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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)

19 Plaintiffs,)

20 vs.)

21 U.S. FOREST SERVICE; U.S. BUREAU OF)
22 LAND MANAGEMENT; THOMAS)
23 TIDWELL in his official capacity as Chief of)
24 the United States Forest Service, MICHAEL)
25 NEDD, in his official capacity as Acting)
26 Director of the United States Bureau of Land)
27 Management,)

25 Defendants.)

Civ. No.)

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

INTRODUCTION

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

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

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

24 4. The Wayne National Forest was created under the Weeks Act to restore natural
25 watersheds and forests devastated by industrial extraction, and to protect these lands for the
26 public’s use and enjoyment. It offers one of the best chances for restoring and preserving Ohio’s
27 wild and natural heritage. New oil and gas leasing and fracking in the Wayne National Forest
28 would undermine the very foundation on which it was established. Many of the lease parcels are

1 near the Ohio River and headwater streams, which will be at risk of contamination from
2 increased transport of fracking chemicals and wastewater via trucks and pipelines, and runoff
3 pollution from new roads and well pads. Fracking will also threaten endangered mussels
4 downstream from lease parcels, as well as the endangered Indiana bat, Northern long-eared bat,
5 and tri-colored bat. These bats are already over-stressed by existing habitat fragmentation, white-
6 nose syndrome, and climate change. Habitat destruction, deadly wastewater pits, and water
7 contamination from fracking activities will compound these threats.

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

22 6. Accordingly, BLM’s and Forest Service’s approvals of new leasing, as well as
23 BLM’s underlying EA and Finding of No Significant Impact, must be set aside. Further, any new
24 leasing or oil and gas activities cannot proceed until BLM and the Forest Service have prepared a
25 legally adequate EIS fully disclosing the effects of new leasing.

26 **JURISDICTION AND VENUE**

27 7. This action arises under 42 U.S.C. § 4331 et seq., and 5 U.S.C. §§ 702, 706.
28 Jurisdiction of this Court is conferred by 28 U.S.C. § 1331 (federal question). Declaratory relief

1 is available pursuant to 28 U.S.C. §§ 2201-02 and Rule 57 of the Federal Rules of Civil
2 Procedure.

3 8. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(e)(1)(B), because (1) a
4 substantial part of the events or omissions giving rise to each of Plaintiffs' claims occurred in
5 this judicial district, (2) a substantial part of property that is the subject of this action is situated
6 in this judicial district, and (3) the Forest Service has an office in this district, and plaintiffs Ohio
7 Environmental Council and Sierra Club have offices and members in this district. Assignment to
8 the Columbus Division is appropriate because the Forest Service office in which a substantial
9 part of the events or omissions giving rise to each of Plaintiffs' claims occurred is in Athens
10 County, and minerals subject to the present action are located in Monroe, Noble, and
11 Washington counties.

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

16 **PARTIES**

17 10. Plaintiff CENTER FOR BIOLOGICAL DIVERSITY (the Center) is a non-profit
18 membership corporation with offices in Arizona, Colorado, Alaska, California, Florida, Hawaii,
19 Minnesota, Oregon, Washington, Washington D.C., and Mexico. The Center works through
20 science, law, and policy to secure a future for all species, great or small, hovering on the brink of
21 extinction. The Center is actively involved in species and habitat protection issues worldwide,
22 including throughout the eastern United States, and continues to actively advocate for increased
23 protections for species and their habitats in Ohio and the Wayne National Forest. The lands that
24 will be affected by the proposed lease sale include habitat for listed, rare, and imperiled species
25 that the Center has worked to protect, including the Indiana bat, Northern long-eared bat, tri-
26 colored bat, fanshell, pink mucket pearly mussel, sheepsnose, and snuffbox. The Center also
27 works to reduce greenhouse gas emissions to protect biological diversity, the environment, and
28 public health. The Center has over 52,300 members, including those living in and near Ohio who

1 have visited these public lands in the Wayne National Forest's Marietta Unit for recreational,
2 scientific, educational, and other pursuits and intend to continue to do so in the future, and are
3 particularly interested in protecting the many native, imperiled, and sensitive species and their
4 habitats that may be affected by the proposed oil and gas leasing. The Center brings this action
5 on its own behalf and on behalf of its adversely affected members.

6 11. Plaintiff HEARTWOOD is a non-profit regional environmental organization
7 dedicated to protecting the public forests of the Central Hardwood Region. Heartwood represents
8 over seventeen hundred individual members and numerous member organizations who depend
9 on these public lands, including the Wayne National Forest, for recreational, spiritual and
10 ecological purposes. Heartwood members have, do and will continue to use these public lands,
11 including the Wayne National Forest's Marietta Unit, for non-consumptive purposes and they
12 derive important tangible and intangible ecological benefits from the presence and ecological
13 integrity of these public lands, including the lands that will be affected by the approved oil and
14 gas leasing. Heartwood brings this action on its own behalf and on behalf of its adversely
15 affected members.

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

25 13. Plaintiff SIERRA CLUB is a national nonprofit organization of approximately
26 740,000 members dedicated to exploring, enjoying, and protecting the wild places of the earth; to
27 practicing and promoting the responsible use of the earth's ecosystems and resources; to
28 educating and enlisting humanity to protect and restore the quality of the natural and human

1 environment; and to using all lawful means to carry out these objectives. The Ohio
2 Chapter of the Sierra Club has more than 20,000 members in the state of Ohio. For many
3 decades, the Sierra Club has worked to protect the Wayne National Forest and Ohio's other
4 public lands from harmful activities such as clear-cutting, mineral extraction, commercial
5 development, pipelines, and oil and gas drilling. Sierra Club members use the public lands in
6 Ohio, including the lands and waters that would be affected by actions under the challenged
7 actions, for quiet recreation, scientific research, aesthetic pursuits, and spiritual renewal. These
8 areas would be threatened by increased oil and gas development that could result from BLM's
9 decision to authorize new leasing, including the December 2016 lease auction. Sierra Club brings
10 this action on its own behalf and on behalf of its adversely affected members.

11 14. The Center, Heartwood, OEC, and Sierra Club (collectively, "Plaintiffs") have
12 individual members who live in or near the Wayne National Forest's Marietta Unit; regularly
13 visit this area, including areas open to new oil and gas leasing, parcels sold in the December
14 2016 lease auction, and areas near or downstream of these areas and the Marietta Unit, such as
15 the Ohio River and Little Muskingum River; and intend to continue to use and enjoy these areas
16 in the near future and beyond. They use and enjoy these areas for a variety of purposes, including
17 scientific study, hiking, cycling, photography, sightseeing, wildlife observation, swimming,
18 canoeing, and fishing, and intend to continue to do so on an ongoing basis in the future.
19 Plaintiffs' members derive recreational, spiritual, professional, aesthetic, educational, and other
20 benefits and enjoyment from these activities.

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

26 16. Plaintiffs and their members have an interest in participating in the management
27 of the Wayne National Forest through participation in the development of land-use and resource
28 management plans and oil and gas leasing decisions for the forest, and in the preparation of

1 comprehensive environmental analyses required under NEPA. Plaintiffs participated in BLM's
2 decision whether to make the Marietta Unit available for new leasing by commenting on the
3 programmatic Environmental Assessment for the decision, and submitting an administrative
4 protest against the December 2016 lease auction. Plaintiffs also met with Forest Service officials
5 and submitted comments and letters to the Service to urge it to perform an adequate
6 environmental review of new leasing and to withhold its approval of new leasing.

7 17. Plaintiffs and their members have been and are suffering, and will continue to
8 suffer, irreparable injury as a result of BLM's and the Forest Service's authorizations of new
9 leasing and their failure to comply with NEPA. For example, new oil and gas leases will allow
10 increased fracking and oil and gas development, resulting in noise, visual blight, increased
11 traffic, seismic risks, loss of natural soil function, habitat fragmentation and degradation, and
12 greater air and water pollution and water depletions. All of these harms will diminish Plaintiffs'
13 members' ability to enjoy recreational, spiritual, professional, aesthetic, educational, and other
14 activities in and around the Wayne National Forest, while increased water pollution will
15 contaminate drinking water sources used by Plaintiffs' members.

16 18. BLM's and the Forest Service's failures to comply with NEPA have deprived
17 Plaintiffs and their members of information to which they are entitled under NEPA, including
18 information pertaining to the effects of new leasing on environmental resources in the Wayne
19 National Forest, reasonable alternatives to the proposed action, and available measures to
20 mitigate adverse environmental impacts. This lack of required public information has injured
21 Plaintiffs and their members by depriving them of a meaningful opportunity to comment on the
22 missing information; and denying them the procedural safeguards required by NEPA to ensure
23 that BLM and the Forest Service carefully consider the direct, indirect, and cumulative effects of
24 their proposed actions, environmentally superior alternatives to that action, and appropriate
25 mitigation measures prior to allowing new leasing.

26 19. Plaintiffs' injuries will be redressed by the relief sought herein. This court has
27 jurisdiction to vacate and enjoin BLM's and Forest Service's authorizations of new leasing, and
28 any leases and project approvals relying on BLM's EA and Finding of No Significant Impact.

1 All such relief would improve Plaintiffs’ opportunities for using and enjoying the Wayne
2 National Forest and the Marietta Unit in the future.

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

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

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

18 **STATUTORY BACKGROUND**

19 23. The National Environmental Policy Act is “our basic national charter for
20 protection of the environment.” 40 C.F.R. § 1500.1(a). Its twin aims are to facilitate informed
21 agency decisionmaking and public access to information. By focusing both agency and public
22 attention on the environmental effects of proposed actions, NEPA facilitates informed
23 decisionmaking by agencies, and fosters public participation.

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

1 25. 16. Under NEPA’s implementing regulations, an agency’s EA must include “brief
2 discussions of the need for the proposal, of the alternatives . . . , [and] of the environmental
3 impacts of the proposed action and the alternatives.” 40 C.F.R. § 1508.9. The EA must take a
4 “hard look” at the impacts, and if the agency decides the impacts are not significant, it must
5 supply a convincing statement of reasons why. The EA must analyze not only the direct impacts
6 of a proposed action, but also the indirect and cumulative impacts. *Id.* § 1508.7, 1508.8. Such
7 analysis must include all reasonably foreseeable impacts of the proposed action.

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

15 27. If, after preparing an EA, the agency determines an EIS is not required, the
16 agency must provide a “convincing statement of reasons” why the project’s impacts are
17 insignificant and issue a Finding of No Significant Impact or “FONSI.” 40 C.F.R. §§ 1501.4,
18 1508.9 & 1508.13.

19 28. Moreover, an agency “[s]hall prepare supplements to either draft or final
20 environmental impact statements if...[t] here are significant new circumstances or information
21 relevant to environmental concerns and bearing on the proposed action or its impacts,” or “[m]ay
22 also prepare supplements when the agency determines that the purposes of the Act will be
23 furthered by doing so.” 40 C.F.R. § 1502.9(c)(1)(ii), (2).

24 **FACTUAL BACKGROUND**

25 **A. The Wayne National Forest**

26 29. The Wayne National Forest is Ohio’s only national forest, beloved for its lush and
27 rugged landscape, many headwater streams, craggy rock outcroppings, and picturesque
28 waterfalls and covered bridges. Located in the foothills of the Appalachian Mountains in

1 southeast Ohio, the Wayne National Forest is one of the few public forests in the state—only 14
2 percent of Ohio’s forests is publicly owned. Within only a few hours driving distance of
3 Columbus, Cleveland, and Cincinnati, the Wayne National Forest provides numerous
4 recreational opportunities to Ohio residents and out-of-state visitors. Hundreds of thousands of
5 people visit the Wayne National Forest each year for hiking, camping, canoeing, wildlife
6 viewing, bird watching, and mushroom gathering, among many other activities.

7 30. The Wayne National Forest is divided into three non-contiguous units—Athens,
8 Ironton, and Marietta—and its administrative boundary contains nearly 834,000 acres of private
9 and federal land spanning twelve counties. The Marietta Unit is the Wayne National Forest’s
10 easternmost unit, consisting of over 268,000 acres of private and federal surface within its
11 administrative boundary, and the Ohio River flows along its eastern edge. The Little Muskingum
12 River, an Ohio River tributary, also winds through the Marietta Unit, making it one of the few
13 remaining free-flowing streams largely on public land within the state. Several campgrounds in
14 the Marietta Unit along the Little Muskingum River make the river a popular recreational spot
15 for backpackers, anglers, and paddlers.

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

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

25 33. Industrial exploitation of southeast Ohio’s coal, iron, clay, and timber resources in
26 the 19th and early 20th centuries denuded and disfigured the land, and left a legacy of
27 environmental damage, from which the Wayne National Forest is still recovering. Increased
28

1 fracking and land disturbance would reverse years of progress already made in reclaiming
2 natural areas for the public's enjoyment and would undermine reclamation efforts.

3 34. Unlike other national forests, the Wayne National Forest is a highly fragmented
4 patchwork of federal and private land, and most of the land within its administrative boundary is
5 privately owned. In the Marietta Unit, over three-quarters of the land within the national forest
6 boundary is under private ownership, and federal acreage (totaling approximately 64,000 acres)
7 is scattered throughout the forest. Federal minerals underlie federal land in the Wayne National
8 Forest (and only a very small percentage of private land), while private minerals underlie both
9 federal and private land.

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

11 35. Several listed species will be harmed by BLM and Forest Service's plans to allow
12 new oil and gas development in the Wayne National Forest's Marietta Unit, including the
13 Indiana bat, Northern long-eared bat, fanshell, pink mucket pearly mussel, sheepsnose mussel,
14 and snuffbox mussel.

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

24 37. White-nose syndrome is a fatal disease affecting hibernating bats that was first
25 documented in the winter of 2006-2007 in New York, and has since rapidly spread across the
26 U.S., killing over 6 million bats. Bats with white-nose syndrome display a white fungus on their
27 noses and on other hairless parts of their body. The disease causes bats to wake up from
28

1 hibernation and fly outside their caves, causing untimely consumption of stored fat reserves,
2 resulting in emaciation and increased mortality.

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

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

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

20 41. Several species of endangered mussels are also threatened by new oil and gas
21 leasing in the Wayne National Forest. These mussels are remarkable for their long life spans of
22 up to several decades and for their unique life cycles, which involve larvae developing on host
23 fish until they are juveniles with shells of their own. The fanshell and pink mucket pearly mussel
24 are both found in sections of the Ohio River immediately downstream of the Marietta Unit.
25 These species are listed as "endangered." Host fish for the fanshell and pink mucket pearly
26 mussel are found within the Marietta Unit of the Wayne National Forest, and could travel
27 downstream and play a role in the life cycle of downstream mussels in the Ohio River.

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

3 43. Major threats to the endangered mussels include habitat fragmentation and
4 destruction from dams, sedimentation from road construction, mining and logging, and pollution
5 from accidental spills and industrial activities, including oil and gas drilling and fracking.

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

7 44. The Marietta Unit overlies both the Marcellus and Utica shale plays. The
8 Marcellus Shale, which extends through northern Appalachia, including much of Ohio, West
9 Virginia, Pennsylvania, and New York, is one of the largest natural gas-producing areas in the
10 U.S. The Utica Shale, which underlies the Marcellus Shale and extends through much of the
11 same area and into Canada, is an emerging area of interest to oil and gas operators, and a
12 significant source of natural gas, oil, and natural gas liquids. According to the U.S. Energy
13 Information Administration (EIA), in recent years, natural gas production in the Marcellus and
14 Utica regions has largely driven growth in total U.S. natural gas production.

15 45. Before 2008, the Marcellus Shale was largely untapped, because the extraction of
16 commercial quantities of natural gas from this formation using “conventional” vertical drilling
17 techniques was not possible. Since then, improved technology—namely, the coupling of
18 hydraulic fracturing (“fracking”) with horizontal drilling—has enabled the profitable exploitation
19 of the Marcellus Shale. In 2010, oil and gas operators also began developing the Utica Shale
20 using these techniques, and current Utica Shale production is largely centered in eastern Ohio.

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

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

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

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

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

25 51. Fracking can result in the discharge of hazardous wastes, including petroleum
26 products, into drinking water. The hydraulic fracturing process involves hundreds of toxic
27 chemicals that can escape into water supplies either through deep well injection or through more
28 conventional routes, like migration through faulty casing or via surface spills. In 2016, the U.S.

1 Environmental Protection Agency (EPA) finalized a study that concluded that fracking can and
2 has resulted in adverse effects on drinking water resources. The study noted numerous cases of
3 water contamination resulting from spills, leaks, and faulty wells. Numerous studies indicate that
4 leaks from fracked wells are a chronic problem, even for newer wells.

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

14 53. Recently published scientific papers describe the harmfulness of the chemicals
15 often used in fracking fluid. One analysis found that 37 percent of the chemicals found at fracked
16 gas wells were volatile, and that of those volatile chemicals, 81 percent can harm the brain and
17 nervous system, 71 percent can harm the cardiovascular system and blood, and 66 percent can
18 harm the kidneys. Volatile organic compounds (VOCs) from car and truck engines, as well as the
19 drilling and fracking stages of oil and gas production, make up about 3.5 percent of the gases
20 emitted by oil or gas operations. The VOCs emitted include the BTEX compounds – benzene,
21 toluene, ethyl benzene, and xylene – which are listed as hazardous air pollutants (HAPs) by EPA.
22 These toxic air contaminants coupled with smog-forming chemicals (such as nitrogen oxides or
23 NOx, methane, and ethane) threaten local communities and regional air quality.

24 54. A number of studies link proximity to unconventional oil and gas development to
25 increased rates of cancer, birth defects, poor infant health, endocrine disruption, cardiology-
26 patient hospitalization, and acute health effects (e.g., skin rashes, nausea or vomiting, headache,
27 dizziness, eye and throat irritation). For example, a 2015 Pennsylvania study found a correlation
28

1 between proximity to unconventional gas drilling and higher incidence of lower birth weight and
2 small-for-gestational-age babies.

3 55. Despite the rapid rise in fracking, state and federal regulators have lagged behind
4 in safeguarding public health and the environment from fracking activities. For example, Ohio
5 does not require the storage of wastewaters or other fluids in closed tanks, instead allowing fluids
6 to be stored in open pits. Open pits not only create hazardous conditions for humans and wildlife,
7 but can also leak and contaminate streams or groundwater if improperly constructed or unlined.
8 Ohio lacks any specific standards for pit construction or liners, and only requires that pits be
9 “liquid tight” and constructed and maintained to “prevent the escape of brine and other waste
10 substances.” According to EPA’s study on drinking water resources, between 1983 and 2007, 63
11 incidents of non-public water supply contamination from unlined or inadequately constructed
12 pits occurred in Ohio. Increased fracking activities and storage of wastewaters and frack fluids
13 increases the likelihood of additional water contamination incidents.

14 **D. BLM and the Forest Service’s Approval of New Leasing and the December 2016**
15 **Lease Auction**

16 56. On October 14, 2016, BLM approved new leasing of all federal minerals in the
17 Wayne National Forest’s Marietta Unit, opening it up to large-scale, high-volume fracking of the
18 Utica and Marcellus shales for the first time. BLM held its first lease auction pursuant to this
19 approval on December 13, 2016, selling 17 parcels totaling 679.48 acres. Prior to the sale, the
20 Forest Service authorized the leasing of these parcels, pursuant to 30 U.S.C. § 352 and 36 C.F.R.
21 § 228.102(e).

22 57. BLM’s and the Forest Service’s approvals of new leasing and the lease sale did
23 not take into account significant information concerning fracking and horizontal drilling
24 operations, climate change, and white-nose syndrome, but instead relied on outdated and
25 inadequate analyses from 2006 and 2012.

26 58. In 2006, the Forest Service approved the Final Revised Land and Resource
27 Management Plan for the Wayne National Forest (“2006 Forest Plan”), which made available
28 238,000 acres of the Wayne National Forest, including the Marietta Unit, for oil and gas leasing.

1 The BLM was purportedly a cooperating agency in development of the 2006 Forest Plan and the
2 related Final Environmental Impact Statement (“2006 FEIS”) prepared under the National
3 Environmental Policy Act (“NEPA”), 42 U.S.C. § 4321 *et seq.*

4 59. To inform the 2006 FEIS’s effects analysis of new oil and gas leasing authorized
5 by the 2006 Forest Plan, in 2004 BLM prepared a Reasonably Foreseeable Development
6 Scenario. The 2004 Reasonably Foreseeable Development Scenario projected that 110 vertical
7 wells would be developed in the Wayne National Forest’s Marietta Unit, and that hydraulic
8 fracturing and horizontal drilling in the Wayne National Forest were not economically feasible at
9 that time. The 2004 Reasonably Foreseeable Development Scenario projected that 135 acres of
10 surface disturbance would occur on federal surface overlying federal and private minerals,
11 including an upper limit of 50 acres total of surface disturbance from all forms of utilities
12 construction, such as oil and gas pipelines.

13 60. The 2006 FEIS’s analysis of all impacts resulting from new oil and gas leasing in
14 the Wayne National Forest was based on the 2004 Reasonably Foreseeable Development
15 Scenario’s projections of total surface disturbance and new wells. These surface disturbance
16 assumptions were the basis for many of the resource impact analyses contained in the 2006 FEIS,
17 including those for water, vegetation, and wildlife.

18 61. The 2004 Reasonably Foreseeable Development Scenario did not estimate surface
19 disturbance from private surface activities that could result from new federal leasing, or on
20 private surface adjacent to federal surface—e.g., the drilling of non-vertical wells, such as
21 horizontal wells, or the development of supporting infrastructure. Private inholdings make up
22 76% of the Marietta Unit.

23 62. In 2011, bats infected with white-nose syndrome were discovered in Ohio in the
24 Wayne National Forest for the first time. Since 2011, Ohio has seen a steep decline in its bat
25 populations. According to monitoring data from Ohio Department of Natural Resources, bat
26 populations in Ohio’s two largest hibernacula (or overwintering sites) have declined by over 90
27 percent; summer bat detection rates have dropped by over 50 percent. In addition, a 2013 study
28 projects that climate change will result in a northeast-ward shift in the Indiana bat’s population

1 range-wide, reducing its overall range. The bat's summer range in Ohio and other Midwestern
2 states are likely to become unsuitably warm for the temperature-sensitive species.

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

9 64. Before the scheduled date of the lease sale, in response to the public's concerns,
10 the Forest Service withdrew consent to new leasing and BLM canceled the lease sale, pending a
11 review of new information about fracking and "the effects analysis in the 2006 FEIS and
12 associated planning documents." To inform its review, the Forest Service requested that BLM
13 review the 2004 Reasonably Foreseeable Development Scenario in light of the new potential for
14 fracking and horizontal drilling activities not considered in the 2006 EIS.

15 65. In 2012, BLM reviewed the 2004 Reasonably Foreseeable Development Scenario
16 and determined that horizontal drilling was now economically viable within the Wayne National
17 Forest, and that 10 horizontal well sites could potentially be developed in the Marietta Unit.
18 BLM found that new surface disturbance and other impacts from these activities are "still well
19 within the levels forecast" in the 2004 Reasonably Foreseeable Development Scenario, and
20 concluded "the [2004 Reasonably Foreseeable Development Scenario] is still applicable and
21 does not need to be revised."

22 66. BLM's review underestimated surface disturbance from horizontal well pads, new
23 pipelines, compressor stations, and other infrastructure associated with horizontal drilling and
24 fracking activities, and ignored surface disturbance from new wastewater pits or impoundments.
25 It also ignored the potential for these activities to be located on private land and open up
26 underlying private minerals for extraction, even though: (1) a driller must have the right to access
27 a continuous and large enough portion of a shale formation to make horizontal wells
28 economically viable; (2) well pads can be located over two miles away from targeted minerals;

1 (3) private land surrounds or adjoins the acreage available for federal leasing; and (4) operators
2 may prefer conducting surface operations on private land over national forest land, given the
3 weaker controls that apply to private surface.

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

7 68. The 2012 SIR is not a NEPA document and was not subject to public notice and
8 comment procedures.

9 69. The 2012 SIR concluded that “[n]o additional analysis or protections are needed
10 at the Forest Plan level” with respect to all Forest resources, including water and wildlife. The
11 2012 SIR did not analyze the potential for new or increased private surface activities resulting
12 from new federal oil and gas leasing. It also erroneously assumed that the 2006 Forest Plan’s
13 requirements would mitigate the effects of new leasing, without regard to the potential for new
14 leasing to result in horizontal drilling and fracking on private surface. The 2006 Forest Plan’s
15 requirements do not govern private surface activities.

16 70. The 2012 SIR did not consider climate change effects on the forest or listed
17 species.

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

23 72. In November 2015, BLM initiated a public scoping process for the EA to
24 determine what issues the EA should address. BLM received comments from proponents of
25 federal leasing urging that new federal leasing in the Wayne National Forest was necessary to
26 “provide private landowners the opportunity to develop their minerals,” while “withholding
27 leasing the federal minerals will pose an obstacle to development of private minerals.” This is
28 because private mineral owners would not be able to profitably develop their shale resources in

1 the Marietta Unit without the ability to “pool” and horizontally drill through large contiguous
2 areas of shale resources (e.g., one to two miles wide), including federal minerals scattered
3 throughout the forest.

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

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

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

19 76. On June 15, 2016, before the Draft EA was finalized, the Forest Service
20 authorized BLM to offer a number of parcels for new leasing, to be offered in the December 13,
21 2016 lease auction.

22 77. On October 17, 2016, BLM issued its Final EA and Finding of No Significant
23 Impact, which found that the action of leasing up to 40,000 acres of federal mineral estate within
24 the Marietta Unit “is not a major Federal action” and “will not significantly affect the quality of
25 the human environment.” On the same day, BLM posted an oil and gas lease sale notice for 33
26 parcels, totaling 1,600.69 acres, located in Monroe and Washington counties in the Marietta Unit,
27 scheduled to take place on December 13, 2016. Sixteen of the parcels were later deferred or
28

1 removed from the auction due to concerns that the parcels were not available for leasing. These
2 changes reduced the leasing proposal to 17 parcels totaling 679.48 acres.

3 78. In response to Plaintiffs' comments, in the Final EA BLM admitted the potential
4 for new leasing to result in private surface activities, but failed to analyze or estimate total
5 private surface disturbance and associated impacts, or to adequately consider mitigation for these
6 impacts. BLM dismissed or failed to adequately respond to all other comments raised by
7 Plaintiffs.

8 79. On November 11, 2016, Plaintiffs filed a formal administrative protest against the
9 December 13, 2016 sale, raising their same previous concerns. BLM received over 100 formal
10 protests of the lease sale. On December 12, 2016, BLM denied or dismissed all of the protests,
11 and issued its Decision Record authorizing the lease auction. The lease sale took place on
12 December 13, 2016. All 679.48 acres were sold.

13 80. On January 13, 2017, Plaintiffs filed an administrative appeal of the Decision
14 Record and petition for stay with the Interior Board of Land Appeals. The Board denied
15 Plaintiffs' petition for stay on February 28, 2017. Plaintiffs dismissed their appeal on May 1,
16 2017.

17 81. The Forest Service has never performed or adopted an environmental review of
18 the impacts of fracking in the Wayne National Forest, including impacts caused by reasonably
19 foreseeable private surface activities, or analyzed climate change effects in a NEPA document
20 subject to public notice and comment.

21 82. On information and belief, BLM will continue to hold quarterly lease sales until
22 all 18,000 acres in the Marietta Unit that have been nominated for leasing are sold, and will rely
23 on the Final EA, 2006 Forest Plan EIS, and 2012 SIR for approvals of future leasing auctions of
24 the Marietta Unit. BLM's most recent lease sale for the Wayne National Forest occurred on
25 March 23, 2017, resulting in the sale of 1,147.10 acres in the Marietta Unit. On information and
26 belief, the Forest Service also intends to rely on the 2006 Forest Plan EIS for its authorization of
27 new leasing auctions.

1 83. On information and belief, another lease auction for Wayne National Forest
2 parcels could happen as early as September 2017, and December 2017 thereafter.

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

11 85. On April 21, 2017, Plaintiffs provided a supplemental notice to BLM, Forest
12 Service, U.S. Fish & Wildlife Service, and the Secretary of Interior, clarifying their January 26
13 notice that BLM, the Forest Service, and the Fish and Wildlife Service are in violation of Section
14 7 of the ESA due to their ongoing failure to initiate and complete Section 7 consultation
15 regarding (1) BLM’s decision in the Final EA and Finding of No Significant Impact to make
16 available all federal minerals in the Marietta Unit for oil and gas leasing; (2) BLM’s decision to
17 authorize the December 13, 2016 lease auction and March 23, 2017 lease auction.

18 86. In the event that BLM, U.S. Forest Service, and the U.S. Fish and Wildlife
19 Service fail to remedy the alleged violations within the supplemental notice period, Plaintiffs
20 intend to amend their Complaint in this action to add the alleged ESA violations.

21
22 **CLAIMS FOR RELIEF**

23 **FIRST CLAIM**

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

26 87. Plaintiffs hereby reallege and incorporate by reference the allegations set forth in
27 the preceding paragraphs.

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

9 89. Pursuant to NEPA, agencies “[s]hall prepare supplements to either draft or final
10 environmental impact statements if...[t]here are significant new circumstances or information
11 relevant to environmental concerns and bearing on the proposed action or its impacts.” 40 C.F.R.
12 § 1502.9(c)(1)(ii).

13 90. The leasing of the specific lands sold in the December lease auction has not been
14 adequately addressed in a NEPA document adopted or prepared by the Forest Service.

15 91. Since the adoption of the 2006 Forest Plan and 2006 FEIS, significant new
16 information or circumstances not addressed in these documents but bearing on the December 13,
17 2016 lease auction or its impacts have arisen, including but not limited to:

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

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

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

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

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

2 (f) the listing of new species under the ESA, including the Northern long-
3 eared bat, sheepnose mussel, and snuffbox mussel.

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

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

21 94. Before consenting to leasing, the Forest Service failed to prepare “additional
22 environmental analysis” in a proper NEPA document addressing these significant new
23 circumstances and information, as required by 36 C.F.R. § 228.102(e)(1).

24 95. Accordingly, the Forest Service’s authorization of the December 13, 2016 lease
25 auction is arbitrary and capricious and not in accordance with law, as required by 36 C.F.R. §
26 228.102(e)(1), NEPA, its implementing regulations, and the APA. 5 U.S.C. §§ 701-706, 706(2).

1 **SECOND CLAIM**

2 **BLM'S VIOLATION OF NEPA AND THE APA—**
3 **PREPARATION OF AN UNLAWFUL EA AND FONSI AND FAILURE TO PREPARE AN**
4 **EIS**

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

7 ***Preparation of an Unlawful EA and Finding of No Significant Impact***

8 97. Pursuant to NEPA, BLM must take a “hard look” at the consequences,
9 environmental impacts, and adverse effects of its proposed actions. 42 U.S.C. § 4332(2)(C); 40
10 C.F.R. § 1508.9. The effects analysis must analyze not only the direct impacts of a proposed
11 action, but also the indirect and cumulative impacts. 40 C.F.R. §§ 1508.7, 1508.8, 1508.9. Such
12 analysis must include all reasonably foreseeable impacts of the proposed action.

13 98. BLM failed to analyze the full scope of the effects of (1) making available 40,000
14 acres of the Wayne National Forest’s Marietta Unit to new leasing, and (2) leasing the specific
15 parcels offered in the December 2016 lease sale, including the direct, indirect, and cumulative
16 effects of these actions.

17 99. BLM failed to take a hard look at the potential for new leasing in the Marietta
18 Unit to open up private minerals and private surface to new development. The EA’s failure to
19 address private mineral development and private surface disturbance resulting from federal
20 leasing infects the entire effects analysis in the EA. By opening up federal and, as a consequence,
21 *private* minerals and surface to drilling, new leasing will increase the total number of new well
22 pads and wells, total surface disturbance, watershed impacts, cumulative air pollution emissions,
23 public health risks, habitat loss, and disturbance to wildlife. The EA also erroneously assumes
24 that effects of new leasing would be mitigated by the 2006 Forest Plan, even though its
25 requirements do not apply to private surface and were adopted with only vertical drilling in
26 mind. It further erroneously assumes that Ohio state laws and regulations can adequately mitigate
27 these effects. For example, because open pits are allowed on private surface under Ohio state
28 law, birds and bats would be at risk of entrapment in pits, but the EA fails to analyze these
potential impacts.

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

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

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

25 103. BLM failed to take a hard look at the impacts of fracking, including high-volume
26 water withdrawals, runoff pollution, and spills and leaks, on the endangered mussels and their
27 host fish.

1 104. BLM failed to take a hard look at the cumulative impacts of its proposals in
2 connection with private surface and private oil and gas development, and other past, present, and
3 reasonably foreseeable future projects in the vicinity of the Marietta Unit.

4 ***Failure to Prepare an EIS***

5 105. NEPA requires the preparation of an EIS for all “major federal actions
6 significantly affecting the quality of the human environment.” 42 U.S.C. § 4332(2)(C); 40 C.F.R.
7 § 1501.4.

8 106. BLM’s decision to make available for new leasing all federal mineral acreage in
9 the Marietta Unit is a major federal action significantly affecting the quality of the human
10 environment. Its decision to hold the December 2016 lease auction is also a major federal action
11 significantly affecting the quality of the human environment.

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

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

23 109. In sum, BLM’s adoption of an inadequate EA and Finding of No Significant
24 Impact for its proposed action making available the Marietta Unit for new leasing; issuance of a
25 Decision Record authorizing the December 2016 lease sale; and failure to prepare EISs are
26 arbitrary and capricious and not in accordance with the law, as required by NEPA, its
27 implementing regulations, and the APA. 5 U.S.C. §§ 701-706, 706(2).

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs pray for relief against BLM and the Forest Service as follows:

A. For declarations that:

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

(2) BLM’s adoption of the Final EA, Finding of No Significant Impact, and Decision Record for the December 13, 2016 lease auction violated NEPA, its implementing regulations, and the APA;

(3) BLM’s failure to prepare an EIS for its action making the Marietta Unit available for oil and gas leasing and for the December 13, 2016 lease auction violated NEPA, its implementing regulations, and the APA;

B. For an order, including a preliminary and permanent injunction invalidating and setting aside BLM’s Final EA, Finding of No Significant Impact, and December 12, 2016 Decision Record approving the December 13, 2016 lease auction; the Forest Service’s consent to leasing parcels offered in the December 13, 2016 lease auction; and any leases or approvals issued in reliance on the foregoing documents or decisions;

C. For an injunction restraining BLM and the Forest Service, and each of their agents, employees, officers, and representatives from implementing BLM’s December 12, 2016 Decision Record, or from authorizing new oil and gas leasing, exploration, or development in the Marietta Unit, pending BLM and the Forest Service’s completion of a supplemental EIS analyzing the effects of new oil and gas leasing allowed under the Final EA and Finding of No Significant Impact, and allowed in the December 2016 lease auction, in full compliance with NEPA and all other applicable legal requirements.

D. For an injunction restraining any person or entity from constructing new wells or other projects authorized under BLM or Forest Service approvals that rely on or tier to the Final EA or Finding of No Significant Impact, or 2006 Forest Plan EIS, pending BLM and the Forest Service’s completion of a supplemental EIS analyzing the effects of new oil and gas leasing

1 allowed in the December 2016 lease auction and the Final EA and Finding of No Significant
2 Impact, in full compliance with NEPA and all other applicable legal requirements.

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

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

7
8 DATED: May 2, 2017

Respectfully submitted,

9
10 WENDY S. PARK
11 DIANA DASCALU-JOFFE
12 *Counsel for Plaintiffs Center for Biological
Diversity, Heartwood, and Sierra Club*

13 /s/ Nathan G. Johnson

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THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

| | | |
|--|---|--------------------------------|
| <u>Center for Biological Diversity, et al.</u> | : | Case No. _____ |
| | : | Judge: _____ |
| v. | : | Corporate Disclosure Statement |
| | : | |
| <u>U.S. Forest Service, et al.</u> | : | |
| | : | |

Pursuant to the Corporate Disclosure Statement provisions in Local Civil Rule 7.1.1: Any non-governmental corporate party to a proceeding must file a Corporate Affiliations/Financial Interest statement identifying all of its parent, subsidiary and other affiliate corporations and listing any publicly held company that “controls, is controlled by, or is under common control with a publicly controlled corporation.” A party must file the statement upon filing a complaint, answer, motion, response or other pleadings in this Court, whichever occurs first. The obligation to disclose any changes will be continuing throughout the pendency of this case.

In Compliance with those provisions, this Corporate Disclosure Statement is filed on behalf of:

Center for Biological Diversity

1. Is said party a parent, subsidiary or other affiliate of a publicly owned corporations?

YES NO

If the answer is YES, list below the identity of the parent, subsidiary or other affiliate corporation and the relationship between it and the named party:

2. Is there a publicly owned corporation, not a party to the case, that has a financial interest in the outcome?

YES NO

If the answer is YES, list the identity of such corporation and the nature of the financial interest.

/s/ Wendy S. Park
Signature of Counsel

4/28/2017
Date

“Certificate of Service”

**COUNSEL ARE REMINDED OF THEIR CONTINUING OBLIGATION
TO UPDATE AND SUPPLEMENT THIS STATEMENT**

THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

| | | |
|--|---|--------------------------------|
| <u>Center for Biological Diversity, et al.</u> | : | Case No. _____ |
| | : | Judge: _____ |
| v. | : | Corporate Disclosure Statement |
| | : | |
| <u>U.S. Forest Service, et al.</u> | : | |
| | : | |

Pursuant to the Corporate Disclosure Statement provisions in Local Civil Rule 7.1.1: Any non-governmental corporate party to a proceeding must file a Corporate Affiliations/Financial Interest statement identifying all of its parent, subsidiary and other affiliate corporations and listing any publicly held company that “controls, is controlled by, or is under common control with a publicly controlled corporation.” A party must file the statement upon filing a complaint, answer, motion, response or other pleadings in this Court, whichever occurs first. The obligation to disclose any changes will be continuing throughout the pendency of this case.

In Compliance with those provisions, this Corporate Disclosure Statement is filed on behalf of:

Ohio Environmental Council

1. Is said party a parent, subsidiary or other affiliate of a publicly owned corporations?

YES NO

If the answer is YES, list below the identity of the parent, subsidiary or other affiliate corporation and the relationship between it and the named party:

2. Is there a publicly owned corporation, not a party to the case, that has a financial interest in the outcome?

YES NO

If the answer is YES, list the identity of such corporation and the nature of the financial interest.

/s/ Nathan G. Johnson
Signature of Counsel

5/01/2017
Date

“Certificate of Service”

**COUNSEL ARE REMINDED OF THEIR CONTINUING OBLIGATION
TO UPDATE AND SUPPLEMENT THIS STATEMENT**

THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

| | | |
|--|---|--------------------------------|
| <u>Center for Biological Diversity, et al.</u> | : | Case No. _____ |
| | : | Judge: _____ |
| v. | : | Corporate Disclosure Statement |
| | : | |
| <u>U.S. Forest Service, et al.</u> | : | |
| | : | |

Pursuant to the Corporate Disclosure Statement provisions in Local Civil Rule 7.1.1: Any non-governmental corporate party to a proceeding must file a Corporate Affiliations/Financial Interest statement identifying all of its parent, subsidiary and other affiliate corporations and listing any publicly held company that “controls, is controlled by, or is under common control with a publicly controlled corporation.” A party must file the statement upon filing a complaint, answer, motion, response or other pleadings in this Court, whichever occurs first. The obligation to disclose any changes will be continuing throughout the pendency of this case.

In Compliance with those provisions, this Corporate Disclosure Statement is filed on behalf of:

Sierra Club

1. Is said party a parent, subsidiary or other affiliate of a publicly owned corporations?

YES NO

If the answer is YES, list below the identity of the parent, subsidiary or other affiliate corporation and the relationship between it and the named party:

2. Is there a publicly owned corporation, not a party to the case, that has a financial interest in the outcome?

YES NO

If the answer is YES, list the identity of such corporation and the nature of the financial interest.

/s/ Elizabeth Benson
Signature of Counsel

5/1/2017
Date

“Certificate of Service”

**COUNSEL ARE REMINDED OF THEIR CONTINUING OBLIGATION
TO UPDATE AND SUPPLEMENT THIS STATEMENT**

CERTIFICATE OF SERVICE

I certify that on May 2, 2017, the foregoing Complaint, filed by Center for Biological Diversity, Heartwood, Ohio Environmental Council, and Sierra Club, was served upon all registered counsel via the Court's ECF system and by mailing it via U.S. certified mail per S.D. Ohio Civ. R. 4.2.

DATED: May 2, 2017

/s/ Nathan G. Johnson

NATHAN G. JOHNSON
*Trial Attorney for Plaintiffs Center for Biological
Diversity, Ohio Environmental Council, Heartwood,
and Sierra Club*