



Buckeye Forest Council

*Protecting Ohio's native forests and their
inhabitants through education, advocacy, & organizing*

November 13, 2015

Kurt Wadzinski
Planning & Environmental Coordinator
BLM-Eastern States
Northeastern States District Office
626 East Wisconsin Avenue, Suite 200
Milwaukee, Wisconsin 53202
kwadzins@blm.gov

Tony Scardina
National Forest Supervisor
Wayne National Forest
13700 US Highway 33
Nelsonville, OH 45764
ascardina@fs.fed.us

*RE: Protest of the Bureau of Land Management's Notice of Competitive Oil and Gas Lease Sale in
Wayne National Forest*

Dear Mssrs. Wadzinski and Scardina:

The Buckeye Forest Council ("BFC"), Heartwood, the Center for Health, Environment and Justice ("CHEJ"), Athens County Fracking Action Network ("AFCAN"), Appalachian Ohio Group of the Sierra Club ("AGSC"), and the FreshWater Accountability Project ("FWAP") hereby object to the Federal government's plans to commence leasing of some 31,000 acres of Federally-owned mineral rights underneath Ohio's Wayne National Forest. These groups object for reasons set forth in this letter, ahead of the three public information sessions planned by the Forest Service ("FS") and Bureau of Land Management ("BLM") which are slated for November 17-19, 2015. Because the purpose of the meetings is unclear, participation in them by the undersigned organizations may not be considered to waive strict adherence by BLM and FS to the National Environmental Policy Act ("NEPA").

The November 1, 2015 Public Notice of the meetings was riddled with errors, including specification of a date that did not correspond with the day stated, a nonworking webpage link, and inconsistent acreage sizes. By the notice, the FS and BLM announced these three meetings for purposes of providing information on the leasing proposal and to solicit "feedback" from interested parties. A Forest Service

official described the meetings as “sort of” scoping hearings. However, no project details were provided in the Notice nor have they been otherwise made available. Based on currently available information, it appears that the BLM is recommending four fracking sites in the Marietta unit, and that the FS is apparently going to conduct piecemeal Environmental Assessments, site-by-site, without there ever having been a legally-sufficient Environmental Impact Statement performed at the programmatic level. Mr. Wadzinski has told us that there are some 80 Expressions of Interest to frack in the Wayne. If even a small percentage of those requests are cleared and recommended by the BLM, there will be sizeable footprint and environmental effects.

We believe the present approach is a continuation of the concealment from public view of fracking plans that began with the shallow and incomplete 2006 Final Environmental Impact Statement, which deferred much NEPA scrutiny for later in the site-selection process.

Federal government environmental analyses of the Wayne - the 2006 FEIS and 2012 Supplemental Information Report (SIR) - were poorly conceived and inadequate. The SIR was hidden from the public, and as explained later, is considered by the BLM itself as outside of BLM’s responsibility to comply with NEPA. Both the FEIS and the later review revealed FS’ and BLM’s extraordinary minimization of the monstrous implications of industrializing Ohio’s premier public forest via horizontal hydraulic fracturing.

We hereby demand that the BLM and Forest Service formally convert this current proceeding, whatever it is, into one aimed at producing a comprehensive forest-wide EIS which finally exposes, and causes rejection of, this risky profiteering gambit which threatens to destroy public assets and health for fossil energy that must be left in the ground.

The FS, at p. 1-7 (15/416 of .pdf) of the 2006 FEIS, calls the FEIS and its accompanying long-range management plan, or “LRMP” “a management guide” that “should not be viewed as the ‘final word’ on management of the Forest, but rather will be amended and ultimately again revised as the need for further change arises.” The FEIS further explains that the 2006 plan does not mandate any site-specific decisions, nor does it propose or select any specific project (“Subsequent site-specific environmental analysis will occur prior to any ground disturbing, site specific project proposal. . . . Public involvement is a key part of site specific project development”). *Id.*

Neither the BLM nor the FS can credibly maintain “that oil and gas leasing of the specific lands has been adequately addressed in a NEPA document, and is consistent with the Forest land and resource management plan,” which is the requirement of 30 C.F.R. § 228.102(e)(1). The regulation mandate that:

If NEPA has not been adequately addressed, or if there is significant new information or circumstances as defined by 40 C.F.R. § 1502.9¹ requiring further environmental analysis, additional environment analysis shall be done before a leasing decision for specific lands will be made. If there is inconsistency with the Forest land and resource management plan, no authorization for leasing shall be given unless the plan is amended or revised. *Id.*

But, the 2006 FEIS/LRMP provides no standards and guidelines to bound exploitation of oil and gas in the Wayne. The 2006 FEIS/LRMP dismissed the need to provide deep analysis of the environmental effects from fracking with the conclusory, unverified statement that “**[w]ith current technology, most remaining oil and gas deposits in Ohio, and particularly on the Wayne, are considered to be economically recoverable only where surface occupancy is permitted.**” FEIS p. 1-22 (p. 30/416 of

¹Where significant new circumstances or information arise after the completion of an EIS, NEPA requires the preparation of a supplemental EIS. *See* 40 C.F.R. § 1502.9(c)(1). An agency must prepare a supplemental EIS when “[t]here are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.” *Id.* § 1502.9(c)(1)(ii).

.pdf)(emphasis supplied). The FS further opined in 2006 that since “only 12 wells out of 1,704 permitted during the 10 year period were directional wells, . . . that this type of technology is still not yet economically feasible within the WNF.” The rapid expansion of directionally-drilled fracking on private and public lands elsewhere in southeast Ohio since 2006 contradicts these unreflective observations about the state of the art of hydraulic fracturing.

Regulatory and situational changes in the Ohio fracking picture, along with the accumulation of significant new information since 2006, remain unaddressed, either by a supplemental FEIS, or in the 2011-2012 SIR reconsideration of fracking. Indeed, the SIR violated NEPA² and likely breached the federal assurance to the public in the 2006 FEIS that there would be site-specific examination of environmental effects before leases. This BLM admission that the SIR was a legally-meaningless document only further bolsters public suspicions that there is no intention to explore the downside of fracking under NEPA:

The SIR itself is not a NEPA analysis or approval, nor is it a discrete or circumscribed agency action. It is interlocutory in nature and *does not mark the consummation of a decision-making process or determine any legal rights. It simply is a review of available information, akin to a memorandum to the file, documenting assessment of the significance of new information.* SIR p. 6. (Emphasis supplied).

Consequently, the public continues it’s pursuit to see fulfillment of NEPA’s disclosure mandates prior to fracking of federally-owned minerals underlying 40% of the land surface of Wayne National Forest.

The changing circumstances and new information since 2006, some of which continued to be trivialized or misunderstood by the agencies in the SIR includes:

- The presumed acreage requirements for access to and operation of contemporary multiple well pads is significantly underestimated in both the FEIS and in the BLM’s May 3, 2012 letter and the SIR. Dense well development is readily permitted at each drilling pad by the Ohio Department of Natural Resources. The concentration of wells in one spot greatly affects profitability to the drillers, so there will be a significant imperative to impose dense industrial activity in vast clearings across the forest. Larger forest clearings, access roads to the expanded drilling sites, and accompanying waste holding ponds or pits, will necessitate clear-cutting of 20 acre and larger forest breaks. The waste holding ponds will attract and poison migratory birds and other wildlife. All such ponds leak, even when lined and properly-constructed, which will place groundwater chronically at risk;
- The 2006 FEIS and the May 3, 2012 BLM letter neither mention nor account for the prospective presence of orphan wells relative to the proposed loci for drilling activities. The capping and identification of orphaned wells occurs at taxpayer expense and provides important geological clues that must be considered in the selection of areas for fracking, since fracking wells must not be allowed to connect to uncontrolled pathways to the surface;
- Fracking causes considerable induced environmental damage and corresponding public health threats across Ohio. Deregulation of Ohio air and water quality regulations which formerly restricted fracking-related processes that have become effective since 2006 has fostered creation of dozens of new injection

²Because the agencies did not consider the SIR to be a NEPA review, even though it was in every way a reconsideration of the 2006 FEIS/LRMP, they denied the public any opportunity to review and comment. Nonetheless, interested groups and the City of Athens did hastily interpose written objections and the Forest Service held off an lease approvals.

wells, the so-called “beneficial use” of radioactive and chemically-toxic drilling wastes for such purposes as landfill cover, fill for industrial parks, agricultural fertilizer, access roads to drilling pads, highway de-icing sprays, road dust-control sprays, disposal of radioactive wastes in conventional sanitary landfills, and disposal of radium-bearing water reclaimed from fracking operations through municipal water treatment systems that are incapable of removing the radioactivity and hence a cause of water pollution downstream of such plants. The damaging and lasting effects of the very large waste stream from fracking, such as the absurdity of converting sanitary landfills across Ohio into low-level radioactive waste dumps that are incapable, by definition, of containing Ra-226, Th-232 and other daughter elements, are neither identified nor discussed in the FEIS. Nor are the public health and environmental threats from downstream distribution of chemically- and radiotoxic natural gas via mega-pipeline projects and permitted leaks via compressor stations and associated infrastructure of those pipelines;

- The Bureau of Land Management’s May 3, 2012 assessment of the state of fracking in the Wayne contains no accounting for the large volumes of volatile organic chemicals (VOCs) and poly-aromatic hydrocarbons (PAH) which threaten to pollute groundwater and will continually emanate from drilling sites as they add to the diminished air quality in the Ohio River watershed region;
- An average 1,800 heavy truckloads of materials, chemicals, and wastes are delivered to/taken from the wellhead of every typical fracking well, yet there is neither mention of, nor quantification of, the damage from copious diesel air pollution that thousands of truckloads to and from the well pads will cause to the Forest. There will be unforeseen additional damage to Forest Service and public roadways and bridges as well as many more wildlife kills through vehicular accidents, none of which are accounted for either in the FEIS nor the SIR. Drilling wastes might be used to construct roadbeds to drilling pads, as happens elsewhere in Ohio, which would spread radium-laced shale wastes around the land surface, where it will be prone to leach into groundwater;
- A paramount misunderstanding of fracking by the BLM is reflected in the Table 2 comparison of vertical and fracking wells in the May 3, 2012 letter. This Table contains a category entitled “Water that returns to the surface and is available for reuse” which suggests that all water contaminated by fracking chemicals and radiation will be “reused” indefinitely. The fact is, essentially 100% of all water associated with fracking is permanently polluted from the chemistry used to extract oil and gas and is radioactively contaminated with Ra-226 and Th-232. The flowback and other “water” from fracking is permanently impaired. While some of it may be reused to extract gas and oil, *all* of it will ultimately be left in the ground, or disposed of as drilling wastes. Fracking garbage is not economically amenable to conventional water treatment processes and must be permanently removed from the biosphere. That is precisely why Ohio has experienced a profusion of injection wells. The BLM has completely ignored the reality that some water sacrificed for fracking may have limited reuse potential but in the end, is irredeemable;
- The U.S. Environmental Protection Agency recently published a long-awaited study that proves water resources are threatened, and sometimes actually harmed, by poor oversight of fracking schemes; and
- The global warming implications of promoting the development of fracking on public lands have not been examined for the Wayne. Methane is 86 times more effective than carbon dioxide at trapping heat and accelerating anthropogenic warming of the planet. No serious analysis of environmental effects can overlook the constant releases of methane that accompany drilling and transport of the fracked methane from the wells, but that’s exactly what the BLM and FS have achieved since 2006.

This significant new information and circumstances since 2006 warrants a far more probing

environmental inquest than has happened before. The agencies' identification and comprehension of fracking's direct and indirect environmental effects is severely deficient.

Because of the complicated process that should now be followed, we demand that the following accommodations be made, in the public interest, with respect to contemplated leasing of Wayne National Forest lands for oil and gas fracking:

- 1, That a formal notice from the Forest Service and Bureau of Land Management which announces the plan to produce a new Environmental Impact Statement be published in the Federal Register;
- 2, That the announcement commence a 180-day period for public scoping comments, replete with hearings to take statements from the public (not mere display-board public information sessions) to be conducted after January 1, 2016 in all three ranger districts of the WNF; and
3. That there be formal disclosure of the complete contents of the Expression(s) of Interest which have prompted the current consideration of mineral leases.

Thank you in advance for your time and attention to this important matter.

Sincerely,

/s/ Joseph A. Hazelbaker

Joseph A. Hazelbaker
Interim Director, BFC

/s/ Terry J. Lodge

Terry J. Lodge, Esq.
316 N. Michigan Street, Ste. 520
Toledo, Ohio 43604-5627
(419) 255-7552
tjlodge50@yahoo.com
Of Counsel