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14 UNITED STATES DISTRICT COURT
15 FOR THE SOUTHERN DISTRICT OF OHIO
16 EASTERN DIVISION

17 CENTER FOR BIOLOGICAL DIVERSITY,
18 HEARTWOOD, OHIO ENVIRONMENTAL
19 COUNCIL, SIERRA CLUB

20 Plaintiffs,

21 vs.

22 U.S. FOREST SERVICE; U.S. BUREAU OF
23 LAND MANAGEMENT; U.S.FISH AND
24 WILDLIFE SERVICE; THOMAS TIDWELL in
25 his official capacity as Chief of the United States
26 Forest Service, MICHAEL NEDD, in his official
27 capacity as Acting Director of the United States
28 Bureau of Land Management, and GREG
SHEEHAN, in his official capacity as Acting
Director of the United States Fish and Wildlife
Service,

Defendants.

) Civ. No. 2:17-cv-372

) Judge Watson

) Magistrate Judge Jolson

) **FIRST AMENDED COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF**

1
2 **INTRODUCTION**

3 1. In this action, plaintiffs Center for Biological Diversity, Ohio Environmental Council,
4 Heartwood, and Sierra Club challenge the failure of the Bureau of Land Management (BLM) and
5 U.S. Forest Service to comply with the National Environmental Policy Act (NEPA) and the
6 Endangered Species Act (ESA), in authorizing oil and gas leasing in Ohio’s Wayne National Forest.

7 2. On October 14, 2016, BLM authorized the development of all federal oil and gas
8 minerals in the Wayne National Forest’s Marietta Unit, or approximately, 40,000 acres, opening up
9 the forest to horizontal drilling and large-scale, high-volume hydraulic fracturing or “fracking” for
10 the first time. This dangerous technique involves high-pressure injection of millions of gallons of
11 toxic fluids underground, to blast shale rock and release natural gas, and requires an extensive
12 network of infrastructure and development. Increasingly, fracking of the Utica and Marcellus shale
13 plays in Ohio and neighboring states has encroached upon communities, in the form of concrete well
14 pads, pipelines, heavy truck traffic, accidental spills and leaks, noise, and air and water pollution. On
15 December 13, 2016, BLM held its first lease auction after approval of new leasing in the Marietta
16 Unit, resulting in the sale of 679.48 acres, in Monroe and Washington counties. BLM auctioned
17 another 1,147.10 acres in Monroe County on March 23, 2017. Approximately 18,000 acres in the
18 Marietta Unit already have been “nominated” for oil and gas leasing by oil and gas operators and
19 could eventually be auctioned.

20 3. As a result, fracking will soon occur in Ohio’s only national forest, one of the few
21 natural refuges for people and wildlife in the state. Both humans and wildlife species such as the
22 endangered Indiana bat, river otter, bobcat, and Cerulean warbler rely on the Wayne National
23 Forest’s undeveloped woods, streams and rivers, and peace and quiet. The Wayne National Forest is
24 one of the few public forests located in Ohio to which Ohio residents can escape from urban and
25 industrial development and its effects.

26 4. The Wayne National Forest was created under the Weeks Act to restore natural
27 watersheds and forests devastated by industrial extraction, and to protect these lands for the public’s
28 use and enjoyment. It offers one of the best chances for restoring and preserving Ohio’s wild and

1 natural heritage. New oil and gas leasing and fracking in the Wayne National Forest would
2 undermine the very foundation on which it was established. Many of the lease parcels are near the
3 Ohio River and headwater streams, which will be at risk of contamination from increased transport
4 of fracking chemicals and wastewater via trucks and pipelines, and runoff pollution from new roads
5 and well pads. Fracking will also threaten endangered mussels downstream from lease parcels, as
6 well as the endangered Indiana bat, the threatened Northern long-eared bat, and the tri-colored bat.
7 These bats are already over-stressed by existing habitat fragmentation, white-nose syndrome, and
8 climate change. Habitat destruction, deadly wastewater pits, and water contamination from fracking
9 activities will compound these threats.

10 5. In approving new leasing, however, BLM and the Forest Service failed to take a
11 “hard look” at how the Wayne National Forest’s many natural values would be impacted by fracking
12 and horizontal drilling, in violation of NEPA’s requirement for federal agencies to disclose
13 significant environmental effects of their proposed actions. The Forest Service relied on a decade-old
14 Forest Plan that predates the fracking boom, and a 2012 “Supplemental Information Report” that
15 was never subject to public notice and comment, to conclude that fracking and horizontal well
16 development in the Wayne National Forest would involve no greater or more severe effects than
17 previously analyzed conventional oil and gas development. Likewise, BLM rushed the preparation
18 and approval of an Environmental Assessment (EA) and Finding of No Significant Impact for its
19 proposal to lease and allow fracking of all 40,000 acres of the Marietta Unit’s federal oil and gas
20 minerals. Both agencies failed to analyze the full scope of impacts that could result from new oil and
21 gas leasing, including the potential for disturbance of private land surrounding or adjoining federal
22 acreage in the national forest, total disturbance from new pipelines and other infrastructure, and
23 unique risks posed by fracking to water, public health, and wildlife.

24 6. BLM and the Forest Service also failed to consult U.S. Fish and Wildlife Service
25 regarding the effects of the proposed leasing on the Indiana bat and Northern long-eared bat, and
26 endangered mussels—the fanshell, pink mucket pearly mussel, sheepnose, and snuffbox
27 (“endangered mussels”), and thus failed to ensure new leasing avoids jeopardizing their continued
28 existence, in violation of Section 7 of the ESA. 16 U.S.C. § 1536(a)(2). Instead, the agencies relied

1 on an outdated 2005 Biological Opinion that fails to consider fracking, white-nose syndrome, new
2 information about climate change, and new designations of threatened and endangered species.
3 These new circumstances and information triggered BLM, Forest Service, and Fish and Wildlife
4 Service's duty to reinitiate consultation on the 2005 Biological Opinion, but the agencies have failed
5 to re-consult.

6 7. Accordingly, BLM's and Forest Service's approvals of new leasing, as well as
7 BLM's underlying EA and Finding of No Significant Impact, must be set aside. Further, any new
8 leasing or oil and gas activities cannot proceed until BLM and the Forest Service have prepared a
9 legally adequate EIS fully disclosing the effects of new leasing, and properly consulted under
10 Section 7 of the ESA.

11 **JURISDICTION AND VENUE**

12 8. This action arises under 16 U.S.C. §§ 1536, 1540(c) & (g), 42 U.S.C. § 4331 et seq.,
13 and 5 U.S.C. §§ 702, 706. Jurisdiction of this Court is conferred by 28 U.S.C. § 1331 (federal
14 question). Declaratory relief is available pursuant to 28 U.S.C. §§ 2201-02 and Rule 57 of the
15 Federal Rules of Civil Procedure.

16 9. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(e)(1)(B), because (1) a
17 substantial part of the events or omissions giving rise to each of Plaintiffs' claims occurred in this
18 judicial district, (2) a substantial part of property that is the subject of this action is situated in this
19 judicial district, and (3) the Forest Service and Fish and Wildlife Service have offices in this district,
20 and plaintiffs Ohio Environmental Council and Sierra Club have offices and members in this district.
21 Assignment to the Columbus Division is appropriate because the Forest Service office in which a
22 substantial part of the events or omissions giving rise to each of Plaintiffs' claims occurred is in
23 Athens County, and minerals subject to the present action are located in Monroe, Noble, and
24 Washington counties.

25 10. Pursuant to 28 U.S.C. § 2201 *et seq.*, Plaintiffs seek a declaration of rights under the
26 laws of the United States. There exists now between the parties an actual, justiciable controversy in
27 which Plaintiffs are entitled to have a declaration of their rights and of defendants' obligations, and
28 further relief, because of the facts and circumstances set out herein.

1 lands, including the lands that will be affected by the approved oil and gas leasing. Heartwood brings
2 this action on its own behalf and on behalf of its adversely affected members.

3 14. Plaintiff OHIO ENVIRONMENTAL COUNCIL (OEC) is a non-profit environmental
4 organization whose mission is to secure healthy air, land, and water for all who call Ohio home.
5 OEC has over 100 environmental and conservation member organizations and thousands of
6 individual members throughout the state of Ohio. The OEC has a long history of working to protect
7 the ecological integrity, and recreational and aesthetic qualities of the Wayne National Forest. Many
8 of OEC's members have visited these public lands in the Wayne National Forest's Marietta Unit for
9 recreational, scientific, educational, and other pursuits and intend to continue to do so in the future.
10 OEC brings this action on its own behalf and on behalf of its adversely affected members.

11 15. Plaintiff SIERRA CLUB is a national nonprofit organization of approximately
12 740,000 members dedicated to exploring, enjoying, and protecting the wild places of the earth; to
13 practicing and promoting the responsible use of the earth's ecosystems and resources; to educating
14 and enlisting humanity to protect and restore the quality of the natural and human environment; and
15 to using all lawful means to carry out these objectives. The Ohio Chapter of the Sierra Club has
16 more than 20,000 members in the state of Ohio. For many decades, the Sierra Club has worked to
17 protect the Wayne National Forest and Ohio's other public lands from harmful activities such as
18 clear-cutting, mineral extraction, commercial development, pipelines, and oil and gas drilling. Sierra
19 Club members use the public lands in Ohio, including the lands and waters that would be affected by
20 actions under the challenged actions, for quiet recreation, scientific research, aesthetic pursuits, and
21 spiritual renewal. These areas would be threatened by increased oil and gas development that could
22 result from BLM's and the Forest Service's decisions to authorize new leasing, including the
23 December 2016 and March 2017 lease auctions. Sierra Club brings this action on its own behalf and
24 on behalf of its adversely affected members.

25 16. The Center, Heartwood, OEC, and Sierra Club (collectively, "Plaintiffs") have
26 individual members who live in or near the Wayne National Forest's Marietta Unit; regularly visit
27 this area, including areas open to new oil and gas leasing, parcels sold in the December 2016 and
28 March 2017 lease auctions, and areas near or downstream of these areas and the Marietta Unit, such

1 as the Ohio River and Little Muskingum River; and intend to continue to use and enjoy these areas
2 in the near future and beyond. They use and enjoy these areas for a variety of purposes, including
3 scientific study, hiking, cycling, photography, sightseeing, wildlife observation, swimming,
4 canoeing, and fishing, and intend to continue to do so on an ongoing basis in the future. Plaintiffs'
5 members derive recreational, spiritual, professional, aesthetic, educational, and other benefits and
6 enjoyment from these activities.

7 17. Plaintiffs' members also obtain drinking water from the Ohio River and other streams
8 that are downstream from parcels that have been leased or are open to leasing, and groundwater near
9 the lease parcels. These areas are at risk of water contamination from fracking, pipeline spills, and
10 chemical, wastewater, and oil and gas storage that could result from new leasing.

11 18. Plaintiffs and their members have an interest in participating in the management of
12 the Wayne National Forest through participation in the development of land-use and resource
13 management plans and oil and gas leasing decisions for the forest, and in the preparation of
14 comprehensive environmental analyses required under NEPA and the ESA. Plaintiffs participated in
15 BLM's decision whether to make the Marietta Unit available for new leasing by commenting on the
16 programmatic Environmental Assessment for the decision, and submitting administrative protests
17 against the December 2016 and March 2017 lease auctions. Plaintiffs also met with Forest Service
18 officials and submitted comments and letters to the Service to urge it to perform an adequate
19 environmental review of new leasing and to withhold its approval of new leasing.

20 19. Plaintiffs and their members have been and are suffering, and will continue to suffer,
21 irreparable injury as a result of BLM's and the Forest Service's authorizations of new leasing and
22 their failure to comply with NEPA; and BLM's, the Forest Service's and Fish and Wildlife Service's
23 failure to comply with the ESA and continued reliance on the 2005 Biological Opinion. For
24 example, new oil and gas leases will allow increased fracking and oil and gas development, resulting
25 in noise, visual blight, increased traffic, seismic risks, loss of natural soil function, habitat
26 fragmentation and degradation, and greater air and water pollution and stream depletions. All of
27 these harms will diminish Plaintiffs' members' ability to enjoy recreational, spiritual, professional,
28 aesthetic, educational, and other activities in and around the Wayne National Forest, while increased

1 water pollution will contaminate drinking water sources used by Plaintiffs' members. Moreover, the
2 agencies' failure to consult on the effects of new leasing resulting from BLM's and the Forest
3 Service's actions will result in oil and gas development that will adversely affect the Indiana bat,
4 Northern long-eared bat, and endangered mussels in a manner or to an extent not previously
5 considered in the 2005 Biological Opinion, causing irreparable harm to these species. BLM, Forest
6 Service, and Fish and Wildlife Service have failed to study and adopt adequate "reasonable and
7 prudent alternatives," 16 U.S.C. § 1536(b)(3)(A), to avoid or reduce impacts on these listed species,
8 and failed to study and adopt adequate mitigation measures to avoid or significantly reduce these and
9 other significant adverse impacts of the challenged oil and gas leasing decisions.

10 20. BLM's and the Forest Service's failures to comply with NEPA have deprived
11 Plaintiffs and their members of information to which they are entitled under NEPA, including
12 information pertaining to the effects of new leasing on environmental resources in the Wayne
13 National Forest, reasonable alternatives to the proposed action, and available measures to mitigate
14 adverse environmental impacts. This lack of required public information has injured Plaintiffs and
15 their members by depriving them of a meaningful opportunity to comment on the missing
16 information; and denying them the procedural safeguards required by NEPA to ensure that BLM and
17 the Forest Service carefully consider the direct, indirect, and cumulative effects of their proposed
18 actions, environmentally superior alternatives to that action, and appropriate mitigation measures
19 prior to allowing new leasing; and denying them adequate assurances that new oil and gas leasing is
20 not likely to jeopardize ESA-listed species or adversely modify or destroy critical habitat.

21 21. Plaintiffs' injuries will be redressed by the relief sought herein. This court has
22 jurisdiction to vacate and enjoin BLM's and Forest Service's authorizations of new leasing, and any
23 leases and project approvals relying on BLM's EA and Finding of No Significant Impact, and the
24 2005 Biological Opinion. Requiring consultation to ensure that BLM's and Forest Service's actions
25 do not jeopardize the existence of listed species or adversely modify their critical habitat would
26 redress Plaintiffs' injuries by increasing the likelihood of the species' survival. Further, reasonable
27 and prudent measures to mitigate the adverse effects of new leasing would eliminate or significantly
28 reduce the traffic, air quality, soil conservation, water quality and quantity, scenic, seismic,

1 greenhouse gas, and noise impacts of new leasing allowed under the challenged decisions. All such
2 relief would improve Plaintiffs' opportunities for using and enjoying the Wayne National Forest and
3 the Marietta Unit in the future.

4 22. Plaintiffs have no adequate remedy at law to address the foregoing injuries to their
5 interests.

6 23. Defendant MICHAEL NEDD is sued in his official capacity as Acting Director of
7 Bureau of Land Management. BLM is an agency within the United States Department of the Interior
8 and is responsible for managing federal lands and subsurface mineral estates underlying federal,
9 state, and private lands, including minerals in the Wayne National Forest. BLM's stated mission is to
10 sustain the health, productivity, and diversity of America's public lands for the use and enjoyment of
11 present and future generations. BLM approved the Final EA, Finding of No Significant Impact, and
12 lease auctions at issue in this action.

13 24. Defendant THOMAS TIDWELL is sued in his official capacity as Chief of the U.S.
14 Forest Service, an agency within the Department of Agriculture, which is responsible for the
15 management of national forest lands, including the Wayne National Forest. Its stated mission is to
16 sustain the health, diversity, and productivity of the nation's forests and grasslands to meet the needs
17 of present and future generations. The Forest Service authorized the lease auctions at issue in this
18 action.

19 25. Defendant GREG SHEEHAN is sued in his official capacity as Acting Director of
20 U.S. Fish and Wildlife Service, an agency within the Department of Interior, which is responsible for
21 administering the provisions of the ESA with regard to freshwater aquatic and terrestrial species. Its
22 stated mission is working with others to conserve, protect, and enhance fish, wildlife, plants, and
23 their habitats for the continuing benefit of the American people. Fish and Wildlife Service issued the
24 2005 Biological Opinion at issue in this action.

25 **STATUTORY BACKGROUND**

26 **A. National Environmental Policy Act**

27 26. The National Environmental Policy Act is "our basic national charter for protection of
28 the environment." 40 C.F.R. § 1500.1(a). Its twin aims are to facilitate informed agency decision-

1 making and public access to information. By focusing both agency and public attention on the
2 environmental effects of proposed actions, NEPA facilitates informed decision-making by agencies
3 and fosters public participation.

4 27. To accomplish these objectives, NEPA requires “responsible [federal] officials” to
5 prepare an environmental impact statement (“EIS”) to consider the effects of each “major Federal
6 action[] significantly affecting the quality of the human environment.” 42 U.S.C. § 4332(2)(C)(i).
7 To determine whether the impacts of a proposed action are significant enough to warrant preparation
8 of an EIS, the agency may prepare an Environmental Assessment or “EA.”

9 28. Under NEPA’s implementing regulations, an agency’s EA must include “brief
10 discussions of the need for the proposal, of the alternatives . . . , [and] of the environmental impacts
11 of the proposed action and the alternatives.” 40 C.F.R. § 1508.9. The EA must take a “hard look” at
12 the impacts, and if the agency decides the impacts are not significant, it must supply a convincing
13 statement of reasons why. The EA must analyze not only the direct impacts of a proposed action, but
14 also the indirect and cumulative impacts. *Id.* § 1508.7, 1508.8. Such analysis must include all
15 reasonably foreseeable impacts of the proposed action.

16 29. NEPA’s implementing regulations require that the agency “shall identify any
17 methodologies used and shall make explicit reference by footnote to the scientific and other sources
18 relied upon for conclusions,” and shall ensure the scientific accuracy and integrity of environmental
19 analysis. *Id.* § 1502.24. The agency must disclose if information is incomplete or unavailable and
20 explain “the relevance of the incomplete or unavailable information to evaluating reasonably
21 foreseeable significant adverse impacts.” *Id.* § 1502.22(b)(1). The agency must also directly and
22 explicitly respond to dissenting scientific opinion. *Id.* § 1502.9(b).

23 30. If, after preparing an EA, the agency determines an EIS is not required, the agency
24 must provide a “convincing statement of reasons” why the project’s impacts are insignificant and
25 issue a Finding of No Significant Impact or “FONSI.” 40 C.F.R. §§ 1501.4, 1508.9 & 1508.13.

26 31. Moreover, an agency “[s]hall prepare supplements to either draft or final
27 environmental impact statements if...[t] here are significant new circumstances or information
28 relevant to environmental concerns and bearing on the proposed action or its impacts,” or “[m]ay

1 also prepare supplements when the agency determines that the purposes of the Act will be furthered
2 by doing so.” 40 C.F.R. § 1502.9(c)(1)(ii), (2).

3 **B. The Endangered Species Act**

4 32. Congress enacted the ESA to provide “a program for the conservation of . . .
5 endangered species and threatened species.” 16 U.S.C. § 1531(b). Section 2(c) of the ESA
6 establishes that it is “the policy of Congress that all Federal departments and agencies shall seek to
7 conserve endangered species and threatened species and shall utilize their authorities in furtherance
8 of the purposes of this Act.” 16 U.S.C. § 1531(c)(1). The ESA defines “conservation” to mean “the
9 use of all methods and procedures which are necessary to bring any endangered species or
10 threatened species to the point at which the measures provided pursuant to this [Act] are no longer
11 necessary.” 16 U.S.C. § 1532(3). The ESA imposes substantive and procedural obligations on all
12 federal agencies with regard to listed and proposed species and their critical habitats. *See id.* §§
13 1536(a)(1), (a)(2) and (a)(4) and § 1538(a).

14 33. Under Section 7 of the ESA, federal agencies must “insure that any action authorized,
15 funded, or carried out by such agency ... is not likely to jeopardize the continued existence of any
16 endangered species or threatened species or result in the destruction or adverse modification of
17 habitat of such species which is determined ... to be critical.” 16 U.S.C. § 1536(a)(2).

18 34. “Endangered species” means “any species which is in danger of extinction throughout
19 all or a significant portion of its range.” 16 U.S.C. § 1532(6). “Threatened species” means “any
20 species which is likely to become an endangered species within the foreseeable future throughout all
21 or a significant portion of its range.” *Id.* § 1532(20). The Fish and Wildlife Service “lists” species as
22 threatened or endangered. *See id.* § 1533.

23 35. The definition of agency “action” is broad and includes “all activities or programs of
24 any kind authorized, funded, or carried out, in whole or in part, by Federal agencies,” including
25 programmatic actions. 50 C.F.R. § 402.02. BLM’s and the Forest Service’s approvals of oil and gas
26 leasing constitute such an action. Likewise, the “action area” includes “all areas to be affected
27 directly or indirectly by the Federal action and not merely the immediate area involved in the
28 action.” *Id.*

1 36. The duties in ESA Section 7 are only fulfilled by an agency’s satisfaction of the
2 consultation requirements that are set forth in the implementing regulations for Section 7 of the ESA,
3 and only after the agency lawfully complies with these requirements may an action that “may affect”
4 a protected species go forward.

5 37. For each proposed federal action, an action agency must request from Fish and
6 Wildlife Service whether any listed or proposed species may be present in the action area. 16 U.S.C.
7 § 1536(c)(1); 50 C.F.R. § 402.12. If listed or proposed species may be present in such area, the
8 action agency must prepare a “biological assessment” to determine whether the listed species may be
9 affected by the proposed action. *Id.*

10 38. If the action agency concludes that the proposed action is “not likely to adversely
11 affect” a listed species that occurs in the action area, Fish and Wildlife Service must concur in
12 writing with this determination. 50 C.F.R. §§ 402.13(a), 402.14(b). If Fish and Wildlife Service
13 concurs in this determination, then formal consultation is not required. *Id.* § 402.13(a).

14 39. If the action agency concludes that an action is “likely to adversely affect” listed
15 species or critical habitat, it must enter into “formal consultation” with Fish and Wildlife Service. 50
16 C.F.R. §§ 402.12(k), 402.14(a). The threshold for triggering the formal consultation requirement is
17 “very low”; indeed, “any possible effect ... triggers formal consultation requirements.” *See*
18 *Interagency Cooperation Under the Endangered Species Act*, 51 Fed. Reg. 19,926 (June 3, 1996).

19 40. Formal consultation commences with the action agency’s written request for
20 consultation and concludes with Fish and Wildlife Service’s issuance of a “biological opinion.” 50
21 C.F.R. § 402.02. The biological opinion states Fish and Wildlife Service’s opinion as to whether the
22 effects of the action are “likely to jeopardize the continued existence of listed species or result in the
23 destruction or adverse modification of critical habitat.” *Id.* § 402.14(g)(4).

24 41. When conducting formal consultation, Fish and Wildlife Service and the action
25 agency must evaluate the “effects of the action,” including all direct and indirect effects of the
26 proposed action, plus the effects of actions that are interrelated or interdependent, added to all
27 existing environmental conditions – that is, the “environmental baseline.” 50 C.F.R. §§ 402.14 and
28 402.02. The environmental baseline “includes the past and present impacts of all Federal, state, and

1 private actions and other human activities in the action area....” *Id.* The effects of the action must be
2 considered together with “cumulative effects,” which are “those effects of future State or private
3 activities, not involving Federal activities, that are reasonably certain to occur within the action area
4 of the Federal action subject to consultation.” *Id.*

5 42. If Fish and Wildlife Service concludes that the proposed action will jeopardize the
6 continued existence of a listed species, or result in the destruction or adverse modification of critical
7 habitat, the biological opinion must outline “reasonable and prudent alternatives” to avoid jeopardy.
8 16 U.S.C. § 1536(b)(3).

9 43. If Fish and Wildlife Service concludes that a project is not likely to jeopardize listed
10 species, it must nevertheless provide an incidental take statement (ITS) with the biological opinion,
11 specifying the amount or extent of take that is incidental to the action, but which would otherwise be
12 prohibited under Section 9 of the ESA. “Take” means “to harass, harm, pursue, hunt, shoot, wound,
13 kill, trap, capture, or collect, or to attempt to engage in any such conduct.” 16 U.S.C. § 1532(18).
14 Further, Fish and Wildlife Service must specify “reasonable and prudent measures” necessary or
15 appropriate to minimize such take, and the “terms and conditions” that must be complied with by the
16 action agency to implement any reasonable and prudent measures. 16 U.S.C. § 1536(b)(4); 50 C.F.R.
17 § 402.14(i).

18 44. The action agency and Fish and Wildlife Service must use the best scientific and
19 commercial data available when consulting about whether federal actions may jeopardize listed
20 species or adversely modify critical habitat. *See* 16 U.S.C. § 1536(a)(2); 50 C.F.R. § 402.14(d),
21 (g)(8).

22 45. After the issuance of a biological opinion and “where discretionary Federal
23 involvement or control over the action has been retained or is authorized by law,” the agency must
24 reinitiate consultation if:

- 25 • the amount or extent of taking specified in the incidental take statement is exceeded;
- 26 • new information reveals effects of the action that may affect listed species or critical habitat
27 in a manner or to an extent not previously considered;
- 28 • the identified action is subsequently modified in a manner that causes an effect to the listed
species ... that was not considered in the biological opinion; or

- a new species is listed or critical habitat designated that may be affected by the identified action.

50 C.F.R. § 402.14(d).

46. Section 7(d) of the ESA provides that once a federal agency initiates consultation on an action under the ESA, the agency, as well as any applicant for a federal permit, “shall not make any irreversible or irretrievable commitment of resources with respect to the agency action which has the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures which would not violate subsection (a)(2) of this section.” 16 U.S.C. § 1536(d). The purpose of Section 7(d) is to maintain the environmental status quo pending the completion of consultation. Section 7(d) prohibitions remain in effect throughout the consultation period and until the federal agency has satisfied its obligations under Section 7(a)(2) that the action will not result in jeopardy to listed species or adverse modification of critical habitat.

FACTUAL BACKGROUND

A. The Wayne National Forest

47. The Wayne National Forest is Ohio’s only national forest, beloved for its lush and rugged landscape, many headwater streams, craggy rock outcroppings, and picturesque waterfalls and covered bridges. Located in the foothills of the Appalachian Mountains in southeast Ohio, the Wayne National Forest is one of the few public forests in the state—only 14 percent of Ohio’s forests are publicly owned. Within only a few hours driving distance of Columbus, Cleveland, and Cincinnati, the Wayne National Forest provides numerous recreational opportunities to Ohio residents and out-of-state visitors. Hundreds of thousands of people visit the Wayne National Forest each year for hiking, camping, canoeing, wildlife viewing, bird watching, and mushroom gathering, among many other activities.

48. The Wayne National Forest is divided into three non-contiguous units—Athens, Ironton, and Marietta—and its administrative boundary contains nearly 834,000 acres of private and federal land spanning twelve counties. The Marietta Unit is the Wayne National Forest’s easternmost unit, consisting of over 268,000 acres of private and federal surface within its administrative boundary, and the Ohio River flows along its eastern edge. The Little Muskingum River, an Ohio River tributary, also winds through the Marietta Unit, making it one of the few remaining free-

1 flowing streams largely on public land within the state. Several campgrounds in the Marietta Unit
2 along the Little Muskingum River make the river a popular recreational spot for backpackers,
3 anglers, and paddlers.

4 49. Hundreds of wildlife and plant species are found in the Wayne National Forest,
5 including approximately 90 species of fish, 59 amphibian and reptile species, 50 species of
6 mammals, 158 bird species, and 2,000 species of trees and plants. Rare and sensitive species such as
7 bobcat, black bear, beaver, river otter, Cerulean warbler, Indiana bat, Northern long-eared bat, and
8 tri-colored bat inhabit the Wayne National Forest.

9 50. While the Wayne National Forest is now a peaceful and beautiful refuge for both
10 humans and wildlife, it was not always so. Established in 1934 under the Weeks Act, the Wayne
11 National Forest was created to restore lands and watersheds devastated by many decades of mining
12 and logging.

13 51. Industrial exploitation of southeast Ohio's coal, iron, clay, and timber resources in the
14 19th and early 20th centuries denuded and disfigured the land, and left a legacy of environmental
15 damage, from which the Wayne National Forest is still recovering. The prospect of increased
16 fracking and land disturbance would reverse years of progress already made in reclaiming natural
17 areas for the public's enjoyment and would undermine reclamation efforts.

18 52. Unlike other national forests, the Wayne National Forest is a highly fragmented
19 patchwork of federal and private land, and most of the land within its administrative boundary is
20 privately owned. In the Marietta Unit, over three-quarters of the land within the national forest
21 boundary is under private ownership, and federal acreage (totaling approximately 64,000 acres) is
22 scattered throughout the forest. Federal minerals underlie federal land in the Wayne National Forest
23 (and only a very small percentage of private land), while private minerals underlie both federal and
24 private land.

25 **B. Imperiled Species of the Wayne National Forest**

26 53. Several listed species will be harmed by BLM and Forest Service's plans to allow
27 new oil and gas development in the Wayne National Forest's Marietta Unit, including the Indiana
28

1 bat, Northern long-eared bat, fanshell, pink mucket pearly mussel, sheepsnose mussel, and snuffbox
2 mussel.

3 54. The endangered Indiana bat is well-documented in the Marietta Unit. It hibernates in
4 caves, or occasionally in abandoned mines, during winter. During the summer, the Indiana bat roosts
5 under the peeling bark of dead and dying trees, as well as under the exfoliating bark of mature
6 hickories and white oaks. The Indiana bat, which eats flying insects found along rivers or lakes and
7 in uplands, depends on the Wayne National Forest for foraging and roosting habitat. The Indiana bat
8 was listed as endangered in 1967 due to human disturbance of hibernating bats in caves during
9 winter, resulting in the death of large numbers of bats. Summer habitat loss, pesticides and other
10 contaminants, and, most recently, white-nose syndrome also threaten the Indiana bat's survival.

11 55. White-nose syndrome is a fatal disease affecting hibernating bats that was first
12 documented in the winter of 2006-2007 in New York, and has since rapidly spread across the U.S.,
13 killing over 6 million bats. Bats with white-nose syndrome display a white fungus on their noses and
14 on other hairless parts of their body. The disease causes bats to wake up from hibernation and fly
15 outside their caves, causing untimely consumption of stored fat reserves, resulting in emaciation and
16 increased mortality.

17 56. Because the Indiana bat's life cycle is dependent on temperature changes, making it
18 highly temperature sensitive, climate change is also a major threat to the species. Human-induced
19 climate change driven by greenhouse gas emissions from fossil fuel combustion is increasing
20 temperatures and altering the climate across the Midwestern United States.

21 57. Like the Indiana bat, the Northern long-eared bat hibernates in caves in winter, and
22 lives in forested areas during the summer, in the eastern and north central United States and Canada.
23 In summer, it forages on flying insects and roosts in trees with peeling bark, or in tree cavities or
24 crevices of live and dead trees. The Marietta Unit contains ample suitable foraging and roosting
25 habitat for the species. Among the hardest hit by white-nose syndrome, the species has experienced
26 declines of up to 99% in its Northeast populations. In 2015, these dramatic declines prompted the
27 U.S. Fish and Wildlife Service to list the species as "threatened." Forest fragmentation and
28 development, logging, and environmental contaminants are also major threats to the species.

1 58. Oil and gas development harms species like the Indiana bat and Northern long-eared
2 bat by fragmenting and destroying habitat for spring staging/fall swarming, foraging, and summer
3 roosting, disrupting breeding and foraging patterns, polluting and degrading water sources, and
4 trapping or poisoning bats attracted to insects on the surface of wastewater pits.

5 59. Several species of endangered mussels are also threatened by new oil and gas leasing
6 in the Wayne National Forest. These mussels are remarkable for their long life spans of up to several
7 decades and for their unique life cycles, which involve larvae developing on host fish until they are
8 juveniles with shells of their own. The fanshell and pink mucket pearly mussel are both found in
9 sections of the Ohio River immediately downstream of the Marietta Unit. These species are listed as
10 “endangered.” Host fish for the fanshell and pink mucket pearly mussel are found within the
11 Marietta Unit of the Wayne National Forest, and could travel downstream and play a role in the life
12 cycle of downstream mussels in the Ohio River.

13 60. The sheepnose and snuffbox mussels may be present in waterways within the Wayne
14 National Forest. In 2012, Fish and Wildlife Service listed both species as “endangered.”

15 61. Major threats to the endangered mussels include habitat fragmentation and
16 destruction from dams, sedimentation from road construction, mining and logging, and pollution
17 from accidental spills and industrial activities, including oil and gas drilling and fracking.

18 **C. Hydraulic Fracturing and the Utica and Marcellus Shale Plays**

19 62. The Marietta Unit overlies both the Marcellus and Utica shale plays. The Marcellus
20 Shale, which extends through northern Appalachia, including much of Ohio, West Virginia,
21 Pennsylvania, and New York, is one of the largest natural gas-producing areas in the U.S. The Utica
22 Shale, which underlies the Marcellus Shale and extends through much of the same area and into
23 Canada, is an emerging area of interest to oil and gas operators, and a significant source of natural
24 gas, oil, and natural gas liquids. According to the U.S. Energy Information Administration (EIA), in
25 recent years, natural gas production in the Marcellus and Utica regions has largely driven growth in
26 total U.S. natural gas production.

27 63. Before 2008, the Marcellus Shale was largely untapped, because the extraction of
28 commercial quantities of natural gas from this formation using “conventional” vertical drilling

1 techniques was not possible. Since then, improved technology—namely, the coupling of hydraulic
2 fracturing (“fracking”) with horizontal drilling—has enabled the profitable exploitation of the
3 Marcellus Shale. In 2010, oil and gas operators also began developing the Utica Shale using these
4 techniques, and current Utica Shale production is largely centered in eastern Ohio.

5 64. Fracking is a dangerous practice in which operators inject millions of gallons of toxic
6 fluid underground under extreme pressure to produce fractures that release oil and gas. The main
7 ingredient in modern fracturing fluid (or “frack fluid”) is generally water, although petroleum has
8 also been used as a base fluid. The second ingredient is a “proppant,” typically sand, that becomes
9 wedged in the fractures and holds them open so that passages remain after pressure is relieved. In
10 addition to the base fluid and proppant, a mixture of chemicals is used for purposes such as
11 increasing the viscosity of the fluid, keeping proppants suspended, and impeding bacterial growth or
12 mineral deposition.

13 65. Accordingly, fracking entails the transport of massive quantities of fluid and other
14 products to a single well site: thousands of tons of sand, thousands of gallons of chemicals, and up to
15 eight million gallons of water may be used to frack a single well. Up to eight wells may be drilled
16 from a single well pad. Moreover, many millions of gallons of wastewater may be produced from a
17 single well, which must then be stored, transported, and disposed of. This includes highly toxic frack
18 fluid that returns to the surface after it is injected (known as “flowback”) and brine water that
19 discharges from the fractured formation (known as “produced water”). These wastewaters may be
20 laced with naturally occurring radionuclides, heavy metals, and hydrocarbons that are carried to the
21 surface from the underground formation.

22 66. Horizontal drilling—or drilling down and then sideways along the shale formation—
23 enables economic extraction of thin, deep layers of shale that are not profitable to extract via vertical
24 drilling and hydraulic fracturing alone. Horizontal drilling exposes more of the oil- or gas-bearing
25 formation to the production well. In the Utica and Marcellus shales, fracking typically occurs in
26 multiple stages every 300 to 500 feet along a horizontal borehole that can be over two miles long.

1 67. With the rise in fracking and horizontal drilling operations, significant new
2 information has emerged about fracking in the last decade, and even the last several years, showing
3 significant impacts to air quality, public health, water resources, and wildlife.

4 68. The high volumes of chemicals and water involved, and the high volumes of oil and
5 gas produced, in the Utica and Marcellus shales requires larger-scale infrastructure and equipment—
6 e.g., larger pipelines, tanks, pits, and rigs—and thus greater land disturbance than conventional oil
7 and gas development, to support fracking operations. The clearance of land and construction of new
8 infrastructure destroys and fragments wildlife habitat, and industrializes rural areas.

9 69. Fracking can result in the discharge of hazardous wastes, including petroleum
10 products, into drinking water. The hydraulic fracturing process involves hundreds of toxic chemicals
11 that can escape into water supplies either through deep well injection or through more conventional
12 routes, like migration through faulty casing or via surface spills. In 2016, the U.S. Environmental
13 Protection Agency (EPA) finalized a study that concluded that fracking can and has resulted in
14 adverse effects on drinking water resources. The study noted numerous cases of water contamination
15 resulting from spills, leaks, and faulty wells. Numerous studies indicate that leaks from fracked wells
16 are a chronic problem, even for newer wells.

17 70. Increased storage, transport, and disposal of chemicals and wastewaters associated
18 with fracking can result in a higher incidence and severity of spills and leaks, and devastating
19 consequences for wildlife. For example, in June 2014, a well pad located in Monroe County near the
20 Marietta Unit boundary caught fire, resulting in 54,000 gallons of hazardous fracking chemicals and
21 300,000 gallons of fire retardants washing into a tributary of the Ohio River; the runoff killed 70,000
22 fish over a five-mile long stretch. Studies that compared water quality downstream from a
23 wastewater storage and injection site in West Virginia to that of upstream areas found that
24 downstream sites had elevated levels of endocrine-disrupting chemicals at levels known to adversely
25 affect aquatic organisms.

26 71. Recently published scientific papers describe the harmfulness of the chemicals often
27 used in fracking fluid. One analysis found that 37 percent of the chemicals found at fracked gas
28 wells were volatile, and that of those volatile chemicals, 81 percent can harm the brain and nervous

1 system, 71 percent can harm the cardiovascular system and blood, and 66 percent can harm the
2 kidneys. Volatile organic compounds (VOCs) from car and truck engines, as well as the drilling and
3 fracking stages of oil and gas production, make up about 3.5 percent of the gases emitted by oil or
4 gas operations. The VOCs emitted include the BTEX compounds – benzene, toluene, ethyl benzene,
5 and xylene – which are listed as hazardous air pollutants (HAPs) by EPA. These toxic air
6 contaminants coupled with smog-forming chemicals (such as nitrogen oxides or NO_x, methane, and
7 ethane) threaten local communities and regional air quality.

8 72. The Marietta Unit is located in an impaired airshed. Washington County, Ohio is
9 classified as “non-attainment” for federal, health-based sulfur dioxide (SO₂) standards. Oil and gas
10 extraction operations and transport, especially vehicle emissions, emit SO₂ into the atmosphere,
11 potentially exacerbating the already compromised air quality problem in the region. SO₂ has been
12 linked to an array of adverse respiratory effects including bronchoconstriction and increased asthma
13 symptoms. Studies also show a connection between short-term exposure and increased visits to
14 emergency departments and hospital admissions for respiratory illnesses, particularly in at-risk
15 populations including children, the elderly, and asthmatics.

16 73. A number of studies link proximity to unconventional oil and gas development to
17 increased rates of cancer, birth defects, poor infant health, endocrine disruption, cardiology-patient
18 hospitalization, and acute health effects (e.g., skin rashes, nausea or vomiting, headache, dizziness,
19 eye and throat irritation). For example, a 2015 Pennsylvania study found a correlation between
20 proximity to unconventional gas drilling and higher incidence of lower birth weight and small-for-
21 gestational-age babies.

22 74. Despite the rapid rise in fracking, state and federal regulators have lagged behind in
23 safeguarding public health and the environment from fracking activities. For example, Ohio does not
24 require the storage of wastewaters or other fluids in closed tanks, instead allowing fluids to be stored
25 in open pits. Open pits not only create hazardous conditions for humans and wildlife, but can also
26 leak and contaminate streams or groundwater if improperly constructed or unlined. Ohio lacks any
27 specific standards for pit construction or liners, and only requires that pits be “liquid tight” and
28 constructed and maintained to “prevent the escape of brine and other waste substances.” Ohio

1 Administrative Code, § 1501:9-3-08. According to EPA's study on drinking water resources,
2 between 1983 and 2007, 63 incidents of non-public water supply contamination from unlined or
3 inadequately constructed pits occurred in Ohio. Increased fracking activities and storage of
4 wastewaters and frack fluids increases the likelihood of additional water contamination incidents.

5 **D. BLM and the Forest Service's Approval of New Leasing and the December 2016 and**
6 **March 2017 Lease Auctions**

7 75. On October 14, 2016, BLM approved new leasing of all federal minerals in the
8 Wayne National Forest's Marietta Unit, opening it up to large-scale, high-volume fracking of the
9 Utica and Marcellus shales for the first time. BLM held its first lease auction pursuant to this
10 approval on December 13, 2016, selling 17 parcels totaling 679.48 acres. BLM held a second lease
11 auction pursuant to this approval on March 23, 2017, selling 20 parcels totaling 1147.10 acres.

12 76. Prior to the December and March auctions, the Forest Service authorized the leasing
13 of the parcels sold in each auction, pursuant to 30 U.S.C. § 352 and 36 C.F.R. § 228.102(e).

14 77. BLM's and the Forest Service's approvals of new leasing and the December 2016 and
15 March 2017 lease sales did not take into account significant information concerning fracking and
16 horizontal drilling operations, climate change, and white-nose syndrome, but instead relied on
17 outdated and inadequate analyses from 2006 and 2012.

18 78. In 2006, the Forest Service approved the Final Revised Land and Resource
19 Management Plan for the Wayne National Forest ("2006 Forest Plan"), which made available
20 238,000 acres of the Wayne National Forest, including the Marietta Unit, for oil and gas leasing.
21 The BLM was purportedly a cooperating agency in development of the 2006 Forest Plan and the
22 related Final Environmental Impact Statement ("2006 FEIS") prepared under the National
23 Environmental Policy Act ("NEPA"), 42 U.S.C. § 4321 *et seq.*

24 79. To inform the 2006 FEIS's effects analysis of new oil and gas leasing authorized by
25 the 2006 Forest Plan, in 2004 BLM prepared a Reasonably Foreseeable Development Scenario. The
26 2004 Reasonably Foreseeable Development Scenario projected that 110 vertical wells would be
27 developed in the Wayne National Forest's Marietta Unit, and that horizontal drilling in the Wayne
28 National Forest was not economically feasible at that time. The 2004 Reasonably Foreseeable

1 Development Scenario projected that 135 acres of surface disturbance would likely occur on federal
2 surface overlying federal and private minerals in the Marietta Unit due to “oil and gas drilling
3 activity.” The 2006 FEIS also included an upper limit of 50 acres total of surface disturbance across
4 the entire Wayne National Forest from all forms of utilities construction, including oil and gas
5 pipelines.

6 80. The 2006 FEIS’s analysis of all impacts resulting from new oil and gas leasing in the
7 Wayne National Forest was based on the 2004 Reasonably Foreseeable Development Scenario’s
8 projections of total surface disturbance and new wells. These surface disturbance assumptions were
9 the basis for many of the resource impact analyses contained in the 2006 FEIS, including those for
10 air, water, vegetation, and wildlife.

11 81. The 2004 Reasonably Foreseeable Development Scenario did not estimate surface
12 disturbance from private surface activities that could result from new federal leasing, or on private
13 surface adjacent to federal surface—e.g., the drilling of non-vertical wells, such as horizontal wells,
14 or the development of supporting infrastructure. Private inholdings make up 76% of the Marietta
15 Unit.

16 82. To comply with Section 7 of the ESA, the Forest Service prepared a Biological
17 Assessment, issued on August 31, 2005, assessing, among other things, the 2006 Forest Plan’s
18 effects on the Indiana bat, pink mucket pearly mussel, and fanshell. The Biological Assessment
19 concluded that the 2006 Forest Plan, including new oil and gas leasing authorized thereunder, “may
20 affect, is likely to affect the Indiana bat.” With respect to the pink mucket pearly mussel and
21 fanshell, the Biological Assessment concluded that the 2006 Forest Plan would have “no effects” on
22 the species and was “not likely to adversely affect” the species’ habitat.

23 83. On November 22, 2005, Fish and Wildlife Service issued its Biological Opinion
24 (“2005 Biological Opinion”) for the Forest Plan. The 2005 Biological Opinion concluded that the
25 2006 Forest Plan, including new oil and gas leasing, was “not likely to jeopardize” the continued
26 existence of the Indiana bat, or result in adverse modification of its critical habitat. Fish and Wildlife
27 Service also concurred in the Forest Service’s determination that the 2006 Forest Plan was “not
28 likely to adversely affect” the fanshell and pink pearly mucket mussel. Neither the Biological

1 Assessment nor the 2005 Biological Opinion accounted for impacts to these species from oil and gas
2 activities on private surface.

3 84. Since 2005 several issues directly relevant to the Forest Plan and its impacts on listed
4 species and national forest resources have arisen, including the significant rise in fracking and
5 horizontal well development and development of the Marcellus and Utica shale plays, increased
6 scientific knowledge about and environmental impacts from climate change, and the outbreak of
7 white-nose syndrome.

8 85. Neither the 2005 Biological Opinion nor the 2006 Forest Plan EIS addressed these
9 issues.

10 86. In 2011, bats infected with white-nose syndrome were discovered in Ohio in the
11 Wayne National Forest for the first time. Since 2011, Ohio has seen a steep decline in its bat
12 populations. According to monitoring data from Ohio Department of Natural Resources, bat
13 populations in Ohio's two largest hibernacula (or overwintering sites) have declined by over 90
14 percent; summer bat detection rates have dropped by over 50 percent. In addition, a 2013 study
15 projects that climate change will result in a northeast-ward shift in the Indiana bat's population
16 range-wide, reducing its overall range. The bat's summer range in Ohio and other Midwestern states
17 are likely to become unsuitably warm for the temperature-sensitive species.

18 87. In 2011, BLM proposed the sale of over 3,300 acres of oil and gas minerals in the
19 Wayne National Forest nominated for leasing by oil and gas operators. Increasing interest in the
20 Utica shale in Ohio and reports that large-scale, high-volume fracking and horizontal drilling could
21 make exploitation of this shale play feasible led to an outpouring of public concern about the lease
22 sale. Among the public's many concerns were increased risks to water resources and fragmentation
23 of the forest.

24 88. Before the scheduled date of the lease sale, in response to the public's concerns, the
25 Forest Service withdrew consent to new leasing and BLM canceled the lease sale, pending a review
26 of new information about fracking and "the effects analysis in the 2006 FEIS and associated
27 planning documents." To inform its review, the Forest Service requested that BLM review the 2004
28

1 Reasonably Foreseeable Development Scenario in light of the new potential for fracking and
2 horizontal drilling activities not considered in the 2006 EIS.

3 89. In 2012, BLM reviewed the 2004 Reasonably Foreseeable Development Scenario and
4 determined that horizontal drilling was now economically viable within the Wayne National Forest,
5 and that 10 horizontal well sites could potentially be developed in the Marietta Unit. BLM found that
6 new surface disturbance and other impacts from these activities are “still well within the levels
7 forecast” in the 2004 Reasonably Foreseeable Development Scenario, and concluded “the [2004
8 Reasonably Foreseeable Development Scenario] is still applicable and does not need to be revised.”

9 90. BLM’s review underestimated surface disturbance from horizontal well pads, new
10 pipelines, compressor stations, and other infrastructure associated with horizontal drilling and
11 fracking activities, and ignored surface disturbance from new wastewater pits or impoundments. It
12 also ignored the potential for these activities to be located on private land and open up underlying
13 private minerals for extraction, even though: (1) a driller must have the right to access a continuous
14 and large enough portion of a shale formation to make horizontal wells economically viable; (2) well
15 pads can be located over two miles away from targeted minerals; (3) private land surrounds or
16 adjoins the acreage available for federal leasing; and (4) operators may prefer conducting surface
17 operations on private land over national forest land, given the weaker controls that apply to private
18 surface.

19 91. The Forest Service prepared an internal Supplemental Information Report (“2012
20 SIR”) based on BLM’s updated oil and gas surface disturbance analysis, to assess whether a
21 supplemental NEPA review or update to the 2006 Forest Plan was warranted.

22 92. The 2012 SIR is not a NEPA document and was not subject to public notice and
23 comment procedures.

24 93. The 2012 SIR concluded that “[n]o additional analysis or protections are needed at
25 the Forest Plan level” with respect to all Forest resources, including water and wildlife. The 2012
26 SIR did not analyze the potential for new or increased private surface activities resulting from new
27 federal oil and gas leasing. It also erroneously assumed that the 2006 Forest Plan’s requirements
28 would mitigate the effects of new leasing, without regard to the potential for new leasing to result in

1 horizontal drilling and fracking on private surface. The 2006 Forest Plan’s requirements do not
2 govern private surface activities.

3 94. The 2012 SIR did not consider climate change effects on the forest or listed species.

4 95. In 2015, BLM began preparing a programmatic Environmental Assessment (“EA”)
5 for new oil and gas leasing in the Marietta Unit. By that time, approximately 18,000 acres in the
6 Wayne National Forest’s Marietta Unit—or nearly half of all the Marietta Unit’s estimated acreage
7 in federal minerals—had been nominated by oil and gas operators for leasing. Much of this acreage
8 is along or near the Ohio and Little Muskingum rivers.

9 96. In November 2015, BLM initiated a public scoping process for the EA to determine
10 what issues the EA should address. BLM received comments from proponents of federal leasing
11 urging that new federal leasing in the Wayne National Forest was necessary to “provide private
12 landowners the opportunity to develop their minerals,” while “withholding leasing the federal
13 minerals will pose an obstacle to development of private minerals.” This is because private mineral
14 owners would not be able to profitably develop their shale resources in the Marietta Unit without the
15 ability to “pool” and horizontally drill through large contiguous areas of shale resources (e.g., one to
16 two miles wide), including federal minerals scattered throughout the forest.

17 97. On November 4, 2015, BLM submitted a Biological Assessment to U.S. Fish and
18 Wildlife Service initiating informal ESA Section 7 consultation on its contemplated proposal to open
19 the Wayne National Forest to new oil and gas leasing. The Biological Assessment concluded that
20 new leasing is not likely to adversely affect the Northern long-eared bat, Indiana bat, and endangered
21 mussels, among other species. On information and belief, Fish and Wildlife Service has never issued
22 a written response to the Biological Assessment or completed the consultation process.

23 98. BLM released the draft programmatic EA (“Draft EA”) for public comment on April
24 28, 2016. The Draft EA proposed to make available all of the acreage in the Marietta Unit open to
25 leasing, or approximately 40,000 acres of federal mineral estate. The Draft EA relied on the 2012
26 SIR and 2006 FEIS for its analysis of the effects of leasing.

27 99. BLM received over 14,000 comment letters from the public on the Draft EA, many
28 opposed to allowing fracking in the Wayne National Forest’s Marietta Unit.

1 100. On May 31, 2016, Plaintiffs submitted comments on the Draft EA, raising concerns
2 that the EA failed to consider, among other things: (1) the impacts of fracking on various resources,
3 including increased surface disturbance associated with Marcellus and Utica shale horizontal drilling
4 and oil and gas infrastructure, as well as increased water contamination risks; (2) the potential for
5 new leasing to open up private minerals and related private surface development; (3) habitat
6 fragmentation and habitat degradation effects of fracking and private surface activities on the
7 Indiana bat, Northern long-eared bat, and endangered mussels; and (4) in connection with these
8 effects, the impacts of white-nose syndrome and climate change on the Indiana bat.

9 101. On June 15, 2016, before the Draft EA was finalized, the Forest Service authorized
10 BLM to offer a number of parcels for new leasing, to be offered in the December 13, 2016 and
11 March 23, 2017 lease auctions.

12 102. On October 17, 2016, BLM issued its Final EA and Finding of No Significant Impact,
13 which found that the action of leasing up to 40,000 acres of federal mineral estate within the
14 Marietta Unit “is not a major Federal action” and “will not significantly affect the quality of the
15 human environment.” On the same day, BLM posted an oil and gas lease sale notice for 33 parcels,
16 totaling 1,600.69 acres, located in Monroe and Washington counties in the Marietta Unit, scheduled
17 to take place on December 13, 2016. Sixteen of the parcels were later deferred or removed from the
18 auction due to concerns that the parcels were not available for leasing. These changes reduced the
19 leasing proposal to 17 parcels totaling 679.48 acres.

20 103. In response to Plaintiffs’ comments, in the Final EA BLM admitted the potential for
21 new leasing to result in private surface activities, but failed to analyze or estimate total private
22 surface disturbance and associated impacts, or to adequately consider mitigation for these impacts.
23 Moreover, Plaintiffs’ comments on BLM’s Draft EA cited several reports and field data
24 demonstrating that horizontal shale development results in pipeline construction-related surface
25 disturbance far greater than what was considered in BLM’s Draft EA, the 2012 SIR, or the 2006
26 FEIS. Nonetheless, BLM’s Final EA failed to acknowledge the pipeline reports and data submitted
27 by Plaintiffs, and declined to analyze or estimate the potential pipeline construction-related
28

1 disturbance on either federal or private surface that could reasonably be expected to result from new
2 leasing. BLM dismissed or failed to adequately respond to all other comments raised by Plaintiffs.

3 104. On November 11, 2016, Plaintiffs filed a formal administrative protest against BLM's
4 offer of all parcels in the December 13, 2016 sale, raising their same previous concerns. BLM
5 received over 100 formal protests of the lease sale. On December 12, 2016, BLM denied or
6 dismissed all of the protests, and issued its Decision Record authorizing the lease auction. The lease
7 sale took place on December 13, 2016. All 679.48 acres were sold for a total of over \$1.7 million.

8 105. On January 13, 2017, Plaintiffs filed an administrative appeal and petition for stay of
9 the December 12, 2016 Decision Record with the Interior Board of Land Appeals. The Board denied
10 Plaintiffs' petition for stay on February 28, 2017. Plaintiffs filed a notice of withdrawal of their
11 appeal on May 1, 2017. On May 8, 2017, the Board dismissed the appeal.

12 106. On January 13, 2017, BLM posted a notice of a second lease auction offering 21
13 parcels totaling 1,186.06 acres in Monroe County in the Wayne National Forest. BLM later removed
14 one parcel because it was already leased, reducing the March 23 auction to an offer of 20 parcels
15 totaling 1,147.10 acres.

16 107. On February 13, 2017, Plaintiffs filed a formal administrative protest against BLM's
17 offer of all parcels in the March 23 lease auction. BLM received a total of 78 formal protests
18 opposing the auction. On March 22, 2017, BLM denied or dismissed all of the protests. On March
19 23, 2017, BLM issued its Decision Record authorizing the lease auction and held the lease auction.
20 All 1,147.10 acres were sold for a total of over \$5.1 million.

21 108. On May 1, 2017, Plaintiffs filed an administrative appeal and petition for stay of the
22 Decision Record for the March 23, 2017 lease auction with the Interior Board of Land Appeals. The
23 Board denied Plaintiffs' petition for stay on May 17, 2017. Plaintiffs withdrew their appeal on June
24 27, 2017.

25 109. The Forest Service has never performed or adopted a formal NEPA environmental
26 review of the impacts of horizontal drilling and fracking development in the Wayne National Forest,
27 including impacts caused by reasonably foreseeable private surface activities, or analyzed climate
28 change effects in a NEPA document subject to public notice and comment.

1 110. Neither BLM nor the Forest Service consulted Fish and Wildlife Service over the
2 December 2016 or March 2017 lease sale's effects on the listed species in the action area, or
3 reinitiated consultation with Fish and Wildlife Service over the 2006 Forest Plan, despite new
4 information regarding white-nose syndrome and associated bat population declines, climate change,
5 fracking, and the potential for private land disturbance.

6 111. On information and belief, BLM will continue to hold quarterly lease sales until all
7 18,000 acres in the Marietta Unit that have been nominated for leasing are sold, and will rely on the
8 Final EA, 2006 Forest Plan EIS, 2012 SIR, and the 2005 Biological Opinion for approvals of future
9 leasing auctions of the Marietta Unit. On information and belief, the Forest Service also intends to
10 rely on the 2006 Forest Plan EIS for its authorization of new leasing auctions.

11 112. The next oil and gas lease auction for Wayne National Forest parcels is scheduled for
12 September 21, 2017, and another auction is tentatively scheduled for December 14, 2017.

13 113. On January 26, 2017, Plaintiffs provided notice to BLM, U.S. Forest Service, U.S.
14 Fish and Wildlife Service, and the U.S. Department of the Interior Acting Secretary, pursuant to
15 Section 11(g) of the Endangered Species Act (ESA), that BLM, the Forest Service, and the Fish and
16 Wildlife Service are in violation of ESA Section 7 for, among other things, their ongoing failure to
17 initiate and complete Section 7 consultation on the effects of new oil and gas leasing in the Marietta
18 Unit, and their failure to reinitiate consultation on the 2005 Biological Opinion, despite new
19 information regarding white-nose syndrome and associated bat population declines, climate change,
20 fracking, and the potential for private land disturbance.

21 114. On April 21, 2017, Plaintiffs provided a supplemental notice to BLM, Forest Service,
22 U.S. Fish & Wildlife Service, and the Secretary of Interior, clarifying their January 26 notice that
23 BLM is in violation of Section 7 of the ESA due to its ongoing failure to initiate and complete
24 Section 7 consultation regarding (1) its decision in the Final EA and Finding of No Significant
25 Impact to make available all federal minerals in the Marietta Unit for oil and gas leasing; (2) BLM's
26 decisions to authorize the December 13, 2016 lease auction and March 23, 2017 lease auction.

1 **CLAIMS FOR RELIEF**

2 **FIRST CLAIM**

3 **FOREST SERVICE’S VIOLATION OF 30 U.S.C. § 352, NEPA, AND APA –**
4 **FAILURE TO PREPARE A SUPPLEMENTAL ENVIRONMENTAL REVIEW**

5 115. Plaintiffs hereby reallege and incorporate by reference the allegations set forth in the
6 preceding paragraphs.

7 116. Before new leasing of federal oil and gas minerals can proceed in the national forests,
8 the Forest Service must authorize or “consent” to any leasing proposed by BLM. 30 U.S.C. § 352.
9 As a prerequisite to consent, the Forest Service must verify that “leasing of the specific lands [1] has
10 been adequately addressed in a NEPA document, and [2] is consistent with the Forest land and
11 resource management plan.” 36 C.F.R. § 228.102(e)(1). “If NEPA has not been adequately
12 addressed, or if there is significant new information or circumstances as defined by 40 C.F.R. §
13 1502.9 requiring further environmental analysis, additional environmental analysis shall be done
14 before a leasing decision for specific lands will be made.” *Id.*

15 117. Pursuant to NEPA, agencies “[s]hall prepare supplements to either draft or final
16 environmental impact statements if...[t]here are significant new circumstances or information
17 relevant to environmental concerns and bearing on the proposed action or its impacts.” 40 C.F.R. §
18 1502.9(c)(1)(ii).

19 118. The leasing of the specific lands sold in the December 2016 and March 2017 lease
20 auctions have not been adequately addressed in a NEPA document adopted or prepared by the Forest
21 Service.

22 119. Since the adoption of the 2006 Forest Plan and 2006 FEIS, significant new
23 information or circumstances not addressed in these documents but bearing on the December 13,
24 2016 lease auction, March 23, 2017 lease auction, and their impacts have arisen, including but not
25 limited to:

26 (a) development potential of the Marcellus and Utica shale plays in eastern Ohio
27 and the Wayne National Forest made possible by fracking and horizontal drilling, and its potential to
28 open up private minerals and private surface to new development;

1 (b) empirical studies analyzing the greater amount of land disturbance required
2 for horizontal drilling and fracking in the Utica and Marcellus shales in eastern and central Ohio,
3 including disturbance from pipelines, well pads, wastewater ponds, and compressor stations;

4 (c) new information about the effects of fracking on water resources, soil,
5 vegetation, wildlife, air quality, public health, greenhouse gas emissions, and climate change;

6 (d) new information about climate change and its effects on the Indiana bat and
7 other forest resources;

8 (e) white-nose syndrome and associated declines in bat populations;

9 (f) the listing of new species under the ESA, including the Northern long-eared
10 bat, sheepsnose mussel, and snuffbox mussel.

11 120. According to the 2012 SIR, “the SIR itself is not a NEPA analysis or approval.” The
12 2012 SIR is not a proper “NEPA document” as it has never been subject to public notice and
13 comment, or other NEPA requirements. *See* 40 C.F.R. § 1502.9(c)(4) (agencies “[s]hall prepare,
14 circulate and file a supplement to [an EIS] in the same fashion...as a draft and final statement...”);
15 *see also* Forest Service Handbook 1909.15_10 at 45 (“A SIR is not a NEPA document and therefore
16 cannot be used to fulfill the requirements for a revised or supplemental EA or EIS. A SIR cannot
17 repair deficiencies in the original environmental analysis or documentation, nor can it change a
18 decision.”).

19 121. Substantively, the 2012 SIR fails to consider or analyze numerous effects of
20 horizontal drilling and fracking, the potential for private surface development, empirical data
21 showing greater surface disturbance associated with fracking of the Marcellus and Utica shale plays,
22 and climate change and its effects, among other significant new circumstances and information. It
23 also erroneously assumes that Forest Plan rules applying to federal surface will mitigate the effects
24 of new leasing, even though those rules do not apply to private surface. For example, the 2012 SIR
25 assumes that Forest Plan prohibitions or restrictions on wastewater injection, open wastewater pits,
26 and surface and groundwater water depletions will mitigate the impacts of new leasing.

1 habitat loss, and disturbance to wildlife. The EA also erroneously assumes that effects of new
2 leasing would be mitigated by the 2006 Forest Plan, even though its requirements do not apply to
3 private surface and were adopted with only vertical drilling in mind. It further erroneously assumes
4 that Ohio state laws and regulations can adequately mitigate these effects. For example, because
5 open pits are allowed on private surface under Ohio state law, birds and bats would be at risk of
6 entrapment in pits, but the EA fails to analyze these potential impacts.

7 128. BLM failed to take a hard look at the total surface disturbance impacts from fracking
8 and horizontal drilling in the Marietta Unit. The EA's surface impact footprint estimates for new oil
9 and gas development, including gathering lines, well pad sites, compressor station sites, and
10 wastewater ponds, are significantly lower than empirical field data indicates, thereby precluding a
11 complete disclosure and analysis of soil, water quality, vegetation, air quality, and wildlife impacts.
12 For example, the EA fails to quantify surface disturbance from new gathering lines, which transport
13 natural gas from the well to a central collection point, even though gathering lines are the single
14 largest source of surface disturbance associated with shale oil and gas development.

15 129. BLM failed to take a hard look at numerous effects of horizontal drilling and fracking
16 on water resources, vegetation, wildlife, air quality, public health, seismicity, greenhouse gas
17 emissions, and climate change, including the site-specific and aggregate effects of leasing all federal
18 minerals in the Marietta Unit, and of leasing parcels auctioned in the December 2016 and March
19 2017 lease sales. The EA improperly "tiers" to an insufficient NEPA document by relying on the
20 2006 Forest Plan EIS to authorize the new leases in the Marietta Unit, despite the EIS's failure to
21 analyze any impacts associated with fracking and horizontal shale oil and gas development.

22 130. BLM failed to take a hard look at climate change and its effects on the Indiana bat,
23 Northern long-eared bat, and other forest resources; white-nose syndrome and associated declines in
24 bat populations; and how increased fracking in connection with climate change, white-nose
25 syndrome, and private surface development will affect these species. For example, because open
26 wastewater pits are allowed on private surface under Ohio state law, new leasing could result in the
27 construction of pits that could trap and kill bats or expose them to toxic substances.

28

1 131. BLM failed to take a hard look at the impacts of fracking, including high-volume
2 water withdrawals, runoff pollution, and spills and leaks, on the endangered mussels and their host
3 fish.

4 132. BLM failed to take a hard look at the cumulative impacts of its proposals in
5 connection with private surface and private oil and gas development, and other past, present, and
6 reasonably foreseeable future projects, including other existing industrial processes with similar
7 environmental impacts in the vicinity of the Marietta Unit.

8 ***Failure to Prepare an EIS***

9 133. NEPA requires the preparation of an EIS for all “major federal actions
10 significantly affecting the quality of the human environment.” 42 U.S.C. § 4332(2)(C); 40 C.F.R. §
11 1501.4.

12 134. BLM’s decision to make available for new leasing all federal mineral acreage in the
13 Marietta Unit is a major federal action significantly affecting the quality of the human environment.
14 Each of its decisions to hold the December 2016 and March 2017 lease auctions is also a major
15 federal action significantly affecting the quality of the human environment.

16 135. BLM’s conclusion that preparation of an EIS was not required prior to approving
17 each of these actions was arbitrary, capricious, and inconsistent with the law.

18 136. Numerous factors requiring the preparation of an EIS are triggered by BLM’s leasing
19 decisions. Ten factors must be considered in determining the significance of an action’s
20 environmental effects. 40 C.F.R. § 1508.27. Among these are that the action affects “ecologically
21 critical areas,” is “highly controversial,” involves possible effects that are “highly uncertain or
22 involve unique or unknown risks,” is related to other actions with “cumulatively significant
23 impacts,” and “may adversely affect an endangered or threatened species.” 40 C.F.R. §§
24 1508.27(b)(3)(4), (5), (7) & (9). The presence of any or all of these factors in the actions challenged
25 here renders BLM’s decisions to not prepare an EIS arbitrary, capricious, and inconsistent with the
26 law.

27 137. In sum, BLM’s adoption of an inadequate EA and Finding of No Significant Impact
28 for its proposed action making available the Marietta Unit for new leasing; issuance of Decision

1 Records authorizing the December 2016 and March 2017 lease sales; and failure to prepare EISs are
2 arbitrary and capricious and not in accordance with the law, as required by NEPA, its implementing
3 regulations, and the APA. 5 U.S.C. §§ 701-706, 706(2).

4 **THIRD CLAIM**

5 **VIOLATION OF ESA SECTION 7(a)(2)—FAILURE TO CONSULT OR COMPLETE**
6 **CONSULTATION**

7 138. Plaintiffs hereby reallege and incorporate by reference the allegations set forth in the
8 preceding paragraphs.

9 139. BLM's decision to open the Marietta Unit to oil and gas leasing, each of its decisions
10 to authorize the December 2016 and March 2017 lease auctions, and the Forest Service's consent to
11 the lease auctions are each agency actions under the ESA, for which Section 7 consultation was
12 required, because new leasing and resulting oil and gas development "may affect" listed species
13 within the action area.

14 140. Although BLM submitted a Biological Assessment to Fish and Wildlife Service for
15 BLM's proposal to open the Marietta Unit to new oil and gas leasing, on information and belief, Fish
16 and Wildlife Service failed to concur in writing with the Biological Assessment's determination that
17 BLM's proposed decision "is not likely to adversely affect" the Indiana bat, Northern long-eared bat,
18 and endangered mussels, among other species. In the absence of a written concurrence, BLM was
19 required to complete formal consultation with Fish and Wildlife Service, but failed to do so. *See* 50
20 C.F.R. §§ 402.13(a), 402.14(b).

21 141. Neither BLM nor the Forest Service consulted with Fish and Wildlife Service over
22 the December 2016 or March 2017 lease auctions.

23 142. BLM and the Forest Service failed to request from Fish and Wildlife Service whether
24 any listed or proposed species "may be present in the action area" before authorizing the December
25 2016 or March 2017 lease auctions. 16 U.S.C. § 1536(c)(1); 50 C.F.R. § 402.12.

26 143. Listed species are or may be present in the action areas, and thus BLM and the Forest
27 Service further violated the ESA by failing to prepare a biological assessment for each of the lease
28 auctions. 16 U.S.C. § 1536(c)(1); 50 C.F.R. § 402.12.

1 **VIOLATION OF ESA SECTION 7(a)(2), 50 C.F.R. § 402.16—FAILURE TO REINITIATE**
2 **CONSULTATION**

3 147. Reinitiation of consultation is required when “new information reveals effects of the
4 action that may affect listed species or critical habitat in a manner or to an extent not previously
5 considered,” and “[i]f a new species is listed or critical habitat designated that may be affected by the
6 identified action.” 50 C.F.R. § 402.16(b), (d).

7 148. The 2005 Biological Opinion for the 2006 Forest Plan does not address several new
8 issues that have arisen over the last decade showing that new leasing may affect listed species in a
9 manner or to an extent not previously considered, including new fracking and horizontal drilling
10 techniques, the potential for private surface development to result from new leasing, white-nose
11 syndrome, and climate change.

12 149. In addition to the significant new information described above, several new species
13 that may be affected by the 2006 Forest Plan and new oil and gas leasing in the Marietta Unit have
14 been listed since the 2005 Biological Opinion. At least the following species have been designated
15 by Fish and Wildlife Service as threatened or endangered under the ESA subsequent to the 2006
16 Forest Plan, and may be impacted by the projects and activities authorized by the Plan: (1) the
17 sheepnose mussel, designated as endangered on April 12, 2012; (2) the snuffbox mussel, designated
18 as endangered on March 15, 2012; and (3) the Northern long-eared bat, designated as threatened on
19 May 4, 2015.

20 150. BLM, the Forest Service, and Fish and Wildlife Service, however, have failed to
21 reinitiate consultation in order to address significant new information and newly listed species, in
22 ongoing violation of the ESA. 50 C.F.R. § 402.16. These agencies’ failure to reinitiate consultation
23 on the 2005 Biological Opinion also constitutes agency action unlawfully withheld and unreasonably
24 delayed pursuant to the APA. 5 U.S.C. § 706(1).

25 **REQUEST FOR RELIEF**

26 WHEREFORE, Plaintiffs pray for relief against BLM, the Forest Service, and Fish and Wildlife
27 Service as follows:

28 A. For declarations that:

1 (1) the Forest Service's authorization of new oil and gas leasing and failure to
2 prepare a supplemental environmental analysis in a lawful NEPA document violated 36 C.F.R. §
3 228.102, NEPA, its implementing regulations, and the APA;

4 (2) BLM's adoption of the Final EA, Finding of No Significant Impact, and
5 Decision Records for the December 13, 2016 and March 23, 2017 lease auctions violated NEPA, its
6 implementing regulations, and the APA;

7 (3) BLM's failure to prepare an EIS for its action making the Marietta Unit
8 available for oil and gas leasing and for the December 13, 2016 and March 23, 2017 lease auctions
9 violated NEPA, its implementing regulations, and the APA;

10 (4) BLM's and the Forest Service's failures to consult Fish and Wildlife Service
11 over the December 13, 2016 and March 23, 2017 lease auctions, and failures to insure that oil and
12 gas leasing is not likely to jeopardize listed species or modify or destroy critical habitat; BLM's
13 failure to formally consult with Fish and Wildlife Service or complete consultation with Fish and
14 Wildlife Service over its decision to open the Marietta Unit to new oil and gas leasing; and BLM's,
15 the Forest Service's, and Fish and Wildlife Service's failure to reinitiate consultation on the 2005
16 Biological Opinion, violated Section 7 of the ESA and its implementing regulations;

17 B. For an order, including a preliminary and permanent injunction invalidating and
18 setting aside BLM's Final EA, Finding of No Significant Impact, December 12, 2016 Decision
19 Record, and March 23, 2017 Decision Record; the Forest Service's June 15, 2016 consent to leasing
20 Marietta Unit parcels, including parcels offered in the December 13, 2016 and March 23, 2017 lease
21 auctions; Fish and Wildlife Service's 2005 Biological Opinion; and any leases or approvals issued in
22 reliance on the foregoing documents or decisions;

23 C. For an injunction restraining BLM and the Forest Service, and each of their agents,
24 employees, officers, and representatives from implementing BLM's December 12, 2016 and March
25 23, 2017 Decision Records, or from authorizing new oil and gas leasing, exploration, or
26 development in the Marietta Unit, pending (1) BLM and the Forest Service's completion of an EIS
27 analyzing the effects of new oil and gas leasing allowed under the Final EA and Finding of No
28 Significant Impact, and allowed in the December 2016 and March 2017 lease auctions; (2)

1 completion of a reinitiated consultation on the 2005 Biological Opinion; and (3) completion of a
2 Section 7 consultation on BLM's decision to open the Marietta Unit to new leasing; and (4) where
3 leasing or development of minerals leased in the December 13, 2016 lease auction or March 23,
4 2017 lease auction is concerned, completion of a Section 7 consultation over the auction, in full
5 compliance with NEPA, ESA, and all other applicable legal requirements.

6 D. For an injunction restraining any person or entity from constructing new wells or
7 other projects authorized under BLM or Forest Service approvals that rely on or tier to the Final EA
8 or Finding of No Significant Impact, 2006 Forest Plan EIS, or the 2005 Biological Opinion, pending
9 BLM and the Forest Service's completion of an EIS analyzing the effects of new oil and gas leasing
10 allowed in the December 2016 and March 2017 lease auctions and the Final EA and Finding of No
11 Significant Impact; (2) completion of reinitiated consultation on the 2005 Biological Opinion; (3)
12 completion of a Section 7 consultation on BLM's decision to open the Marietta Unit to new leasing;
13 and (4) where leasing or development of minerals leased in the December 13, 2016 or March 23,
14 2017 lease auction is concerned, completion of a Section 7 consultation over the lease auction, in full
15 compliance with NEPA, ESA, and all other applicable legal requirements.

16 E. For Plaintiffs' costs of suit and attorneys' fees pursuant to all applicable legal
17 authority including, but not limited to, ESA, 16 U.S.C. § 1540, the Equal Access to Justice Act, 28
18 U.S.C. § 2412, and any and all other provisions of law or equity; and

19 F. For such other and further relief as this Court may deem just and proper.
20

21 DATED: July 5, 2017

Respectfully submitted,

22
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24 DIANA DASCALU-JOFFE
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CERTIFICATE OF SERVICE

I certify that on July 5, 2017, I filed the foregoing First Amended Complaint on behalf of Plaintiffs Center for Biological Diversity, Heartwood, Ohio Environmental Council, and Sierra Club via the CM/ECF system which will provide electronic service to all counsel of record.

DATED: July 5, 2017

/s/ Nathan Johnson

NATHAN JOHNSON
Lead Attorney for Plaintiff Ohio Environmental Council

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