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Comments: Comments on the Draft Assessment for the Wayne National Forest March

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In the late fall of 2011 citizens in southeastern Ohio including Athens County became aware of the intent from the Bureau of Land Management to offer for lease in December of 2011, several thousand acres of oil and gas mineral rights. Due to fast action by a number of citizens and a sincere approach to at that time Supervisor Anne Carey, concerning the lease sale and the fact that the issue of fracking in our only forest had never been evaluated, Anne Carey decided to postpone the lease sale. Supervisor Carey then used a non-NEPA process, not involving the public review to draft a SIR from a RONI process. This too was an incomplete document as was the 2006 plan in that there was woefully inadequate research of the issues of fracking, impacts to the forest and climate change.

To our dismay, less than 3 years later in the fall of 2015 the Bureau of Land Management announced that it would begin the scoping process under NEPA for fulfilling the EOIs on several thousand acres of oil and gas minerals in the Wayne National Forest. When the BLM announced that it would perform an Environmental Assessment (EA) there was an outcry statewide as to the inadequacy of such a review as opposed to an in-depth, NEPA-required EIS. Comments on the EA were to be submitted by May 2016. The BLM received 14,000 comments on the EA with well over 13,000 protesting fracking or leasing of minerals.¹ In addition, after the BLM and FS reviewed the comments, there were 102 protest letters against fracking and leasing, most with personal information and identification of the person or persons expressing the protest.²

There have been scores of news articles and social media posts covering the concerns of the possibility of fracking and oil and gas leasing in our forest over the past 9 years starting in 2011.

There have been many protests around the state concerning the leasing of oil and gas minerals,

representing the thousands of people who have this issue as a serious concern for our national forest. There was a petition signed by nearly 100,000 people delivered to the BLM in Washington D.C. in November 2016 by 4 activists in the state.³ Regardless, after nine years the Forest Service continues to disregard the public's knowledge and concerns on fracking and its effects on climate change.

1 <https://www.fs.usda.gov/detail/wayne/home/?cid=fseprd529809>.

2 <https://eplanning.blm.gov/epl-frontoffice/eplanning/planAndProjectSite.do?methodName=dispatchToPatternPage¤tPageId=103258>.

3 https://www.athensnews.com/news/local/local-activists-and-others-deliver--signature-petitionopposing-national/article_3ef4ae96-aa9a-11e6-9cf9-9b2b697791b8.html.

In 2018 when the Wayne FS announced the beginning of the 2006 plan revision, many of the same people who had been engaged with the FS throughout the EA and the to-date lease auctions, jumped in and continued to seek involvement in the public process. After being shunned and dismissed on all counts of participation and science sharing, we persisted. When we learned of the FS's public participation plan to engage working groups from around the state to represent many of the management areas of the FS, I personally asked Tony Scardina if there could be a group representing the environment and social justice issues. The Ecological Forest Management, Climate Protection, and Sustainable Economies citizen group was formed and accepted by the FS. We engaged with the FS for the 22 months it took to write the Draft Assessment, and as required, our working group submitted our work in January of 2019. Over 100 pages of peer-reviewed, up-to-date science was submitted with the following intro to the FS:

Dear Planning Revision Team,

The citizen-led Ecological Forest Management, Climate Protection, and Sustainable Economies Working Group presents

the following concerns, with references to peer-reviewed and other documents submitted separately by our members. We expect

all submitted documents to be evaluated in your planning revision

process. Some submissions are re-submissions of testimony,

research, and analysis previously submitted by Buckeye Forest

Council, Athens County Fracking Action Network, Heartwood,

Sierra Club, and other groups as well as by professional biologists

and concerned citizens on issues that have yet to be addressed by

the Wayne in a NEPA-based evaluation of forest actions.

In good faith, the 18-member group had monthly conference calls and spent hours researching

the issues guided by our title and the federal laws under 42 U.S.C. [sect] 4332(C), which requires

National Forests and their agents to "include in every recommendation or report on proposals for

[hellip] major Federal actions significantly affecting the quality of the human environment, a detailed

statement by the responsible official on (i) the environmental impact of the proposed action,

(ii) any adverse environmental effects which cannot be avoided should the proposal be

implemented, (iii) alternatives to the proposed action, (iv) the relationship between local shortterm

uses of man's [sic] environment and the maintenance and enhancement of long-term

productivity, and (v) any irreversible and irretrievable commitments of resources which would

be involved in the proposed action should it be implemented." Additionally, the Agency shall (42

U.S.C. [sect] 4332 (E)) "study, develop, and describe appropriate alternatives to recommended

courses of action in any proposal which involves unresolved conflicts concerning alternative uses

of available resources."

In addition, the federal 2012 planning rule was understood by our group to be the principles

under which the FS would listen and evaluate submissions by the working groups. Once we read

the Draft Assessment, it was apparent the FS planning team did not use or acknowledge any of

the relevant up-to-date science presented by our group. The Wayne planning team has, since the

beginning of the plan revision, stated over and over that it wants to engage the public, and yet the planning team also has openly and repeatedly admitted it is confused as to how to do that. The Wayne planning team's solution to this problem now is quite clear. Rather than deal with its failures to work with public groups, the Wayne planning team has decided to get rid of the public groups. During the March 6 conference call it was revealed that the FS would disengage the working groups citing the obscure FACA federal law to the groups, hoping the groups would stay engaged, but stating: "We want to consider appropriate public engagement opportunities that allow us to capture the knowledge, experience, and desires of all our partners and the public at large. We want a meaningful engagement process that allows us to continue moving the process forward and does not create barriers to involvement." The FS engaged interested dedicated people from all over the state, willing to be involved in the process and then dismissed those groups, all the while hoping those groups would stay engaged. This defies all intent of the 2012 planning rule! Moreover, could the Wayne planning team have been any more pretentious and insulting?

Contrary to Wayne planning team's decision is a letter dated November 26 ,2018 sent by Interim Forester Jonathan Kazmierski in an email to me stating: "During the Plan Development phase, the Wayne National Forest will be asking the working groups to help develop plan components and alternatives." (See attached email and letter.)

Not knowing what FACA referred to, I researched the law. I found the report from the federally appointed FACA who worked on the 2012 rule with the FS. They made their concerns known to the FS about the implementation and the ability of the FS to use the rule as intended. Martin Nie, Director of the Bolle Center for People and Forests, and Professor of Natural Resources Policy in the W.A. Franke College of Forestry and Conservation at the University of Montana, served on the committee and expressed concerns over the FS's ability to think outside the box. He states in his comments:

Adaptive planning and the use of best available science are anchor

points of the 2012 Rule. My motivation to be on the Committee

was largely driven by wanting to see the USFS attempt a sciencedriven

approach to adaptive management, starting at the plan

level. To date, forest plan revisions are not fully utilizing the

Rule's potential in this regard. As noted in our final

recommendations to the Secretary and Chief, "[I]t appears as

though there remains an entrenched adherence to the old way of

developing forest plans under prior planning rules."⁴

Also serving on this FACA was Peter Nelson, the director of the federal lands program at

Defenders of Wildlife. representing national environmental organizations on the federal advisory

committee from 2012 to 2018. Nelson expresses similar concerns on the FS ability and

willingness to change their ways in how they plan and manage our forests:

We are also troubled by a trend in forest plans conflating

"adaptive management" with "flexibility," which builds

undesirable uncertainty into plans. People vary in where they

stand on the "discretionary vs. regulatory" forest plan spectrum;

however, the USFS may be electing to avoid developing plans that

provide for certainty in the name of adaptive management. This

would be a mistake. The natural resource management

community[mdash]from academics to policymakers to practitioners[mdash]

has been trying to crack the code on adaptive management for

decades. The Planning Rule gave the USFS the opportunity to

develop forest plans that are both adaptive and accountable by

directing science-based assessments, measurable plan direction,

targeted monitoring, and a method to update plans. Building and

implementing a robust adaptive management program presents

challenges, but we cannot afford to pass on the opportunity to

effectively improve the condition of our forests." 5

4 <https://academic.oup.com/jof/article/117/1/65/5227990>.

5 <https://academic.oup.com/jof/article/117/1/65/5227990>.

Our group realized the concerns stated by federally-appointed FACA members on the 2012

planning rule also apply to the current planning process undertaken by the Wayne planning team.

In other words, the concerns and criticisms of the federally-appointed FACA members quoted

above are the same as the concerns and criticisms of this Ecological Forest Management,

Climate Protection, and Sustainable Economies citizen group. Our group has identified and

addressed the most controversial issue facing the world and our region and related it to the Forest

Plan, climate change and issues impacting it from fracking and burning and timbering. This issue

of controversy is the very issue that the responsible officer, the forest supervisor is mandated to

address. "The Responsible Official should tailor public participation during the assessment in a

manner that reflects anticipated public interests. For example, if intense public interest is

anticipated as a result of existing or recent controversial issues, a wide range of public

participation options should be scheduled to provide information to the public about the

assessment and planning process and to accept information and concerns offered by the public.

Approaches to public participation in the development of plan components should be tailored to

the needs and capacity of the public, taking into account the anticipated complexity of the

planning exercise. Where divergent views are anticipated, time spent on public participation

prior to drafting plan components can result in draft plan components that earn broad public

support. "(FSH 1909.12, ch.40).

Regarding the dismissal of information or no mention of the issues of concern as referenced by

the dozens of relevant up to date science documents demanding attention in the FS plan, it is

NOT a discretionary measure that can be taken by the responsible officer. Federal law mandates the use of the most up-to-date science and explanation of what is used by the FS in the stead of relevant and substantive science presented by our working group.

[sect] 219.3 Role of science in planning. The responsible official shall use the best available scientific information to inform the planning process required by this subpart for assessment; developing, amending, or revising a plan; and monitoring. In doing so, the responsible official shall determine what information is the most accurate, reliable, and relevant to the issues being considered. The responsible official shall document how the best available scientific information was used to inform the assessment, the plan or amendment decision, and the monitoring program as required in [sect][sect] 219.6(a)(3) and 219.14(a)(3). Such documentation must: Identify what information was determined to be the best available scientific information, explain the basis for that determination, and explain how the information was applied to the issues considered.

Under the 2012 planning rule, could the responsible official choose to disregard the best available science?

The responsible official will not have the discretion to disregard the best available scientific information in making a decision. We listened to public concerns about how best available scientific information should be used during land management planning, specifically regarding the proposed rule's wording that the responsible official must "take into account" the best available

scientific information. The 2012 planning rule clarifies that the responsible official must use the best available scientific information to inform the planning process and plan decisions.⁶

⁶ <https://www.fs.usda.gov/detail/planningrule/faqs/?cid=stelprdb5349628#25>.

Finally, now that the FS is aware of the lawsuit filed against it and the BLM biologicaldiversity.org/programs/public_land/energy/dirty_energy_development/oil_and_gas/pd/fs/Complaint_WNF_5-2-2017.pdf and the recent court decision in favor of the plaintiffs, biologicaldiversity.org/w/news/press-releases/court-stalls-fracking-leases-in-ohios-only-national-forest-2020-03-13/, you should be more than aware how our complaints on The Wayne's decision making process reveals its negligent and deficient shortfalls. These quotes taken from the judge's decision should help guide further planning in order to make the 2012 planning rule WORK, and to keep the possibility of lawsuits at bay.

Thus, the Court finds that USFS did not engage in reasoned analysis because it did not consider all reasonably foreseeable impacts of fracking, despite having information available to them for their consideration, and acknowledging that an increase in total surface area disturbance could require an EIS. (p. 41)

Thus, the Court cannot conclude that BLM engaged in a reasoned decision process when it determined that fracking would cause surface disturbance on only 55 acres because BLM considered in that calculation the surface disturbance caused by well-pads and nothing else. Likewise, the Defendants cannot argue that such information was unavailable, and thus not foreseeable, at the time BLM prepared its 2016 EA. [hellip]Indeed, there is evidence in the

record that demonstrates that BLM can and does routinely estimate surface disturbances. To not do so where there are reasonably foreseeable impacts from fracking was arbitrary and capricious.

The agencies made decisions based on a faulty foundation that the 2006 Forest Plan's and 2006 EIS's consideration of vertical drilling sufficiently accounted for the impacts of fracking. Each iteration of agency review built upon that faulty foundation - the 2016 EA relied on the 2012 SIR, which relied on the 2012 BLM letter, which relied on the 2006 Forest Plan and 2006 EIS - but neither USFS nor BLM stopped to take that 'hard look' that was required of them. Specifically, the Court finds that at the decision-to-lease phase, USFS and BLM failed to take a hard look at the impacts of fracking in WNF, including 1) surface area disturbance, 2) cumulative impacts on the Indiana Bat and the Little Muskingum River, and 3) impacts on air quality.

(pp. 70-71)

In conclusion, the next phase, Need for Change document should not be solely in the hands of the FS as the last 22 months lead me to believe it will be. You must consider the many perspectives from a worldly view, free from the strictures imposed by outdated FS attitudes claiming that your hands are tied. We need to hear news that you are willing to do something new, something different, something bold. The Forest Service can no longer look at the narrow landscape of our small but precious forest as means to create timber plantations or hope that wind farms don't kill all the bats, or landowners will be angry if they don't make money. The

broader landscape is in peril, and it is up to all of us to figure out how to mitigate the ongoing challenges of Climate Change.

Respectfully submitted,

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Attachments