can the FS be in compliance with the FS Managing Groundwater Resources directive (quote from excerpts below) when you have not inventoried groundwater resources or threats to groundwater from fracking in an EIS?

3. SE Ohio groundwater is not mapped. Will it be in time for you to assess its implications before you make your decision? Have you studied the Nelsonville Drinking Water Report and assessed the economic implications of your proposed actions on this *highly vulnerable* drinking water system?

Forest Service (FS) *Technical Guide to Managing Groundwater Resources* (FS-881, May 2007) states FS responsibility to protect public drinking water supplies is FS groundwater policy (FS Manual 2543). All Forest planning must consider this responsibility:

“The protection of all sources of public drinking water from contamination is a nationwide imperative, heralded by the Safe Drinking Water Act (SDWA) of 1974.

Many activities have the potential to contribute contamination to soils and ground water simply through the presence and use of fuels, oils, solvents, paints and detergents, and by the generation of solid or liquid wastes. Typical contamination sources on NFS lands include mines, oil and gas wells, landfills, and septic systems. Contamination of soils and ground water can be difficult, time-consuming, and expensive to address.

Although numerous Federal and State programs regulate activities that may release contaminants to soils and ground water, the implementation of these programs in rural areas generally lags behind that in urban areas. Because the release of even small amounts of stored chemicals or fuels may

substantially damage soil and ground water resources, efforts must be made to ensure that all Forest Service activities and facilities comply with regulations for preventing soil and ground water contamination. Similarly, efforts must be made to collaborate or partner with States, permittees, owners of in-holdings, and forest-bounded communities to institute appropriate ground water protection measures.

... Ground water inventories and monitoring data shall be integrated into the land and resource management process. When evaluating project alternatives or revising national forest plans, use the best available science, technology, models, information, and expertise to determine the location, extent, depths, amounts, flow paths, quality, and recharge and discharge areas of ground water resources and their hydrological connections with surface water.

Conduct appropriate National Environmental Policy Act (NEPA) analyses when evaluating applications for water wells or other activities that propose to test, study, monitor, modify, remediate, withdraw, or inject into ground water on NFS lands (see also FSH 2509).

Manage ground water-dependent ecosystems under the principles of multiple use and sustained yield, while emphasizing protection and improvement of soil, water, and vegetation, particularly because of effects upon aquatic and wildlife resources. **Give preferential consideration to ground water-dependent resources when conflicts among land-use activities occur.**

Delineate and evaluate both groundwater itself and groundwater-dependent ecosystems before implementing any project activity with the potential to adversely affect those resources.

Determine geographic boundaries of ground water-dependent ecosystems based on site-specific characteristics of water, geology, flora, and fauna.

Design inventory and monitoring programs to (1) gather enough information to develop management alternatives that will protect ground water resources, and (2) evaluate management concerns and issues expressed by the general public. **Assign high priorities for survey, inventory, analysis, and monitoring to municipal water-supply aquifers, sensitive aquifers, unique ground water-dependent ecosystems, and high- value or intensively managed watersheds.**

II. FS is responsible to consider CLIMATE IMPACTS when planning activities.

How is the Wayne considering the climate impacts of hydrofracking in weighing whether to lease further forest land for this new technology in consideration of the FS National Roadmap for Responding to Climate Change directives?

FS responsibilities, from *National Roadmap for Responding to Climate Change* (FS-957b, 2-11): “As the climate changes, the importance of America’s forests is bound to grow as a source of clean and abundant water. **A successful response to climate change will entail sound stewardship of America’s watersheds.**

- Assess the impacts of climate change **and associated policies** on tribes, **rural communities**, and other resource-dependent communities.
- Develop landscape-scale assessments, adaptation plans, and management strategies.
- Mitigation includes...Diminishing greenhouse gas emissions (for example, through the cooling effects of urban forests, which reduce the need for fossil fuels to run air conditioners) or through more prudent consumption in facilities, fleet, and other operations.
- ... Consider human communities
- **Maintaining the social health and economic prosperity of human communities is a vital part of landscape-scale conservation.** Humans shape and depend on forests and grasslands for a variety of benefits and are an intrinsic component of the landscape. Adaptation and mitigation strategies need to explicitly recognize the vulnerabilities of human communities to a changing climate. **Strategies should address how changing ecological and climate conditions, and associated policies, affect the array of ecosystem services** and products and economic opportunities **generated by forests** and grasslands.
- **Continuous environmental monitoring and incorporation of new science into planning, policies,**

and decision-making processes are critical to adaptation and mitigation in an uncertain climate future.

- *...Incorporating climate-related vulnerabilities and uncertainties into land management and project-level environmental analyses.*
- ...Develop new management strategies for reconnecting habitats, maximizing the habitat accessible to native species while minimizing the spread of unwanted species.
- *...Manage forest and grassland ecosystems to decrease fragmentation.*
- ...the Forest Service must be nimble, *willing to learn from mistakes*, and must incorporate lessons learned into future agency direction.”

III. LEGAL ISSUES:

1. How can a post-lease site-specific EIS satisfy NEPA requirement that you evaluate whether to lease? Have you studied case law supporting this requirement?

See *Pennaco Energy, Inc. v. U.S. Dept. of Interior*: BLM issued leases for coal bed methane ("CBM") extraction on public lands in Wyoming. A plan-level EIS for the area had not addressed the possibility of CBM exploitation, and a later EIS was prepared only after the leasing stage, and thus "did not consider whether leases should have been issued in the first place." Because the issuance of leases gave lessees a right to surface use, the failure to analyze CBM impacts before the leasing stage prevented the subsequent EIS from affecting the agency's decision. Accordingly, the **10th Circuit held that a supplemental EIS assessing the specific effects of coal bed methane was required before the leasing stage.** 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.**

2. How can a post-lease site-specific EIS meet NEPA requirements that the FS do an EIS before committing resources, which a lease entails?

Sierra Club v. Peterson, 717 F.2d 1409, 1415 (D.C.Cir.1983): 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) stipulation on all parcels; however the agency has not chosen that course. *Southern Utah Wilderness Alliance*, IBLA No. 2000-358, 159 IBLA 220, 241 (6-03) states, **"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."**

3. You state that because lands are "administratively open to leasing," you must lease. Yet the BLM policy issued in 2010 states, "While an RMP [Resource Management Plan, such as a Forest Plan] may designate land as 'open' to possible leasing, such a designation does not mandate leasing." Why have you not publicized this fact and followed its guidance?

IV. SCALE OF IMPACTS:

1. Has the FS considered National Park Service estimates of 1500 trucks per frack in evaluating impacts of this new technology on our communities, as it must do according to NEPA (National Environmental Policy Act)? How can a post-lease site-specific EIS evaluate cumulative impacts of this truck traffic through our community and on the air and forest itself?

2. How are you accounting for the 23 tons of volatile organic compounds emitted into the air from each well, which is 200 times the level if not fracked and is unregulated by Ohio law? Have you studied the recent Colorado School of Public Health report, which found

increased air emission-related cancer and non-cancer health risks for residents living within 1/2 mile of HF sites? **How can a post-lease site-specific EIS evaluate cumulative impacts of these air emissions on our community?**

3. **How are you assessing the potential impacts of vast volumes of undiluted chemicals (up to 200 tons per frack or 2000 tons per well or 20,000 tons per well pad) that will be trucked through our communities for your wells and the high rate of expected fatal truck accidents and chemical spills on Wayne public land?**
4. **How are you addressing the impossibility of preventing corrosion, well failure, spills, leaks, and accidents, especially given that *every single parcel you previously sought to lease is underlain with abandoned mines (and associated acid water, which corrodes cement and steel in decades)*?**
5. **What are you going to do with your waste, 150 times or more the quantity produced from vertically fracked wells? Why should our community absorb this waste? This is an externalized cost—you will be dumping toxic waste in our community to benefit the industry and China, which is likely to purchase the oil at the expense of the health and economic viability of our region. How can a site-specific post-lease EIS evaluate or limit the cumulative impacts of this waste?**
6. **Gathering lines:** According to The Nature Conservancy (TNC), cleared HVHF rights of way range between 30 to 150 feet, but average 100 feet in width. An average of 1.65 miles of gathering pipeline is required per HVHF well site. According to TNC, each “mile of a 100-foot-right-of-way directly disturbs ... approximately 12 acres and creates an additional 72 acres of new forest edges.” In short, *gathering pipeline construction is perhaps the single largest source of surface disturbance associated with HVHF. The 2006 Wayne Forest Plan and EIS failed to give any consideration to gathering line disturbance.* **How can a post-lease site-specific EIS evaluate the cumulative impacts of these gathering lines?**
7. **Well sites:** Clearance for wellpads involves 10 acres or more. Edge effects amount to 21.2 acres on average, for a total average of 30 acres of surface destruction per well pad. **How can a post-lease site-specific EIS evaluate the significance of cumulative impacts of such edge effects and land destruction?**

V. Science and evidence of harm:

1. **What resources are you using to educate yourselves about HVHF? What scientific studies have you assessed?**
2. **Are you following Dimock and Bradford County PA contamination cases and cases there and in Colorado and elsewhere of human, pet, and livestock illnesses and deaths?**

VI. Obfuscation:

1. **Why do you state that there is “no interest” when this process of extensive and on-going community concern began last year based on an Expression of Interest and hundreds of leases for fracking Athens County land have since been signed?**
2. **You state that because lands are “administratively open to leasing,” you must lease. Yet the BLM policy issued in 2010 states, “*While an RMP [Resource Management Plan, such as a Forest Plan] may designate land as ‘open’ to possible leasing, such a designation does not mandate leasing.*” Why have you not publicized this fact and followed its guidance?**

VII Questions about a post-lease EIS:

In the event the plan-level EIS is not supplemented and only a post-lease site-specific EIS is done in relation to each individual permit application:

Who writes the contract for operator leasing?

If it is the BLM, does the Wayne have any input into the contract?

In what ways can the provisions of the contract be limited by the Wayne by means of a site-specific EIS?

- Limitations on air pollution?
- Limitations on truck traffic?
- Limitations on road construction—location and quantity?
- Limitations on on-site burial of mud and cuttings from fracking (HVHFF) operations? Can this be prohibited?
- Limitations on open pit storage of flowback and produced water? Can this be prohibited?
- Limitations on location, construction and existence of pipelines, air compression stations, electric utility lines—Can these be prohibited?

Will Wayne personnel have oversight and monitoring authority for the fracking (HVHF) operation during its construction? During its operation?

Glossary:

BLM: Bureau of Land Management, which administers leasing once Wayne gives its permission to lease

EIS: Environmental Impact Statement

FS: U.S. Forest Service

HVHF: Deep-shale drilling and high-volume horizontal hydraulic fracturing

NEPA: National Environmental Policy Act

OEPA: Ohio Environmental Protection Agency

ODNR: Ohio Department of Natural Resources administers Ohio oil and gas laws and permits wells -- with no environmental factors considered, according to Ohio law

RMP: Resource Management Plan (such as Forest Plans)

RONI: Review of New Information, an internal process with no public input. Does not meet NEPA requirements for environmental and economic evaluation.

WNF: Wayne National Forest

Wayne Forest Plan: last done is 2006. According to NEPA, all Forest actions must comply with most recent plan. The 2006 Plan and its EIS did not evaluate HVHF.

For more information, contact acfanohio@gmail.com or visit ACFAN.org