DEPARTMENT OF THE INTERIOR
OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF LAND APPEALS

OHIO ENVIRONMENTAL COUNCIL, CENTER FOR BIOLOGICAL DIVERSITY, SIERRA CLUB, OHIO VALLEY ALLIES, and HEARTWOOD, Appellants, v. **BUREAU OF LAND MANAGEMENT,** Respondent.	**IBLA No.** RE: Wayne National Forest Supplemental Environmental Assessment, DOI-BLM-Eastern States-M000-2023-0005-EA (Apr. 2025)

NOTICE OF APPEAL AND PETITION FOR STAY

Pursuant to 43 C.F.R. §§ 4.21 and 4.410, the Ohio Environmental Council ("OEC"), Center for Biological Diversity ("the Center"), Sierra Club, Ohio Valley Allies ("OVA"), and Heartwood ("Appellants") file this Notice of Appeal and Petition for Stay of the Bureau of Land Management ("BLM") Northeastern States District's Final Supplemental Environmental Assessment ("Supplemental EA" or "SEA"), Finding of No Significant Impact ("FONSI"), and Decision Record ("DR") for the Wayne National Forest Supplemental Environmental Assessment Project ("Wayne Leasing Project" or "the Project"), DOI-BLM-Eastern States-M000-2023-0005-EA (Apr. 2025).

A Notice of Appeal is timely if it is filed no later than thirty (30) days "after the date of service of the decision." 43 C.F.R. § 4.411(a)(2)(i). Appellants received notice of the signed DR on April 18, 2025, the day after the signed FONSI, and signed DR were posted to BLM's

ePlanning website. *See* Email from Derek A. Strohl, Bureau of Land Mgmt., to Nathan Johnson, OEC, (Fri, Apr 18, 2025 at 11:15 AM) (enclosed as Ex. 1). Thirty days from April 18, 2025 is Sunday, May 18, 2025; the next business day is Monday, May 19, 2025. Therefore, this Notice of Appeal and Petition for Stay is timely.

A stay is well-justified in this case. In authorizing the sale and issuance of Wayne National Forest oil and gas leases, BLM failed to analyze, assess, and disclose a number of potentially significant impacts, in violation of the National Environmental Policy Act ("NEPA"), 42 U.S.C. § 4331, et seq. BLM's Supplemental EA fails to take the required NEPA "hard look" at several relevant factors of the Wayne Leasing Project.

Approval of the Wayne National Forest leases and lease sales is not only unlawful, it threatens immediate, imminent, and irreparable harm to Appellants and their interests in protecting and restoring the Wayne National Forest ("WNF"), wildlife, clean air and water, and a safe climate. Further, approval of the Wayne National Forest leases poses irreparable harms to Appellants, yet a stay would pose no harm to BLM. To this end, a stay would protect the public interest, maintaining the status quo and preventing significant environmental harms. For the following reasons, we respectfully request that the Interior Board of Land Appeals ("IBLA") grant a stay of the implementation of the Decision Record and the Wayne Leasing Project.

I. BACKGROUND

This appeal challenges the BLM's April 17, 2025 decision to approve the "Wayne Leasing Project" through the issuance of a Supplemental EA, FONSI, and Decision Record. BLM's decision makes approximately 40,000 acres of the Wayne National Forest available for oil and gas lease sales; and, affirms 8 prior BLM oil and leasing decisions. Decision Record, at 1.

BLM's 8 prior leasing decisions total 65 oil and gas leases sold in the Wayne between the years 2016 and 2019.

The BLM first proposed the Wayne Leasing Project in 2015. In October 2016, the BLM issued a final EA and Finding of No Significant Impact (thus concluding that no additional NEPA analysis was required) for its 40,000-acre leasing proposal. On May 2, 2017, the Center for Biological Diversity, the Ohio Environmental Council, Sierra Club, and Heartwood filed a lawsuit in the U.S. District Court for the Southern District of Ohio (case no. 17-cv-372) challenging the Wayne Leasing Project's conformance with NEPA and the Administrative Procedure Act (APA).

On March 13, 2020, the Court issued an Opinion and Order ruling that BLM and U.S. Forest Service violated NEPA when the agencies failed to take the requisite "hard look" at the impacts of fracking prior to deciding to grant leases. *Center for Biological Diversity v. U.S. Forest Service*, 444 F. Supp. 3d 832, 872 (S.D. Ohio 2020) (hereinafter "*CBD*"). In holding BLM's underlying 2016 NEPA analysis for the Wayne Leasing Project unlawful, the Court found that BLM "failed to take a [NEPA] hard look at the impacts of fracking in the WNF, including: (1) surface area disturbance, (2) cumulative impacts on the Indiana Bat and the Little Muskingum River, and (3) impacts on air quality." *Id*.

On March 8, 2021, after the parties completed briefing on remedies, the Court issued an Opinion and Order remanding BLM's 2016 EA and corresponding FONSI to undergo revised NEPA analysis, and enjoining further Wayne Leasing Project leasing and related activities pending completion of agency NEPA analysis "in accordance with" the Court's March 13, 2020 Opinion and Order. *Center for Biological Diversity v. U.S. Forest Service*, No. 2:17-CV-372, 2021 WL 855938, at *5 (S.D. Ohio Mar. 8, 2021). BLM issued the 2025 Supplemental EA and

DR-FONSI now before the IBLA in response to the Court's 2020 and 2021 Opinions and Orders.[1]

II. APPELLANTS ARE PARTIES THAT ARE ADVERSELY AFFECTED

To be granted a stay, Appellants must first demonstrate that they can maintain an appeal. *See* 43 C.F.R. § 4.21(a)(2). To maintain an appeal, Appellants must (1) be a party to the case; and (2) be adversely affected by the decision being appealed. 43 C.F.R. § 4.410(a); *National Wildlife Federation v. BLM*, 129 IBLA 124, 125 (1994).

The Ohio Environmental Council is a non-profit environmental organization whose mission is to protect the environment and health of all Ohio communities through legal and policy advocacy, decision-maker accountability, and civic engagement. OEC has thousands of individual members throughout the state of Ohio. The OEC has a long history of working to protect the ecological integrity, and recreational, aesthetic, and economic qualities of the Wayne National Forest. Many of our members have visited these public lands in the Wayne National Forest for recreational, scientific, educational, and other pursuits and will continue to do so in the future.

The Center for Biological Diversity is a non-profit 501(c)(3) corporation with offices in Arizona, New Mexico, California, Nevada, Oregon, Washington, Alaska, Minnesota, Colorado, and Washington, D.C. The Center works through science, law, and policy to secure a future for all species, great or small, hovering on the brink of extinction. The Center has approximately 93,927 members throughout the United States, Ohio, and the world. The Center is actively

[1] BLM prepared the 2025 Supplemental EA under CEQ's 2020 NEPA regulations and BLM's own NEPA regulations at 43 C.F.R. Part 46, guided by Departmental Manual Section 516, Environmental Quality (DOI 2020), and BLM's National Environmental Policy Act Handbook H-1790-1 (BLM NEPA Handbook) (BLM 2008). SEA, at 1-12. The Final Supplemental EA (including appendices), FONSI, and Decision Record are linked here and available on BLM's ePlanning website.

involved in species and habitat protection issues worldwide, including the eastern United States. The Center, its members, and staff members use the lands in and near the Wayne National Forest and the Ohio River, for recreational, scientific, and aesthetic purposes. They also derive recreational, scientific, and aesthetic benefits from these lands through wildlife observation, study, and photography. The Center and its members have an interest in preserving their ability to enjoy such activities in the future. As such, the Center and its members have an interest in helping to ensure their continued use and enjoyment of these activities on these lands. The Center is particularly concerned about species that are affected by fracking in and downstream from the Wayne National Forest. The Center and its members will be adversely affected by fracking in and around the Wayne National Forest's Marietta Unit.

The Sierra Club is a national nonprofit organization of more than 740,000 members dedicated to exploring, enjoying, and protecting the wild places of the earth; to practicing and promoting the responsible use of the earth's ecosystems and resources; to educating and enlisting humanity to protect and restore the quality of the natural and human environment; and to using all lawful means to carry out these objectives. The Ohio Chapter of the Sierra Club has more than 20,900 members in the state of Ohio. For many decades, the Sierra Club has worked to protect the Wayne National Forest and Ohio's other public lands from harmful activities such as clear-cutting, mineral extraction, commercial development, pipelines, and oil and gas drilling. Sierra Club members use the public lands in Ohio for quiet recreation, scientific research, aesthetic pursuits, and spiritual renewal.

Ohio Valley Allies (OVA) was formed in 2015 and has been a registered nonprofit organization in Ohio since 2022. As a grassroots organization with deep roots in Appalachia, Ohio Valley Allies utilizes a science based educational approach to inform the public about

environmental and public health risks, and promotes the solutions for a more sustainable and healthy future for our children.

Heartwood is a non-profit regional environmental organization dedicated to protecting the public forests of the Central Hardwood Region. Heartwood represents over seventeen hundred individual members and numerous member organizations who depend on these public lands, including the Wayne National Forest, for recreational, spiritual and ecological purposes. Heartwood members have, do and will continue to use these public lands, including the Wayne National Forest, for nonconsumptive purposes and they derive important tangible and intangible ecological benefits from the presence and ecological integrity of these public lands, including the lands that will be affected by the oil and gas leasing proposed by this action.

A. Appellants Are Parties

A party to the case includes a person or group who "participated in the process leading to the decision under appeal." *See* 43 C.F.R. § 4.410(b). Here, Appellants are parties because they have submitted extensive comments to BLM regarding the Wayne National Forest leasing proposal during the public comment periods provided by the agency. Appellants OEC, CBD Sierra Club, Heartwood, and OVA all submitted timely written comments on the Draft Supplemental EA. *See* Final Supplemental EA, Appendix J (response to comments). The issues presented in this Notice of Appeal and Petition for Stay were raised with reasonable specificity in Appellants' prior comments.

B. Appellants Are Adversely Affected

To demonstrate that it will "be adversely affected by the decision being appealed," a party must demonstrate a legally cognizable "interest" and that the decision appealed has caused

or is substantially likely to cause injury to that interest. 43 C.F.R. § 4.410(d). This requisite "interest" can be established by cultural, recreational, or aesthetic uses as well as enjoyment of the public lands and wildlife. *See The Coalition of Concerned National Park Retirees*, et al., 165 IBLA 79, 88 (2005); *Animal Protection Institute of America*, 117 IBLA 208, 210 (1990). The IBLA does not require a showing that an injury has actually occurred. Rather, a colorable allegation of injury suffices. *See Wildlands Defense*, 187 IBLA 233, 240, 241 (2016).

Moreover, it is not necessary for parties to show that they have actually set foot on the impacted parcel or parcels to establish use or enjoyment for purpose of demonstrating adverse effects. Rather, "one may also establish he or she is adversely affected by setting forth interests in resources or in other land or its resources affected by a decision and showing how the decision has caused or is substantially likely to cause injury to those interests." *The Coalition of Concerned National Park Retirees*, 165 IBLA at 84.

Filed concurrently with this Notice of Appeal and Petition for Stay is Appellants' Statement on Standing, which includes the declaration of Jill Hunkler, a member of each of the Appellant organizations. Ms. Hunkler testifies that she has an extensive history of recreating in the Wayne Leasing Project's Action Area and definite plans to continue doing so. *Id*. The declaration of Ms. Hunkler establishes that the BLM's decision to make available approximately 40,000 acres of the Wayne National Forest for oil and gas lease sale will adversely affect her recreational, aesthetic, conservation, spiritual, and educational interests. Statement on Standing, Exhibit 1 (Declaration of Jill Hunkler), at ¶¶ 14, 28. Ms. Hunkler's declaration also establishes that a favorable ruling in this appeal would redress the harms she would otherwise experience. *Id*. at ¶ 29.

III. REQUEST FOR STAY

Appellants respectfully request the IBLA grant their request for a stay of the BLM's Decision Record and FONSI for the Wayne Leasing Project during the pendency of this appeal. Appellants seeking a stay must demonstrate that (1) the balance of harms weighs in favor of a stay, (2) the Appellants are likely to succeed on the merits of their appeal, (3) the likelihood of immediate and irreparable harm to Appellants if the stay is not granted, and (4) the public interest favors granting a stay. 43 C.F.R. § 4.21(b)(1). The Appellant bears the burden of proof to demonstrate that a stay should be granted. 43 C.F.R. § 4.21(b)(2). In accordance with 43 C.F.R. § 4.21(b)(1)-(2), below we show that Appellants are likely to succeed on the merits, that Appellants will suffer immediate and irreparable harm if the stay is not granted, that the balance of harms favors a stay, and that the granting of a stay is in the public interest.

A. Appellants Are Likely to Succeed on the Merits

For the following reasons, among others, the BLM's approval of the Wayne Leasing Project violates NEPA, and should be overturned by the IBLA.

1. Legal Standard

The National Environmental Policy Act (NEPA) is our national charter for protection of the environment. NEPA requires agencies to evaluate and publicly disclose the potential environmental impacts of proposed actions. *Marsh v. Or. Natural Res. Council*, 490 U.S. 360, 371 (1989). NEPA ensures "that the agency, in reaching its decision, will have available, and will carefully consider, detailed information concerning significant environmental impacts; it also guarantees that the relevant information will be made available to the [public] that may also

play a role in both the decisionmaking process and the implementation of that decision." *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989).

NEPA requires agencies to prepare a detailed "environmental impact statement" ("EIS") for major federal actions that may significantly impact the environment. 42 U.S.C. § 4332(2)(C). Agencies may prepare an "Environmental Assessment" ("EA") when necessary to determine whether a proposed action may have a significant impact on the environment. *See* 42 U.S.C. § 4336(b)(2). Based on the EA, the agency must determine whether an EIS is required. *Id*. Agencies must involve the public, to the extent practicable, in preparing EAs. 43 C.F.R. 46.305(a). If the agency decides based on the EA that it does not need to prepare an EIS, it must prepare a "Finding of No Significant Impact," 42 U.S.C. §§ 4336(b)(2), 4336(e), and make this finding available to the public, 43 C.F.R. § 46.305(c).

"If an agency decides not to prepare an EIS, it must supply a 'convincing statement of reasons' to explain why a project's impacts are insignificant." *Blue Mts. Biodiversity Project v. Blackwood*, 161 F.3d 1208, 1212 (9th Cir. 1998). "The statement of reasons is crucial to determining whether the agency took a 'hard look' at the potential environmental impact of a project." *Id*. The court may defer to the agency's decision not to prepare an EIS only when that decision is "well informed and well considered." *Save the Yaak Comm. v. Block*, 840 F.2d 714, 717 (9th Cir. 1988).

In a NEPA case, the role of a reviewing tribunal is to "ensure that the agency has adequately considered and disclosed the environmental impacts of its actions and that its decision is not arbitrary or capricious." *CBD*, 444 F. Supp. 3d at 846 (citations and quotation marks omitted). An agency decision is arbitrary and capricious if:

> [T]he agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an

> explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.

Meister v. U.S. Dep't of Agric., 623 F.3d 363, 371 (6th Cir. 2010) (internal citation omitted). Put another way, "[t]he duty of a court reviewing agency action under the 'arbitrary or capricious' standard is to ascertain whether the agency examined the relevant data and articulated a rational connection between the facts found and the decision made." *Citizens' Comm. to Save Our Canyons v. Krueger*, 513 F.3d 1169, 1176 (10th Cir. 2008) (internal citation and quotation marks omitted). "When reviewing an agency's factual determinations, the Court 'ask[s] only whether the agency took a 'hard look' at information relevant to the decision." *High Country Conservation Advocates v. United States Forest Serv.*, 333 F. Supp. 3d 1107, 1119 (D. Colo. 2018). "At bottom, NEPA's procedural requirements exist to ensure that decisions to lease are 'fully informed and well-considered.'" *CBD*, 444 F. Supp. 3d at 841 (quoting cases).

2. The EA Fails to Take the Required NEPA "Hard Look" at Surface Impacts.

In holding BLM's underlying Environmental Assessment for the Wayne Leasing Project unlawful, the *CBD* Court found that BLM "failed to take a [NEPA] hard look at the impacts of fracking in the WNF, including: (1) surface area disturbance, (2) cumulative impacts on the Indiana Bat and the Little Muskingum River, and (3) impacts on air quality." *CBD*, 444 F. Supp. 3d at 872.

The BLM's failure to take the required NEPA hard look at the above categories of impacts continues in its 2025 Supplemental EA and April 17, 2025 DR-FONSI. Appellants are likely to succeed on the merits with respect to all of these categories of impact.[2] However, for

[2] For example, in response to public comments that water depletion impacts from fracking would be significant, BLM adopted a prohibition on all water depletions in "mussel streams" and "Eastern hellbender streams" but the

purposes of this Petition for Stay, Appellants focus on the BLM's continued failure to take the requisite NEPA hard look at reasonably foreseeable surface disturbance impacts.

a. Surface disturbance "hard look" failures in BLM's 2016 EA

The Wayne Leasing Project contemplates the leasing of approximately 40,000 acres of deep shale (e.g., Utica formation) for development through "unconventional" high-volume horizontal fracturing, or "fracking." *See* SEA, at 1-10. While the Wayne National Forest has a long history of oil and gas development through much smaller "conventional" vertical wells, the Wayne Leasing Project is the first unconventional, horizontal fracking project proposed for the Forest. *See Id*. at 1-16. The Wayne's existing 2006 Forest Plan was developed, in part, on an estimate that up to 135 acres of the Forest's Marietta Unit could be disturbed by conventional, vertical oil and gas development. *CBD*, 444 F. Supp. 3d at 855. This 135-acre conventional, vertical development disturbance estimate, in turn, is based on the 2006 Forest Plan EIS and an accompanying 2004 Reasonably Foreseeable Development Scenario (2004 RFDS). *Id*.

In its 2016 EA, BLM estimated that the Wayne Leasing Project's horizontal fracking-related surface disturbance could occur on up to 55 acres of federal surface. 2016 EA, at 24. BLM then concluded that, because its 55-acre horizontal disturbance estimate was less than the Forest Plan's 135-acre conventional disturbance estimate, the Project's surface disturbance impacts would not be significant. In the words of the *CBD* Court:

> In other words, BLM concluded that the advent of [horizontal] fracking in WNF was not a significant impact and did not require preparation of an EIS because the 2006 Forest Plan sufficiently accounted for oil and gas activities generally, and the fracking impacts did not exceed the projected surface disturbance in the WNF.

prohibition does not apply to upstream waters that feed into those streams; is not an absolution prohibition as the EA claims; and lacks clear standards for its application. Nor does the supplemental EA correct the failure to take a hard look at air quality impacts—BLM quantified emissions from fracking but failed to analyze their effects on ambient air quality, as the court required.

CBD, 444 F. Supp. 3d at 856.

The Court held that BLM's 2016 analysis of surface disturbance was arbitrary and capricious and failed to take the requisite NEPA hard look because BLM ignored important relevant factors, because BLM's conclusions were contrary to record information, and because BLM's analysis lacked quantified or detailed information. *See id*. at 871-72.

Specifically, the *CBD* Court held that it could not conclude that BLM's 55-acre disturbance estimate was based in a "reasoned decision process" because BLM included only one of several known sources of surface disturbance (well-pads) in its calculation. *CBD*, 444 F. Supp. 3d at 860 (noting BLM considered "the surface disturbance caused by well-pads and nothing else.").[3] In addition, public comments submitted during the development of BLM's 2016 EA provided the BLM with record evidence that pipeline impacts associated with horizontal development would likely differ from those associated with conventional development. As the Court noted, BLM failed to reasonably consider this record evidence and instead concluded, without any support, that "there is already a well-developed pipeline infrastructure in place which should minimize the need for lengthy gathering lines to service new wells." *CBD*, 444 F. Supp. 3d at 861, fn. 14. In the words of the Court:

> [BLM's] conclusion is contrary to record information, albeit record information submitted primarily by various organizational Plaintiffs, that demonstrate that gathering pipelines for fracking and conventional vertical drilling cannot be interchanged. […] [T]he Court is not tasked with weighing whether Plaintiffs' assertion is true or accurate. Rather, it is tasked with reviewing whether the agencies adequately considered the record evidence. And here, the failure to reasonably consider whether the drilling methods would require different pipelines, once presented with the issue, is not a sufficient review.

Id.

[3] By contrast, the 2006 estimate of 135 disturbance acres "encompassed 'all acreage potentially affected by oil and gas activities, including road construction, well pad construction, construction of turnaround/production facility areas, pipelines, and other related activities.'" *Id*. at 856 (quoting BLM's 2016 EA).

The *CBD* Court also found that BLM's 2016 EA estimate of 55 acres of horizontal well-pad disturbance was arbitrary and capricious because it relied heavily on a 2012 U.S. Forest Service Supplemental Information Report (2012 SIR), which was in turn based on a May 3, 2012 BLM letter (May 2012 Letter) that the Court found lacked any "quantified or detailed information." *CBD,* 444 F. Supp. 3d at 859. The Court rejected BLM's argument that detailed surface disturbance analysis was not possible at the leasing stage. *See id.* at 861. The Court noted that "BLM can and does routinely estimate surface disturbances[,]" and held that "[t]o not do so when there was reasonably foreseeable impacts from fracking was arbitrary and capricious." *Id*.

b. The 2025 Supplemental EA's analysis fails to take the required NEPA hard look at surface disturbance impacts

Much like its 2016 EA, BLM's 2025 Supplemental EA ignores important relevant factors, draws conclusions contrary to record information, and lacks quantified or detailed information. In short, BLM's Supplemental EA and the FONSI and DR that rely on it fail, again, to take the required NEPA hard look at the Project's reasonably foreseeable surface disturbance impacts.

While the 2025 SEA contains updated surface disturbance estimates (e.g., up to 1,015 acres of disturbance),[4] it nonetheless fails, again, to meaningfully substantiate those estimates with citations to quantified or detailed information. BLM's 2020 Reasonably Foreseeable Development Scenario[5] states that unconventional well pads in southeastern Ohio have ranged in disturbance acreage from 6 to 35 acres, depending on topography, access, pipelines and the number of wells proposed per pad. 2020 RFDS at 34. The SEA estimates that a maximum of

[4] The BLM's 2016 EA estimated up to 55 acres of disturbance of *federal surface* from Project development. The 2025 SEA, by contrast, estimates up to 1,015 acres of disturbance on all surface, both federal and private, in the Project's Action Area.

[5] The SEA's surface disturbance estimates are taken directly from the 2020 RFDS. SEA, Appendix D.

1,015 acres in the Action Area could be developed based on the 2020 RFDS's estimate of 29 well-pads at up to 35 acres per pad. SEA at 2-23, 3-70. However, BLM provides no calculations or citations to substantiate how it arrived at its surface disturbance estimates, stating only that they were "determined from a variety of resources, including previous oil and gas environmental assessments, recent drilling permits applications, discussion with state oil and gas personnel, discussion with a prominent operator in the WNFs, and document reviews." 2020 RFDS at 28. *Cf. CBD*, 444 F. Supp. 3d at 856 (noting BLM's "May 2012 Letter is devoid of citations or references to support any of its reasoning or conclusions."). BLM's vague explanation for how it arrived at its purportedly comprehensive[6] surface disturbance estimates is devoid of quantified and detailed information; and, therefore, does not offer meaningful evidence of a reasoned decisionmaking process.[7]

Furthermore, the 2020 RFDS carries forward the same assumption in the 2016 EA – that "there is already a well-developed pipeline infrastructure in place which should minimize the need for lengthy gathering lines to service new wells" – that the Court found was wholly unsupported and contrary to record evidence demonstrating that gathering pipelines for horizontal and conventional vertical drilling cannot be interchanged. SEA, Appendix D at 30; *CBD*, 444 F. Supp. 3d at 861, fn. 14; *see also* 2020 RFDS at 28 (stating that the surface disturbance evaluation is based on, inter alia, an assumption that existing pipelines will be used).

[6] The Supplemental EA states that:
"The projected surface disturbance in the 2020 RFDS included all acreage potentially affected by future oil and gas development activities, such as road construction, well-pad construction, water storage tanks, construction of turnaround/production facility areas, pipelines (including gathering and distribution lines), staging areas, water impoundments, and other related activities."
Supplemental EA at 2-23.

[7] The 2020 RFDS contains a list of references, but BLM does not cite to any references with respect to its surface disturbance estimates; several of the references are to personal conversations; and many references are to voluminous reports with no page cites. In short, BLM does not "show its work" on these important surface disturbance estimates in any meaningful way.

Nowhere in its 2025 SEA does BLM explain its continued bald assumption that existing gathering lines will minimize the need for pipeline surface disturbance.[8] The fact that BLM's 2020 RFDS and 2025 EA continue with this flawed assumption, which the Court has already roundly criticized, further demonstrates that the agency failed to take a hard look at the Project's reasonably foreseeable surface disturbance impacts.

Moreover, BLM's conclusions about surface disturbance are contrary to evidence before it in the record. Specifically, existing federal horizontal leases from the Action Area demonstrate a far larger surface disturbance footprint than the SEA's estimates. For example, Applications for Permits to Drill (APDs) for the two "Rolland" Wells (accessing federal minerals within the Action Area) show that the combined disturbance from the Rolland pad, road, and pipeline totals 103.460526 acres. Rolland APDs at PDF page 29. This very relevant real world example dwarfs BLM's 35-acre maximum disturbance per-pad estimate. Appellants' comments on the Draft Supplemental EA raised this issue explicitly, yet BLM failed to address it. Not only that, but BLM's (nonresponsive) response to Appellants' comment about the Rolland Wells only raises further substantial questions about the adequacy of its NEPA review:

> In response to public comment on a Draft Environmental Assessment, BLM and Ohio Department of Natural Resources (ODNR) records were reviewed to evaluate *whether documented oil and gas activities in the Wayne National Forest since the RFDS analysis was completed exceed the RFDS-estimated disturbances*. Based on reviewed records, the possible surface activities projected in the RFDS have not been exceeded and the projected environmental effects remain valid. Accordingly, no change to the RFDS modeled projection is necessary at this time.

[8] BLM's response to comments on the Draft Supplemental EA states that:
"The RFDS estimated surface disturbance is based not on the actual width of a pipeline but rather the anticipated right-of-way (ROW) width that would be necessary to install the potential pipelines. Accordingly, small, medium and larger pipelines are included in the estimated surface disturbance presented in the RFDs as the various sized lines would all be constructed within the width of the corridors and their disturbance included in the RFDS." SEA, Appendix J, at J-31. This BLM statement does not respond to the relevant factor in question – that is, whether it is reasonable to assume, as BLM's analysis does, that the presence of an existing network of aging, small-diameter gathering pipelines will "minimize" the need for new pipeline construction and corresponding surface disturbance. And, BLM's response fails to offer clarity as to whether and to what extent the agency actually took the larger ROW widths associated with larger diameter unconventional development pipelines into account.

Response to Comments, SEA, Appendix J, at J-32 (emphasis added). In other words, BLM states (again, without detailed or quantified information) that it checked to see whether real-world oil and gas-related surface disturbance in the Action Area had *already* exceeded its 1,015-acre maximum disturbance estimate. Needless to say, BLM's statement did not respond to Appellants' concern that BLM's acreage estimates appear to substantially underestimate the potential scope of the Project's *reasonably foreseeable* surface disturbance impacts.

Even when focusing solely on the issue of reasonably foreseeable surface impacts, it is clear that BLM's 2025 Supplemental EA bears several hallmarks of arbitrary and capricious decisionmaking. BLM's SEA ignores important relevant factors, draws conclusions contrary to record information, lacks quantified or detailed information, and fails to rationally articulate connections between facts before it and decisions made. In short, Appellants are likely to succeed on the merits because BLM failed to take the required NEPA hard look at reasonably foreseeable Project impacts. *See CBD.*, 444 F. Supp. 3d at 841 ("At bottom, NEPA's procedural requirements exist to ensure that decisions to lease are 'fully informed and well-considered.'").

B. The Balance of Harms Clearly Favors Granting a Stay

The Supreme Court has stated "environmental injury, by its nature, can seldom be adequately remedied by money damages and is often permanent or at least of long duration, i.e., irreparable." *Amoco Production Co. v. Village of Gambell*, 480 U.S. 531, 542 (1987). "If environmental harm is sufficiently likely, the balance of harms will usually favor the issuance of an injunction to protect the environment." *Id*. Moreover, irreparable environmental injury typically flows from a NEPA violation. *South Fork Band Council of Western Shoshone of Nev. v. U.S. Dep't of Interior*, 588 F.3d 718, 728 (9th Cir. 2009) ("likelihood of irreparable

environmental injury without adequate study of the adverse effects and possible mitigation is high."). If the BLM proceeds with lease sales under the DR-FONSI and Supplemental EA, it will commit the agency to allowing surface operations and impacts within the Wayne National Forest and surrounding areas, without having conducted proper environmental review of those impacts.[9] The commitment of resources without adequate agency review and public disclosure of environmental impacts would deprive the public and decisionmakers of valuable information and a meaningful opportunity for them to recommend measures to reduce or avoid these impacts, thereby increasing the chances of environmental harm. Moreover, it would be difficult, if not impossible, for the BLM to "undo" the issuance of the leases without considerable administrative expense (paid for by U.S. taxpayers) and staff time.

While Appellants will be harmed as a result of the Wayne National Forest oil and gas leasing and development, *see* section C., below, the BLM will suffer no harm from the granting of a stay. Nothing in the BLM's Supplemental EA, Finding of No Significant Impact, or Decision Record indicates there is any overriding emergency or urgency around proceeding with lease sales or drilling in the project area.

C. Appellants Will Suffer Immediate, Imminent, and Irreparable Harm if the Stay Is Not Granted

As established by the declaration of Ms. Hunkler, Appellants Ohio Environmental Council, Center for Biological Diversity, Sierra Club, Ohio Valley Allies, and Heartwood will likely suffer immediate and irreparable harm to their interests absent a stay. For example, Ms. Hunkler enjoys wildlife viewing within and near the Marietta Unit, but new drilling and leasing

[9] The BLM is now soliciting APDs on the 65 reaffirmed leases. See BLM press release dated April 18, 2025 on the Project webpage, available at: https://eplanning.blm.gov/eplanning-ui/project/2024234/510.

will result in fragmentation, pollution, and disruption of the forest and surrounding areas, harming wildlife and reducing their habitat, and therefore reducing her opportunities for wildlife viewing. *See* Statement on Standing, Exhibit 1, ¶¶ 17, 22-23. Ms. Hunkler also attests to her concern that industrialization of areas that she visits is likely to reduce her aesthetic and recreational enjoyment of the forest. *See* Statement on Standing, Exhibit 1, ¶¶ 14, 17, 20.

Without a stay, drilling and lease sales will proceed without having first been subject to the appropriate levels of agency foresight and deliberation required by NEPA. The public will also be deprived of important information and a meaningful opportunity to participate in the agency's decision. Whether or not prospective leases for the 40,000 acres contemplated in the BLM's flawed Supplemental EA should even issue, and under what conditions, are critical questions that will be effectively bypassed if BLM's decision is not stayed. The agencies' glaring NEPA violations are themselves the source of considerable irreparable harm. *Sierra Club v. U.S. Army Corps of Engineers*, 645 F.3d 978, 995 (8th Cir. 2011) (upholding preliminary injunction because "the failure to comply with NEPA's requirements causes harm itself, specifically the risk that 'real environmental harm will occur through inadequate foresight and deliberation.'") (citing *Sierra Club v. Marsh*, 872 F.2d 497, 503-04 (1st Cir. 1989)); *see also, Marsh*, 872 F.2d 500-01 ("NEPA's object is to minimize […] the risk of uninformed choice, a risk that arises in part from the practical fact that bureaucratic decisionmakers (when the law permits) are less likely to tear down a nearly completed project than a barely started project."); *CBD*, 444 F. Supp. 3d at 851 (holding BLM's decision to lease "irrevocably commit[s] resources, because only the manner and method of accessing those committed resources can be regulated at the APD stage.").

Furthermore, in the absence of a stay, it is highly likely that existing and prospective leases will be developed. The pending requirements for APDs and state permitting will not obviate the fact that the BLM has already committed in principle to the leasing and development of approximately 40,000 acres of the Marietta Unit. As the Court noted in the underlying merits decision in this matter:

> [W]aiting to evaluate the environmental impacts of a decision until after the no action alternative is off the table would circumvent the very purposes of NEPA, which is insuring that federal agencies infuse in project planning a thorough consideration of environmental values including to consider seriously the no action alternative before approving a project with significant environmental effects.

Id. (quoting *Conner v. Burford*, 848 F.2d 1441, 1451 (9th Cir. 1988)) (internal quotation marks omitted). In its Notice of Satisfaction on Remand, filed with the Court on April 29, 2025, BLM estimates that ground disturbing activities could begin in August 2025, and possibly as early as mid-July 2025. (Federal Defendants' Notice of Satisfaction on Remand at PageID 7871-72).

The large-scale, high-volume shale development of these parcels will result in surface disturbance; tree clearing; land moving; habitat destruction and fragmentation; increased vehicular traffic; air pollution; light pollution; noise pollution; and a considerable risk of water pollution from runoff, spills, and leaks. All of these impacts are direct and irreparable harms to the environment and to Appellants' recreational, aesthetic, conservation, education, and spiritual interests in that environment.

The threat of immediate, imminent, and irreparable harm from BLM's decision necessitates the issuance of a stay.

D. The Public Interest Favors Granting a Stay

The public interest weighs heavily in favor of preserving the status quo and preventing irreparable environmental and other harms until Appellants' appeal has been fully reviewed. The public interest in favor of a stay is especially acute where there are violations of environmental laws. "Suspending a project until [environmental analysis] has occurred . . . comports with the public interest," because "the public interest requires careful consideration of environmental impacts before major federal projects may go forward." *S. Fork Band Council of W. Shoshone of Nev. v. U.S. Dept. of Interior*, 588 F.3d 718, 728 (9th Cir. 2009); *see also Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1138 (9th Cir. 2011) (public's interest in preserving the environment favors injunctive relief); *Earth Island Inst. v. U.S. Forest Service*, 442 F.3d 1147, 1177 (9th Cir. 2006) (same); *Or. Natural Resources Council Fund v. Goodman*, 505 F.3d 884, 897-99 (9th Cir. 2007) (same). In this case, BLM clearly fell short of meeting legal requirements under NEPA.

Vindicating congressionally established environmental policies and standards, particularly as enumerated under NEPA favors the requested stay. *See California ex rel. Van de Kamp v. Tahoe Regional Planning Agency*, 766 F.2d 1319, 1324 (9th Cir. 1985) (finding that public interest may be defined "by reference to the policies expressed in legislation") (citation omitted). In passing laws such as NEPA, Congress clearly meant to ensure environmental protection considerations were not cast aside, leading to ill-informed decisions with potentially irreversible consequences on human health and the environment. As Congress stated in the preamble to NEPA, its purpose was "[t]o declare a national policy which will encourage productive and enjoyable harmony between man and environment [and] to promote efforts which

will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man[.]" 42 U.S.C. § 4332(a).

BLM's interests in this stay request are negligible and are not sufficient to outweigh the interests of the Appellants and the public in preventing irreparable environmental harm. Nor is there a compelling economic argument for denying this stay request. On the subject of economic impact, the Supplemental EA states that "[m]inimal impacts on […] local economic conditions would result" from oil and gas development under the selected project alternative. SEA at 3-149. And, the BLM's response to public comments on the Draft Supplemental EA notes that the EA does not "predict whether [workforce] impacts would be negative, positive, or neutral." SEA, Appendix J ("Draft EA Public Comments and BLM Responses"), at J-5. Notably, however, in the same response the agency acknowledges that "research from the Ohio River Valley Institute presents findings that the oil and gas boom has not led to significant improvements in local economies or employment in the referenced region." *Id*. Put another way, the analysis contained in the SEA does not provide compelling reasons for denying Appellants' request for a temporary stay of the challenged decision while this appeal is pending.

In light of the NEPA violations detailed above, moving forward with BLM's Decision Record, FONSI, and Supplemental EA is clearly against the public interest. Given that BLM is required to meaningfully evaluate the environmental implications of oil and gas leasing, the IBLA should grant a stay to protect the public interest.

For these reasons, Appellants respectfully request that the IBLA grant a stay of the challenged decision in order to preserve the status quo until Appellants' appeal can be properly decided. The Appellants have demonstrated that they are likely to succeed on the merits of this appeal. If a stay is not issued, substantial and irreparable harm to Appellants' interests and the

environment will occur. The balance of harms tips decidedly in Appellants' favor. And the public interest is in favor of a temporary stay to preserve the status quo while this appeal is heard and decided.

CONCLUSION

In light of the foregoing, we respectfully request the IBLA grant a stay of the BLM's April 17, 2025 Decision Record and FONSI for the Wayne Leasing Program.

Respectfully submitted this 17th day of May, 2025,

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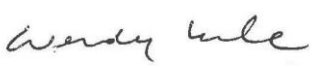

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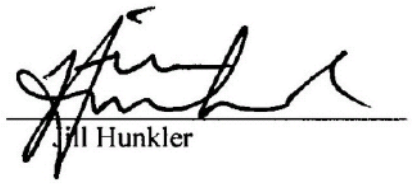

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CERTIFICATE OF SERVICE

In accordance with 43 C.F.R. §§ 4.401(c), 4.413, and the Office of Hearings and Appeals ("OHA") Standing Order on Electronic Transmission, I hereby certify that on May 17, 2025, I served a true and correct copy of the foregoing **NOTICE OF APPEAL AND PETITION FOR STAY** upon:

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