



**DECISION NOTICE**

**And**

**FINDING OF NO SIGNIFICANT IMPACT**

**OIL AND GAS LEASING EA**

**PROJECT (2002-2)**

**USDA Forest Service, Region Nine  
Wayne National Forest  
Athens Ranger District and Ironton Ranger District**

**National Forest System lands in the Counties of  
Gallia, Hocking, Lawrence, Monroe, and Washington, Ohio**

**September 26, 2002**

This notice documents the agency’s finding (40 CFR 1508.13) and program decision (40 CFR 1507) regarding oil and gas leasing of public oil and gas resources lying beneath the Wayne National Forest.

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## 1. SUMMARY OF DECISION

The USDA Forest Service has prepared an Environmental Assessment (EA), Project #2002-2, on whether to consent to oil and gas leasing on approximately 4,600 acres on the Wayne National Forest. The EA is available for public review in the Supervisor's Office in Nelsonville, Ohio. The United States Department of the Interior (USDI), Bureau of Land Management (BLM) has been a cooperating agency under NEPA and was instrumental during the preparation of integral sections of the analysis.

The EA and appendices documents the environmental analysis that was completed, and discloses the environmental effects of the proposed actions and alternatives to those actions. Development of this EA is in accordance with the requirements of the National Environmental Policy Act (NEPA), National Forest Management Act (NFMA), and the Council on Environmental Quality (CEQ) regulations at 40 CFR 1500-1508. The 1988 Wayne National Forest Plan decision determined that the entire federally owned oil and gas mineral estate within the Wayne National Forest was administratively available for oil and gas leasing.

### DECISION

Four oil and gas leasing alternatives were developed and their effects analyzed by the forest resource specialists. After an in depth review of all the relevant facts and comparative analysis of the trade-offs between the different future scenarios, it is determined that **Alternative D** strikes the reasonable balance between use and conservation of forest resources. Alternative D offers 50 tracts within 3,579 acres of federal subsurface mineral estate for the U.S. Bureau of Land Management (BLM) to make available to the public for potential oil and gas leasing.

## 2. LEASING PROCESS

Management of each administrative unit of the National Forest System is governed by a Land and Resource Management Plan (Forest Plan). In January 1988, the United States Department of the Agriculture (USDA), Forest Service (FS), released the first Land and Resource Management Plan for the Wayne National Forest (Wayne Forest Plan). The Wayne Forest Plan was based on an environmental analysis documented in the Final Environmental Impact Statement (FEIS) and Record of Decision (ROD), signed on January 4, 1988. The ROD included the statement that: "Oil and gas extraction will continue on USA-owned leases."

In 1992, an Amendment to the 1988 Wayne Forest Plan was completed that further defined the process by which oil and gas leasing would be considered on the Wayne National Forest.

USA-owned (federal) oil and gas leases are authorized under the Mineral Leasing Act of 1920, as amended, and the Mineral Leasing Act of 1947, for Acquired Lands. The BLM is responsible for issuing leases for Federally owned oil and gas resources with the consent of the surface managing agency, in this instance the Forest Service. On National Forest System Lands, the Forest Service is responsible for determining which lands are available for oil and gas leasing. Before lands may be leased, the Forest Service must confirm that leasing is consistent with the Forest Plan and, through an

environmental analysis, verify that the subject lands are suitable for this use. The Forest Plan provides the framework that determines the set of conditions under which a leasing consent decision may be considered.

Once the Forest Service completes its determination on whether to lease, or not to lease, the subject lands, the BLM would offer only the specific lands determined suitable for leasing. Lands would be offered through competitive oral auction and leases would be issued to the successful bidder. Issuance of the lease commits the oil and gas resource to development subject to the lease notices/stipulations identified appropriate for the subject lands. Future exploration and development would require filing of a Surface Use Plan of Operations (SUPO) with the Forest Service and an Application for Permit to Drill (APD) with the BLM. The Forest Service/BLM will site-specifically analyze the drilling proposal and complete an environmental analysis and make it available for public review and comment. The environmental analysis process will identify the necessary mitigation measures to eliminate or reduce any environmental effects resulting from the surface disturbing operations. Site-specific conditions necessary to protect sensitive natural resource values and address, other environmental and socio-economic concerns, will be identified and documented through this analysis. The approved SUPO and APD will incorporate these "conditions of approval" as appropriate.

### 3. CONSENT TO LEASE ANALYSIS

In June 2001, the Wayne National Forest completed an EA addressing the potential of leasing 4,634 acres (revised from 4,609 after a more accurate measuring of parcel locations) for exploration and development of oil and gas resources. The subsequent finding and decision were appealed to the Regional Forester. One of the appeal points was that the EA contained insufficient analysis of effects to threatened and endangered species (When the biological analysis was initiated, in June 1997, the Indiana bat had not been found on the Wayne National Forest.) The Regional Forester remanded the decision and directed the completion of a revised Environmental Assessment. Consequently, an interdisciplinary team (ID Team) of resource specialists was assigned to prepare a revised environmental assessment.

### 4. ALTERNATIVES

Four oil and gas leasing alternatives were analyzed:

Alternative A	1998 Proposed Action (Leasing 63 tracts (4,634 acres) with Standard Stipulations)
Alternative B	No Leasing on any of the 63 tracts (4,634 acres)
Alternative C	Leasing 63 tracts (4,634 acres) with standard and new stipulations, plus the Biological Opinion's terms and conditions
Alternative D	Leasing 50 tracts (3,579 acres) with standard and new stipulations, plus the Biological Opinion's terms and conditions.

There are several common elements shared by all alternatives (Except the No Action). These include:

1. Private minerals, outstanding rights, and reserved rights are not affected.
2. Best management practices (BMPs), standard and new lease terms, or stipulations, are applicable to all oil and gas leases.
3. Forest-wide guidance, explained in Chapter 2 of the 1988 Forest Plan, provides a standard level of protection for all resources designed to minimize potential for environmental damage and mitigate adverse environmental effects. Clarifications to Forest Plan guidance are included in the Plan Amendment #8 as Appendix C of the 1992 EIS.

## **5. PUBLIC INVOLVEMENT AND ISSUE IDENTIFICATION**

In June 2001, the Wayne National Forest completed an Environmental Assessment addressing leasing 4,634 acres (revised from 4,609 after a more accurate measuring of parcel locations) for exploration and development of oil and gas resources. The EA was made available to the public for a 30-day comment period. The subsequent finding and decision were appealed to the Regional Forester. One of the appeal points rested on the basis of insufficient analysis with regards to threatened and endangered species (note: when the biological analysis was initiated, in June 1997, the Indiana bat had not been found on the Wayne National Forest). The Regional Forester remanded the decision and requested the completion of a revised Environmental Assessment addressing, among other issues, threatened and endangered species analysis.

Issues were identified during the development of the 1998-2001 proposed leasing process – and in the appeal of my original 2001 decision. In addition, internal interdisciplinary team review and analysis of the existing project record were conducted to identify any other pertinent issues. This internal review included an examination of the 1992 Oil and Gas Plan Amendment #8 which documented extensive public scoping and issue identification during the development of the EIS. The issues can be summarized as follows:

- Effects on threatened and endangered species from leasing,
- Long-term irreversible and irretrievable commitment of forest resources as a result of leasing.

On July 18, 2002, the Wayne National Forest released a revised EA for oil and gas leasing on approximately 4,600 acres of federal mineral estate. Four letters were received from the public. The letters, and the responses to the issues presented in the four letters, are outlined in Appendix A attached to this document.

## **6. FINDING OF NO SIGNIFICANT IMPACTS (FONSI)**

Based on the process and analysis documented in the Oil and Gas Leasing Environmental Assessment (Project #2002-2), the effects of implementing any of the alternatives will not significantly affect the quality of the human environment, and therefore, does not constitute a major federal action, individually or cumulatively, requiring the preparation of an environmental impact statement.

## 7. RATIONALE FOR FONSI

Provisions of 40 CFR 1508.27(b) indicate project significance must be judged in terms of the project context and intensity. Based on a review of these provisions, I have determined that the alternatives analyzed in the Oil and Gas Leasing EA (Project #2002-2) will not significantly affect the quality of the human environment, and therefore, are not a major federal action, individually or cumulatively, requiring the preparation of an environmental impact statement.

The finding is based on the following factors:

### A. Context

-The 1988 Forest Plan decision determined that the entire federally owned oil and gas mineral estate was administratively available for leasing. In 1992, the Wayne National Forest prepared an EIS addressing oil and gas leasing on the forest. On August 6, 1992, the Forest Supervisor of the Wayne-Hoosier National Forest signed a Record of Decision (ROD) for oil and gas resources on the Wayne National Forest. The ROD on the Final Supplemental Environmental Impact Statement for Oil and Gas Resources on the Wayne National Forest (Wayne O&G FSEIS) found that leasing of federally owned oil and gas resources to be an appropriate resource use on specific Forest Plan designated Management Areas. The ROD for the Wayne Oil and Gas FSEIS also approved Amendment # 8 to the Wayne Forest Plan - which provides specific direction on the management of oil and gas resources on the Wayne National Forest. The ROD determined which lands are administratively available for leasing and allowed for leasing of federally-owned oil and gas rights subject to various stipulations and notifications. This was Amendment #8 to the 1988 Wayne National Forest Land and Resource Management Plan.

-Although the effects of oil and gas activities may be forest-wide, they are nevertheless, localized in nature with implications for only the immediate area when considering the greater context of the environment. Cumulative effects of past management, combined with the current proposal, and reasonably foreseeable future actions for each of the alternatives and individual resource are displayed in the Oil and Gas Leasing EA (Chapter 4). These effects were considered in the final determination. The selected alternative is consistent with the management direction and standards and guidelines outlined in the Forest Plan.

### B. Intensity

-Oil and gas activities on the Wayne National Forest have been on-going for decades. There are over 1000 active wells within the boundaries of the forest.

- Since this decision does not authorize any surface disturbing activities, no public health and safety risks would result by any of the alternatives (EA Project #2002-2 Chapter 3 Affected Environment). BLM, as a cooperating agency under NEPA, is responsible for analyzing health and safety issues with regard to oil and gas activities on the Wayne National Forest and preparing a stand-alone document that specifically addresses health and safety issues with regard to oil and gas activities.

- The actual administrative decision to lease, or not lease, federal minerals would have no effect on federally listed species or Regional Forester sensitive species (Chapter 4 – section 4.10)
- There are no unique characteristics of the geographical area that will be significantly affected by the alternatives. No issues related to unique characteristics were raised during the scoping or during the notice and comment on the EA (Chapter 1, issues section 1-6). Chapter 3, Table 3-1 lists all the critical elements of the environment that are present and affected.
- Both beneficial and adverse effects were evaluated in the EA and (with the application of stipulations) expected to be minor and less than significant.
- Based on the analysis by the ID Team, consultation with BLM and the FWS, the effects of the alternatives on the quality of the human environment are not expected to be highly controversial (Chapter 3, Affected Environment, Introduction section).
- There are no known effects on the human environment that are highly uncertain or involve unique or unknown risks (Chapter 3, Affected Environment, Introduction section).
- There are no known significant cumulative effects between this project and other ongoing or planned projects in or adjacent to the proposed lease tracts (Chapter 4, sections 4-3 & 4-4).
- The action does not establish a precedent for future actions with significant effects or represent a decision in principle about a future consideration that has not already been addressed in the 1992 Wayne Oil & Gas Final Supplemental EIS (Appendix 2).
- No known sites listed in or eligible for the National Register of Historic Places will be affected by oil and gas leasing (Chapter 4, section 4.2).
- The alternatives do not threaten a violation of Federal, State or local laws imposed for the protection of the environment (See discussion of Applicable Laws, Regulations and Policy in this document).
- Oil & gas leasing is an administrative action that does directly result in impacts. Surface-disturbing activities -- associated with exploration and development that is authorized by the leasing -- results in impacts. If leases were issued, any operations that are approved subsequent to lease issuance would include a separate site-specific environmental analysis. Approved operations would be inspected and monitored to ensure compliance with Forest Plan Standards and Guidelines, existing State and Federal operating regulations, and additional measures identified through this analysis.

## **8. RATIONALE FOR SELECTED ALTERNATIVE**

I have determined to offer for oil and gas leasing tracts identified under Alternative D [i.e. consent to leasing of 50 tracts (3,579 acres) with standard and new stipulations, plus the Biological Opinion's terms and conditions] of the Oil and Gas leasing EA (Project # 2002-2). Incorporated into this 50-tract Alternative is a list of standard and new stipulations developed by the ID Team to assure leasing of oil and gas (and future surface disturbing activities) do not cause long-term, unmitigatable impacts. In

addition, Alternative D includes the application of terms and conditions recommended by the 2001 U.S. Fish and Wildlife Service Biological Opinion (Appendix 5 of the EA).

Oil and gas leasing is not new to the Wayne National Forest. There is a considerable history and experience between the oil and gas industry, the BLM and the National Forest in managing oil and gas resources in a safe and environmentally sound manner.

Table A is a history of acres offered vs. leased over time. Given that the most recent comparison of acres offered to acres leased is 32%, it is reasonable to expect that some of these offered tracts would not be leased (see Table A).

Table - A

Leased Acres from 1990-2000

Date	Acres Offered	Acres Leased
Nov 1990	2,468	1,834 (74%)
Jun 1995	212	212 (100%)
Sep 1995	15,014	4,799 (32%)

Type of Lease	Number of Leases	Acres Leased
Federal/public	40	8,121
Private	99	12,333

The regulations, at 36 CFR 228.102 (c) (3 and 4), require the Forest Service to “project the type / amount of post-leasing activity that is reasonably foreseeable as a consequence of conducting a leasing program.” The purpose of the Reasonable Future Development Scenario (RFDS) is to attempt to quantify and depict the type of surface disturbing activities associated with oil and gas development on the Wayne National Forest that is likely to occur if the lands are offered for oil and gas leasing. BLM prepared the RFDS (Appendix 1 of the EA) that projected up to four drill holes and a maximum of 8 acres of surface disturbance is anticipated.

The percentage of oil and gas operations on the Wayne National Forest within the State of Ohio is small (3-5 %) as compared to private lands. Federal oil and gas leases generate revenues for the federal as well as local governments. Twenty five percent of rental receipts from federal leasing are returned to local governments. These funds help support local communities provide much needed services to their residents.

It is concluded that the oil and gas resource projected revenues have sufficient value and outweigh the anticipated small scale of disturbance (maximum potential footprint of 8 acres within the 3,579 acre

proposed lease area - See Appendix 1 of EA Project #2002-2), and in the estimation of the ID Team, less than significant once mitigation measures (BMPs and stipulations) are implemented.

The ID team developed an analysis matrix that identified thirteen tracts (1,055 acres) that contained a combination of high resource sensitive values (such as steep slopes, floodplains, special management areas and known site-specific wildlife habitats-See EA Appendix 7, Table 13). Alternative D was developed to exclude these thirteen sensitive tracts from leasing. The decision regarding thirteen tracts not offered for leasing at this time may be reconsidered in the future - if conditions and analysis indicate otherwise.

The EA fully considered the protection of endangered, threatened, and sensitive species and their habitats. The ID Team incorporated the 2001 U.S Fish and Wildlife Biological Opinion for the Wayne National Forest (BO) terms and conditions into Alternative D (See EA Appendix 5) and a Biological Evaluation (BE) was completed that addresses potential effects to Threatened or Endangered Species and Regional Foresters' Sensitive Species, respectively. The Wayne National Forest staff will work with the U.S. Fish and Wildlife Service in future proposal to develop site-specific conditions that prevents or minimizes effects to biological resources.

Alternative D fully conforms to the USDA Forest Service's national policy and objectives for energy and minerals management, and meets the USDA Forest Service's legal responsibilities under the Federal Onshore Oil and Gas Leasing Reform Act of 1987 (FOOGLRA) and its implementing regulations.

Alternative A (leasing 4,634 acres/63 Tracts with Standard Stipulations) was not selected because it does not include the terms and conditions from the September 2001 U. S. Fish and Wildlife Service Biological Opinion necessary to address potential effects to threatened and endangered species.

Alternative B (No leasing on 4,634 acres/63 tracts with Standard Stipulations) was not selected because it does not meet the objectives of the 1988 Wayne National Forest Plan and its 1992 Amendment #8. The Record of Decision signed on January 4, 1988 documented the selection of one of the alternatives considered in the Forest Plan FEIS and gave approval of the Wayne Forest Plan. A part of the decision made in January 1988 on the Forest Plan FEIS included the statement that: "Oil and gas extraction will continue on USA-owned leases."

In addition, no leasing would not be consistent with laws, regulations, and agency policies that outline authorities and direction for the leasing and development of Federal mineral resources on National Forest System Lands. These include:

- The Mineral Leasing Act of 1920, as amended, which states, "...deposits of coal, phosphate, sodium, oil, oil shale, or gas and lands containing such deposits owned by the United States, including those in national forests.... shall be subject to disposition in the form and manner provided by this Act to citizens of the United States..."
- The Mineral Leasing Act for Acquired Land of 1947 amended the 1920 Act to provide authority for leasing minerals with "acquired" status. The 1947 Act gave authority to the Forest Service to consent to leasing acquired lands under Forest Service jurisdiction.

- The Mining and Minerals Policy Act of 1970 states that it is the intent of the Federal government to encourage private enterprise in developing mineral resources, including oil and gas.
- Most recently, Executive Order 13212 of May 18, 2001 directs agencies to take appropriate actions to expedite projects that will increase the production, transmission, or conservation of energy. The increased production and transmission of energy in a safe and environmentally sound manner is essential to the well being of the American people.

When compared to Alternative A, Alternative D increases protection of flood storage areas and source areas for nutrients and large woody debris, moderates the occurrence of log jams, and improves channel self-maintenance functions by including a list of new stipulations developed through the interdisciplinary analysis (See EA Appendix 7, table 8a). Protection of these functions benefits the river otter, eastern hellbender, Ohio lamprey, eastern sand darter, salamander mussel, and little spectaclecase mussel (Regional Forester's Sensitive Species).

Alternative A does not apply stipulations for protection of Olympia marble, timber rattlesnake, cerulean warbler habitat. Alternative D provides stipulations to protect habitat for Olympia marble and timber rattlesnake habitat [Regional Forester's Sensitive Species-(See Appendix 7, Table 14)].

Both Alternatives C (leasing 4,634 acres/63 Tracts with standard, new stipulations and the terms and conditions of the biological opinion) and D (leasing 3,579 acres/50 Tracts with standard, new stipulations and the terms and conditions of the biological opinion) include the necessary surface protection measures (including No Surface Occupancy) that would eliminate or reduce the effects of oil and gas leasing on forest resources. The major difference between Alternative C and D is that D does not assume the stipulation of No Surface Occupancy (NSO), as a measure to mitigate effects on forest resources.

The Wayne NF did not consider offering the 1,055 acres/13 Tracts with an NSO stipulation because the nature of exploration and production in the Wayne is such that directional drilling from an off lease location is not economic. The Record of Decision for the 1992 Oil and Gas Plan Amendment #8, page 9, states: "*Currently, because of the shallow location of oil in southeastern Ohio, slant drilling of oil is not possible.*" In effect, an NSO designation for an entire tract of land would make it undevelopable.

In making the decision to consent to lease the 50 tracts (3,579 acres), the following factors were taken into consideration:

- Best Management Practices (EA Appendix 9), standard and new stipulations (EA Appendix 7) will provide tools for future surface management of exploration and development operations.
- Prior to any surface disturbing activities, the successful lessees must file a Surface Use Plan of Operation (SUPO) and Application for Permits to Drill (APD) with the Forest Service and BLM for review. A site-specific environmental assessment (EA) will be prepared to identify the sensitive areas and situate any proposed ground disturbing activities as to avoid or adverse effects on forest resources from oil and gas exploration or development.
- Forest resource specialists will work with BLM and the operator at the field level, to assure any stipulations and conditions to any future permits are reasonable and practical to implement. These site-specific stipulations provide additional assurances of minimizing impacts and risks.

## Consistency with Other Laws, Regulations, and Previous NEPA Decisions

Oil and gas leasing, as described in this decision, complies with the requirements of National Environmental Policy Act (NEPA); the Endangered Species Act of 1973; the National Forest Management Act (NFMA) of 1976; NFMA implementing regulations, in 36 Code of Federal Register (CFR) Section 219; and the 1988 Wayne National Forest Land and Resource Management Plan, and the 1992 Amendment # 8.

## Findings Required by Other Laws and Regulations

### Endangered Species Act:

Since the proposed consent to lease does not authorize any ground disturbing or vegetation disturbing activities it would have no affect to any federally listed threatened or endangered species. In a letter dated June 20, 2000 the US Fish and Wildlife Service stated that since the consent to lease does not authorize any ground disturbing actions, and provided the Wayne National Forest will prepare biological evaluations at the time of well construction or any ground disturbing activity, that they have no objection to the consent to lease.

### National Historic Preservation Act:

Since the proposed consent to lease does not authorize any ground disturbing or vegetation disturbing activities it would not have any direct affect on heritage resources. Because a separate NEPA analysis will be conducted before any ground disturbing activities are allowed to occur, a final heritage determination will take place at the time of review of a site-specific APD.

### Forest Plan Consistency:

The proposed consent to lease is consistent with the Forest Plan.

## **9. APPEAL PROVISIONS AND IMPLEMENTATION**

This decision is subject to appeal pursuant to 36 CFR 215.7. As stated in 36 CFR 215.11, an appeal may be filed by any person or non-Federal organization. The appeal period lasts 45 days, starting the day after the notice of this decision is published in the *Athens Messenger* newspaper from Athens, Ohio. Appeals must be submitted in writing to: USDA Forest Service, Eastern Region; ATTN: Appeals Deciding Officer (RFO); 310 West Wisconsin Avenue, Milwaukee, WI 53203 or alternatively faxed to: 414-297-3127, ATTN: Appeals Deciding Officer, USDA, Forest Service, Eastern Regional Office.

- Appeals must meet the content requirements of 36 CFR 215.14. Detailed records of the environmental analysis are available for public review on the Internet at (<http://www.fs.fed.us/r9/wayne/>), or at the Wayne National Forest, 13700 US Highway 33, Nelsonville, OH 45764, (740) 753-0101.

If no appeal is received, implementation of this decision may occur on, but not before, five business days from the close of the appeal filing period. If an appeal is received, implementation may not occur for 15 days following the date of appeal disposition.

RESPONSIBLE OFFICIAL

Mary O. Reddan, Forest Supervisor, Wayne National Forest

./s/ Mary O. Reddan.

MARY O. REDDAN  
Forest Supervisor  
Wayne National Forest

./9/26/02.

Date