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Judge strikes down Ohio fracking on NEPA grounds

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Conservation groups are applauding a judge's ruling last week finding that the federal government improperly vetted the use of hydraulic fracturing on leases in Ohio's Wayne National Forest.

Conservation groups are cheering a federal judge's finding last week that federal agencies improperly authorized hydraulic fracturing in Ohio's Wayne National Forest.

The Center for Biological Diversity, Heartwood, the Ohio Environmental Council and the Sierra Club had challenged the Bureau of Land Management and the Forest Service for approving fracking on 40,000 acres of the state's only national forest, located in the foothills of the Appalachian Mountains.

In his **ruling** Friday, Judge Michael Watson for the U.S. District Court for the Southern District of Ohio said the federal agencies had failed to take a "hard look" under the National Environmental Policy Act at the impacts of fracking.

Those impacts ranged from worsened air quality and land disturbance to lowered water levels in the Little Muskingum River, as well as harm to the endangered Indiana bat.

"Here, USFS and BLM demonstrated a disregard for the different kinds of impacts caused by fracking in the Forest. The agencies made a decision based on a faulty foundation," wrote Watson, a George W. Bush appointee.

The judge faulted the agencies for basing their analysis of the risks of fracking on a 2006 forest plan and environmental impact statement. He asked the parties in the case to file additional briefs to determine the next course of action.

"I think it's hugely important for Wayne National Forest," said Wendy Park, a senior attorney for the Center for Biological Diversity.

"The government can't continue oil and gas leasing in the national forest until it has done a full review on the impacts of fracking," she said. "It allows the agencies to go back to the drawing board and consider conservation measures."

Park said the ruling also sent a message to the Trump administration that it couldn't ignore public concerns about fracking.

Watson declined to rule that the agencies should have drafted an environmental impact statement, rather than a less stringent environmental assessment.

"Although the Court has found that BLM and USFS failed to take sufficiently hard looks at certain aspects of fracking, it also is not finding as a matter of law that fracking is a significant action requiring preparation of an EIS," Watson wrote.

Park also noted the judge did not agree with conservation groups on their challenges to the leases for failing to consider cumulative impacts to the Indiana bat under the Endangered Species Act.

Part of the arguments centered on how well federal agencies should be expected to estimate possible environmental harms at the leasing stage of development.

BLM made the case that it could not fully predict effects like surface disturbance until the companies submitted applications for permit to drill.

The judge described that approach as "insufficient" when the agency had other sources of information about impacts available.

"This is a huge win for people, for wildlife and for the forest," said Nathan Johnson, public lands director for the Ohio Environmental Council, in a press release. "This effort dates back to at least 2011, when southeast Ohio communities came together to oppose fracking in the Wayne.

"Today's ruling is a culmination of citizen effort, and it reaffirms that federal agencies must consider the environmental impacts of oil and gas development," he said.

BLM could not immediately be reached for comment.