

**UNITED STATES DEPARTMENT OF THE INTERIOR
OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF LAND APPEALS**

THE CENTER FOR BIOLOGICAL
DIVERSITY AND ALABAMA
ORNITHOLOGICAL SOCIETY,

Appellants,

v.

BUREAU OF LAND MANAGEMENT,

Respondent.

IBLA No. _____

Re: Decision Record, Final Environmental
Assessment, and Finding of No Significant
Impact for the Conecuh National Forest Oil &
Gas Leasing Availability Analysis (DOI-
BLM-Eastern States-J000-2026-0009-EA)

NOTICE OF APPEAL AND PETITION FOR STAY

NOTICE OF APPEAL

Pursuant to 43 C.F.R. § 4.402, the Center for Biological Diversity (the “Center”) and Alabama Ornithological Society (“AOS,” and, collectively, “Appellants”) file this Notice of Appeal and Petition for Stay of the Bureau of Land Management (“BLM”) Eastern States’ Decision Record adopting the United States Forest Service’s Environmental Assessment (“EA”) and Finding of No Significant Impact (“FONSI”) for the Conecuh National Forest Oil and Gas Leasing Availability Analysis, DOI-SLM-Eastern States-J000-2026-0009-EA. The Decision Record, EA, and FONSI are attached hereto as **Exhibits A, B, and C**.

A Notice of Appeal is timely if it is filed no later than thirty (30) days “after the date of receiving notice of the decision.” 43 C.F.R. § 4.403(c)(1). Appellant received notice of the decision on June 22, 2026, the day the Decision Record was posted to BLM’s ePlanning website. Thirty days from June 22, 2026 is July 22, 2026. Therefore, this appeal is timely filed.

FACTUAL BACKGROUND

A. Conecuh National Forest

The Conecuh National Forest consists of 84,000 acres of publicly-owned land on the southern border of Alabama in Covington and Escambia counties. In the 33-million-acre state of Alabama, the Conecuh National Forest comprises less than 1% of the state's land, yet it contains 40% of the state's fish and mussel species as well as some of the healthiest watersheds in the region. The forest's hardwood swamps, pitcher plant bogs, and southern coastal plain forests shelter dozens of rare and imperiled plants and animals. The Conecuh National Forest is a nationally and globally significant biodiversity hotspot.¹ In fact, Alabama National Forests rank number one in the country for diversity of fish, turtles, mollusks, and crayfish, and the Conecuh contains a significant amount of endemic wildlife.² Nineteen federally-listed species occur or have habitat in the Conecuh National Forest.

National forests play an outsized role for watershed protection and recreation, especially in the southeastern United States, where public lands are fewer and private lands dominate. Even among these, the Conecuh is exceptional. It is home to healthy and diverse forests of longleaf pine, upland scrub oak, and dogwood, as well as an aquatic labyrinth of winding creeks and cypress ponds. The Forest also contains unique and rare citronelle wetlands and carnivorous plant glades.

More than 3 million people live within a 3-hour drive to the Conecuh. It attracts thousands of visitors annually to its lakes, hiking trails, springs, and free-flowing rivers. Nearly half of all visitors to the Conecuh come to view natural features, according to the EA.³ Hiking and

¹ Alabama Water Watch. 2024. Auburn University.

<https://awwblog.auburn.edu/2023/04/20/alabamafreshwaterturtles/#:~:text=The%20Pond%20Sliders%20are%20the,are%20found%20throughout%20the%20state.>

² Outdoor Alabama. 2024. Alabama Department of Conservation and Natural Resources.

<https://www.outdooralabama.com/invertebrates/crayfish#:~:text=Alabama%20is%20home%20to%2097,caves%20and%20associated%20underground%20streams.>

³ EA, p. 91.

viewing wildlife are two of the most popular activities in the Conecuh.⁴ The Forest’s lakes, rivers and streams—popular with boaters, anglers, and canoeists—would be especially threatened by expanded oil and gas development. One of Conecuh’s most important rivers is Five Runs Creek, which the U.S. Forest Service has deemed eligible for Wild and Scenic River status.

B. Oil and Gas Leasing Availability Analysis

The land and resource management plan for Alabama’s National Forests was published in 2004 (“2004 Forest Plan”). Today, this 22-year-old plan governs land and resource management on the Conecuh National Forest, even though it is sorely out of date and due for revision. In 2021, BLM prepared a Reasonably Foreseeable Development Scenario for Oil and Gas Activities (“RFDS”) for the Conecuh National Forest, forecasting oil and gas drilling of a total of 11 oil and gas wells over a period of 15 years. Relying on the RFDS, in 2025, the Forest Service prepared an Oil and Gas Leasing Availability Analysis for the Conecuh National Forest to decide whether any acreage of the forest would be closed to oil and gas leasing. In February 2026, despite significant opposition from members of the public and conservation groups alike, the Forest Service made the decision to leave the entire forest open to oil and gas leasing, while placing No Surface Occupancy (“NSO”) restrictions on 28,300 acres.⁵

The Forest Service’s Oil and Gas Leasing Availability Analysis suffered from significant substantive and procedural defects, which were detailed by Appellants and other members of the public in comments at the scoping and EA stages. Appellants and other conservation groups also submitted formal objections to the Forest Service’s Oil and Gas Leasing Availability Analysis, which are attached as **Exhibit D**. The defects identified in Appellants’ comments and objections were not cured in the Oil and Gas Leasing Availability Analysis or in the final EA or FONSI.

⁴ EA, p. 86.

⁵ FONSI, pp. 2-3.

Notwithstanding the deficiencies in the final EA and FONSI, BLM decided to adopt them in a Decision Record signed June 10, 2026 and published on BLM's website on June 22, 2026. Relying on the Decision, BLM has further published notice of its intent to offer more than 2,000 acres of the Conecuh National Forest in an oil and gas lease sale in March 2027.⁶ Because of the defects in the EA and FONSI, detailed herein, Appellants appeal the BLM's Decision adopting them.

STATEMENT OF STANDING

To maintain an appeal, the appellant must (1) be a party to the case; and (2) be adversely affected by an appealable decision. 43 C.F.R. § 4.402(a); *National Wildlife Federation v. BLM*, 129 IBLA 124, 125 (1994). Appellants meet both requirements. Appellants participated in the administrative decision-making process by submitting comment letters and formal objections to the EA and FONSI, and Appellants and their members are adversely affected by the June 22, 2026 Decision of the BLM to adopt those documents. 43 C.F.R. § 4.410. An organization is “adversely affected” by the decision appealed if one or more of its members have “a legally cognizable interest in the subject matter of the appeal, coinciding with the organization’s purposes, that is or may be negatively affected by the decision.” *Wildlands Defense and Deep Green Resistance*, 187 IBLA 233, 236 (2016) (citing 43 C.F.R. § 4.410). A legally cognizable interest can include “cultural, recreational, and aesthetic use and enjoyment of the affected public lands.” *Cascadia Wildlands & Or. Wild*, 188 IBLA 7, 9-10 (2016); *see also Wyo. Outdoor Council*, 153 IBLA 379, 383 (2000) (legally cognizable interest in the land “need not be an economic or a property interest” and “[u]se of the land will suffice”). The Board does not require a showing of actual injury.

⁶ See BLM docket for NEPA numbers DOI-BLM-Eastern States-J000-2026-0015-DNA and DOI-BLM-Eastern States-J000-2026-0013-EA.

The Center is a tax-exempt, non-profit, membership organization with more than 1.8 million members and supporters, including 11,000 members and supporters in Alabama. The Center's main office is in Tucson, Arizona. The Center works through science, law, and policy to protect imperiled wildlife and their habitat. *See* Declaration of Jimmy Stiles ("Stiles Decl.") ¶18. The Center has an extensive history of working to protect ecosystems, species, water, and climate on public lands, including lands administered by BLM. *Id.*

As part of its mission, the Center provides oversight of governmental activities that impact all species and their habitats, as well as on human health and wellbeing more generally. The Center has been at the forefront of efforts to hold the government accountable for its obligations under the Endangered Species Act ("ESA") and engages in protection efforts and campaigns to ensure that our nation's environmental laws—including the National Environmental Policy Act ("NEPA"), Federal Land Policy and Management Act ("FLPMA"), and the ESA—are enforced with respect to imperiled wildlife and habitat, air and water quality, and human health, especially on our public lands.

The Center's members' diverse interests span natural history, ecology, conservation, wildlife and native plant observation, nature photography, hiking, camping, backpacking, quiet and solitude in nature, dark skies, spiritual renewal, and a love of Alabama's natural forests. For example, Jimmy Stiles is a member of the Center. Stiles Decl., ¶ 17. Mr. Stiles has lived, worked, and recreated on the Conecuh National Forest for more than two decades. Stiles Decl., ¶¶ 5-8. Over the years, Mr. Stiles has hiked, fished, and explored every corner of the Conecuh, and he has had the enjoyment of observing and studying some of its most unique wildlife, like mimic glass lizards and eastern indigo snakes. Stiles Decl., ¶3, 6-11. Mr. Stiles is deeply concerned about the impact that oil and gas activities will have on the forest, and he is injured by the failure of BLM to comply

with federal environmental laws to adequately review the impacts of leasing on the national forest and the unique plants and animals that live there. Stiles Decl., ¶¶12-13, 20.

AOS was founded in 1952 and is the official keeper of the state's ornithological records. Declaration of Gregory J. Harber ("Harber Decl.") ¶3. Its purposes are: (i) to promote scientific and educational activities, (ii) to promote legislation to protect birds, (iii) to stimulate interest in the study of birds, (iv) to bring together those interested in birds, and (iv) to make available for the public the findings of such observations. Harber Decl., ¶4. AOS currently has more than 400 members dedicated to these causes. Harber Decl., ¶5. AOS's members live near the Conecuh National Forest and visit the forest regularly to view and study birds, like the red-cockaded woodpeckers, Bachman's sparrows, and swallow-tailed kites. AOS's members also participate in breeding surveys for migratory birds on the Forest. Harber Decl., ¶¶6-9. AOS's Conservation Committee Chair, Greg Harber, shares the concerns of other AOS's members that BLM's decision to allow leasing without conducting the environmental review required by law will hurt the birds and their habitat, depriving AOS's members of their recreational, educational, aesthetic, and professional interests in seeing birds in the wild on the Conecuh National Forest. Harber Decl., ¶12-14.

For all of these reasons, Appellants and their members are adversely affected by BLM's decision and have standing to appeal.

PETITION FOR STAY

Pursuant to 43 C.F.R. § 4.405(b), Appellants hereby petition for a stay of BLM's Decision adopting the EA and FONSI. As explained in detail below, a stay is necessary to prevent irreparable harm to the environment and Appellant's members pending the Board's decision on the merits.

LEGAL STANDARD FOR OBTAINING A STAY

Appellants seeking a stay must demonstrate (i) immediate and irreparable harm – the likelihood of immediate and irreparable harm if the stay is not granted; (ii) balance of harms – whether the harm to the appellant absent a stay exceeds the harm to the United States or other parties from a stay being granted; (iii) likelihood of success – the likelihood of the appellant's success on the merits; and (iv) public interest – whether the public interest favors granting the stay. 43 C.F.R. § 4.405(b)(3)(i)-(iii), “In balancing the likelihood of movant’s success against the potential consequences of a stay on the other parties it has been held that it will ordinarily be enough that the plaintiff has raised questions going to the merits so serious, substantial, difficult and doubtful, as to make them a fair ground for litigation and thus more deliberative investigation.” *Wyo. Outdoor Council Inc.*, 153 IBLA 379, 388 (2000) (internal quotes omitted); *see also Sierra Club et al.*, 108 IBLA 381, 384-85 (1989) (same). Maintaining the status quo during pendency of appeal “can be of considerable importance since the effectiveness of any relief may be compromised if actions objected to are allowed to go forward during the period of adjudication.” *W. Wesley Wallace*, 156 IBLA 277, 278 (2002).

I. Likelihood of Immediate and Irreparable Harm

A stay is warranted here because the Decision threatens immediate and irreparable harm to federal public lands and Appellant’s interests therein. *See generally* Stiles Decl. and Harber Decl. The Supreme Court has acknowledged that “environmental harm, by its nature, is often permanent or irreparable,” and that the “balance of harms usually favors issuance of an injunction to protect the environment.” *Amoco Prod. Co. v. Village of Gambell, Alaska*, 480 U.S. 531, 545 (1987); *see also Save Our Sonoran v. Flowers*, 408 F.3d 1113, 1124 (9th Cir. 2005) (finding irreparable harm

because “once the desert is disturbed, it can never be restored”); *San Luis Valley Ecosystem Council v. FWS*, 657 F. Supp. 2d 1233, 1241 (D. Colo. 2009) (“complete vegetation recovery will take up to 15-20 years; such a long recovery time may constitute irreparable damage”).

Federal courts also recognize that noncompliance with NEPA and other environmental laws in and of itself generally causes irreparable injury, both by threatening permanent environmental harm and by injuring the rights of affected members of the public to participate and be fully informed of the agency’s decision-making process. *See e.g., Village of Gambell, Alaska*, 480 U.S. at 545; *South Fork Band Council of Western Shoshone of Nev. v. U.S. Dep’t of Interior*, 588 F.3d 718, 728 (9th Cir. 2009); *Sierra Club v. Norton*, 207 F. Supp. 2d 1310, 1340 (S.D. Ala. 2002). Courts have repeatedly held that injunctive relief is appropriate for noncompliance with environmental laws, including NEPA violations. *See Las Vegas Paiute Tribe*, 200 IBLA 172, 190-91 (2025); *Fla. Key Deer v. Paulison*, 522 F.3d 1133, 1147 (11th Cir. 2008); *Envtl. Def. Fund v. Marsh*, 651 F.2d 983, 1005 (5th Cir. 1981); *Sierra Club v. Bosworth*, 510 F.3d 1016, 1033-34 (9th Cir. 2007).

As established by the declaration of Mr. Stiles and Mr. Harber, Appellants and their members will suffer immediate, imminent, and irreparable harm to their interests, absent a stay. Relying on the EA and FONSI, the BLM has already published notice of its intention to include more than 2,000 acres of the Conecuh in lease sales in March 2027, which demonstrates that its adoption of those documents has imminent and immediate consequences. *See generally* Stiles Decl., Harber Decl. The parcels that it intends to offer in the proposed lease sales contain fragile and irreplaceable forests, wetlands, and sensitive aquatic habitats that would not be available for leasing or may be available for leasing only with restrictive stipulations if the underlying environmental analyses complied with the law. The Decision to adopt the EA and FONSI puts the

entire forest at risk of oil and gas development and threatens to degrade the habitat of federally-protected species that Appellants and their members enjoys studying and observing, including eastern indigo snakes, red-cockaded woodpeckers, and gopher tortoises. It risks fragmenting the longleaf pine landscapes and pitcher plant bogs where Appellants' members spend their time, and it will introduce more traffic, noise, and artificial light into forest, which will cause immediate and irreparable deprivation of their aesthetic, spiritual, and recreational interests. *See* Stiles Decl. at ¶20, Harber Decl. at ¶14. Additionally, Appellants' members will be deprived of their use of the freshwater creeks, streams, and springs if oil and gas development degrades the water quality or depletes the only available water to sustain life in the area, undoubtedly accelerating the collapse of the sensitive riparian ecosystems on which fish, mussels, and other species on the forest depend. *See* Stiles Decl. at ¶13, Harber Decl. at ¶12.

Furthermore, BLM's violations of the ESA, FLPMA, and NEPA, discussed below, are themselves the source of considerable irreparable harm. Mr. Stiles and Mr. Harber, like other of Appellants' members, expect and depend on the BLM to follow the procedures for environmental review required by federal laws to prevent the degradation of the Conecuh National Forest or the irreversible loss of the species that live there. *See* Stiles Decl. at ¶20, Harber Decl. at ¶14. Further, it is clear from the EA and FONSI that several of the key issues raised by Appellants and other members of the public have not been addressed. *See* **Exhibit D**. Key among these are violations of the environmental review process, including – as explained in more detail below – the failure to formally consult on the effects of the decision on listed species and critical habitat, the failure to reinitiate consultation on newly listed species and newly designated critical habitat, failure to prepare an environmental impact statement (“EIS”), failure to consider a reasonable range of alternatives that would not leave the entire forest open to leasing, the failure to establish

environmental baseline, failure to take the requisite “hard look” at the environmental consequences of its decision, and the failure to prevent unnecessary or undue degradation of public lands.

This appeal represents Appellants’ final opportunity to challenge—and hopefully avert—extensive oil and gas development in the Conecuh National Forest, the environmental consequences of which will be severe and adverse, and the last chance to have those consequences examined on a forest-wide scale. Should the Board deny a stay, the decision will allow the BLM to immediately push forward with lease sales for oil and gas development across the entire forest. BLM is already planning to auction off more than 2,000 acres of the Conecuh for oil and gas development in March 2027. BLM’s decision to adopt the deficient EA and FONSI create an imminent risk that oil and gas development will harm fragile ecosystems and imperiled species on the Conecuh National Forest, that it will degrade air, water, and night sky across the forest, and that it will impede the public’s ability to recreate there – all without the legally-required environmental review. Accordingly, a stay is warranted to prevent imminent, irreparable, and potentially severe environmental harm. *Village of Gambell, Alaska*, 480 U.S. at 545; *Or. Nat. Res. Council v. Goodman*, 505 F.3d 884, 897-99 (9th Cir. 2007).

II. Balance of Harms

The balance of harms favors staying the implementation of BLM’s Decision. In situations involving the preservation of the natural environment, the balance of harms usually favors granting an injunction. *See Village of Gambell, Alaska*, 480 U.S. at 545; *U.S. v. Jenkins*, 714 F. Supp. 2d 1213, 1221–22 (S.D. Ga. 2008) (citing *Village of Gambell*). In addition, the balance of equities tips in favor of an appellant when the agency faces only delay. *See Alliance for the Wild Rockies v. Marten*, 200 F. Supp. 3d 1110, 1112 (D. Montana 2016) (citing *League of Wilderness Defenders v. Connaughton*, 752 F.3d 755, 765 (9th Cir. 2014)).

Here, BLM faces only a delay if a stay is granted. It plans to include acreage of the Conecuh National Forest in lease sales next year, a plan which would *and should* be delayed while the legally required environmental review is completed. By contrast, the harm to Appellants would be severe and effectively permanent. Appellants' interests in utilizing and enjoying federal public lands will irreparably be harmed, as described above. The real environmental harm caused by oil and gas development across fragile wetlands and longleaf pine forests, the long-term degradation of freshwater streams and springs, and the irreversible loss of imperiled wildlife carries more weight than the minor harm that may be caused to BLM from a delay while it completes the environmental analyses that are prerequisites to holding a lease sale – especially where it is BLM's own failure to comply with federal law that necessitates the delay. The balance of harms therefore tips in favor of a stay.

III. Public Interest

Allowing a project to proceed in violation of NEPA and other environmental laws is not in the public interest. *Las Vegas Paiute Tribe*, 200 IBLA 172, 192 (2025). “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.*, 588 F.3d at 728. *See also Goodman*, 505 F.3d at 897-99; *Davis v. Mineta*, 302 F.3d 1104, 1116 (10th Cir. 2002).

The Conecuh National Forest is public land. Members of the public and members of Appellants use the forest for recreation and other purposes that will be impeded by the decision to auction off the forest to private oil and gas companies, especially if BLM does so without any additional environmental assessment or public comment. Because Appellant seeks to compel the BLM to follow federal laws designed to ensure that the agency makes fully informed (if not

environmentally sound) decisions, and because the issuance of a stay would in fact maintain the national forest, its waterways, and the sensitive habitats of federally-protected species, the granting of this stay would serve the public interest. *See State of Alaska v. Andrus*, 580 F.2d 465, 485 (D.C. Cir. 1978) (“[I]n most cases, . . . it is possible and reasonable for the courts to insist on strict compliance with NEPA, and actions can, consistently with the public interest, be enjoined until such compliance is forthcoming.” (citation omitted)); *Greater Yellowstone Coal. v. Bosworth*, 209 F. Supp.2d 156, 163 (D.D.C. 2002) (“Courts have not hesitated to enjoin an agency action that was taken in violation of NEPA.”); *David G. and Jacelyn Holmgren v. BLM*, 175 IBLA 321, 333 n.17 (2008).

IV. Likelihood of Success on the Merits

Appellant is likely to succeed on the merits of its claims because BLM violated the ESA, NEPA, and FLPMA by issuing its decision to adopt the Forest Service’s EA and FONSI.

A. The Decision violates the Endangered Species Act.

Congress enacted the ESA “to halt and reverse the trend toward species extinction, whatever the cost.” *TVA v. Hill*, 437 U.S. 153, 184 (1978). The “heart of the ESA” is its Section 7 consultation requirement, contained within 16 U.S.C. § 1536(a). *W. Watersheds Project v. Kraayenbrink*, 632 F.3d 472, 495 (9th Cir. 2011). Section 7 imposes a substantive duty on each federal agency to “insure that any action . . . is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species.” 16 U.S.C. § 1536(a)(2).

BLM’s Decision violates the consultations requirement of the ESA in two respects. First, BLM did not formally consult with the U.S. Fish and Wildlife Service (“FWS”) regarding the effects to listed species and critical habitat, in order to ensure that the decision will not jeopardize

any of the numerous listed species or result in the destruction or adverse modification of any designated critical habitat within the Conecuh National Forest. 16 U.S.C. § 1536(a)(2); 50 C.F.R. §§ 402.10-16.

Under Section 7, after preparing a Biological Assessment to assess the potential effects of a proposed action on listed species and critical habitat, an agency must *formally consult* with FWS if it determines that the proposed action is likely to adversely affect listed species. 16 U.S.C. § 1536(c)(1); 50 C.F.R. §§ 402.02, 402.12(f), 402.14(a). FWS completes the consultation process by providing a “biological opinion” explaining how the proposed action will affect the listed species or habitat. 16 U.S.C. § 1536(b); 50 C.F.R. § 402.14. When preparing a biological opinion, FWS must use the “the best scientific and commercial data available” and make a jeopardy determination to ensure that the proposed action is not likely to jeopardize protected species or adversely modify designated critical habitat. 16 U.S.C. § 1536(a)(2). A biological opinion must, among other things, suggest a “reasonable and prudent alternatives” to the agency’s actions. 16 U.S.C. § 1536(b)(3).

Here, by relying on the deficient consultation conducted by the Forest Service in connection with its decision, it appears that BLM is instead attempting to proceed with only informal consultation. In connection with the EA and FONSI, the Forest Service prepared a Biological Assessment in January 2026. This Biological Assessment contains one single, generic paragraph about the impacts that leasing 81,300 acres of national forest would have on nineteen threatened and endangered species – ranging from insects to mammals to mussels and fish – that occupy entirely different habitats on the Conecuh, as well as the federally-designated critical habitat of seven species. No individual species impacts are discussed. The Biological Assessment

fails to provide any meaningful analysis of the potential impacts of the decision on the numerous threatened and endangered species found on the Conecuh National Forest.

For example, by adopting the Forest Service's decision without formal consultation, BLM has failed to consider the effects of any of the following activities on federally protected species or habitat: oil and gas exploration and drilling; seismic surveys and fracking; well pad, road, and pipeline construction; increased noise and light pollution; changes to air quality from vehicle traffic or well flaring and venting; changes or reduction in prescribed fire activities; water usage and groundwater drawdown; spills of hydrocarbons or other contaminants; on-site waste storage or disposal; or forest fragmentation.

Even in areas where NSO stipulations or other management prescriptions apply, BLM must still formally consult with FWS to ensure that it has considered the effects from the numerous allowable exceptions to NSO or other lease stipulations, including that lessees may still submit special use permits for roads, pipelines, and other uses on these lands, and that horizontal drilling could still access the areas with NSO stipulations. BLM has also failed to consider or address that there are listed species and critical habitat that falls outside of the NSO stipulation areas, including 27,500 acres of red-cockaded woodpecker habitat management areas.⁷ The only way to ensure that there are no effects to federally listed species on the Conecuh National Forest would be close it to oil and gas leasing; otherwise, formal Section 7 consultation is required. 16 U.S.C. 1536(a).

The single paragraph of analysis within the Biological Assessment relies on existing state and federal protections, standards and guidelines in the 2004 Forest Plan, and the NSO stipulations. This is insufficient for BLM to comply with its Section 7 obligations. *See* 16 U.S.C. § 1536. For

⁷ Final EA, p. A-1. *See also* Center for Biological Diversity Map of Sensitive Habitats and Ecosystems on the Conecuh National Forest:
<https://cbdnet.info/portal/apps/instant/basic/index.html?appid=f85568386aea4d78a595e536240546f0>

example, in its generic reference to “existing State and Federal protections,” the Forest Service fails to disclose or specify what protections it is referring to. Federal protections might include the ESA, but these are only effective when the agency complies with Section 7, which it has not done here.

Relatedly, the second reason that the Decision violates the ESA because of its reliance on the Forest Plan. In the 22 years since the 2004 Forest Plan was issued, nine species have been listed under the ESA that live in the Conecuh National Forest:

Escambia map turtle (2024)	Northern long-eared bat (2022)
Eastern black rail (2020)	Fuzzy pigtoe (2012)
Narrow pigtoe (2012)	Round ebonyshell (2012)
Choctaw bean (2012)	Southern kidneyshell (2012)
Southern sandshell (2012)	

The Forest Service and the U.S. Fish and Wildlife Service has never reinitiated consultation on the 2004 Forest Plan for any of these newly listed species or the related designation of critical habitat, *see* 50 C.F.R. § 402.16(a), so there is no consultation for BLM to adopt or rely on for these species in any existing document. Moreover, neither the 2004 Forest Plan nor its associated EIS contain any discussion of the impacts of fracking and unconventional drilling on species. These practices would be especially detrimental to aquatic species and designated critical habitats, and they have never been addressed in any ESA consultation for the Conecuh National Forest. Such consultation must occur before these activities move forward.

BLM is in violation of the ESA for failing to formally consult with FWS, pursuant to Section 7 of the ESA, regarding any decision for oil and gas leasing on the Conecuh National Forest and for failing to reinitiate consultation on the 2004 Forest Plan despite the listing of nine additional species.

B. The Decision violates the National Environmental Policy Act.

BLM's decision to adopt the Forest Service's EA and FONSI for the Oil and Gas Leasing Availability Analysis is a violation of NEPA. NEPA, 42 U.S.C. § 4331 *et seq.*, "is our basic national charter for protection of the environment." *WildEarth Guardians v. BLM*, 870 F.3d 1222, 1226 (10th Cir. 2017). NEPA recognizes "the profound impact of man's activity on the interrelations of all components of the natural environment" and declares a continuing federal policy "to use all practicable means and measures . . . to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans." 42 U.S.C. § 4331(a). NEPA requires federal agencies to evaluate the "relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity" as well as "any irreversible and irretrievable commitments of resources." 42 U.S.C. §§ 4332(2)(C)(iv), (v).

"Section 101 of NEPA declares a broad national commitment to protecting and promoting environmental quality." *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 348 (1989) (citing 83 Stat. 852, 42 U.S.C. § 4331). "The sweeping policy goals announced in § 101 of NEPA are . . . realized through a set of 'action-forcing' procedures that require that agencies take a 'hard look' at environmental consequences." *Id.* at 350 (citing *Kleppe v. Sierra Club*, 427 U.S. 390, 410 n.21 (1976)).

NEPA serves a dual purpose: to inform decision making, and to disclose information to the public about how a federal action will affect the environment and public health. *See, e.g., Marsh v. Or. Nat. Res. Council*, 490 U.S. 360, 371 (1989) ("NEPA ensures that the agency will not act on incomplete information, only to regret its decision after it is too late to correct."). Thus, NEPA requires that the BLM take a "hard look" at the direct, indirect, and cumulative impacts of a

proposed action, which entails a “thoughtful and probing reflection of the possible impacts associated with the proposed project.” *Silverton Snowmobile Club v. U.S. Forest Serv.*, 433 F.3d 772, 781 (10th Cir. 2006) (quoting *Comm. to Preserve Boomer Lake Park v. Dep’t of Transp.*, 4 F.3d 1543, 1553 (10th Cir. 1993)). NEPA “ensures that the agency, in reaching its decision, will have available, and will carefully consider, detailed information concerning significant environmental impacts.” *Robertson*, 490 U.S. at 349; *see also Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council*, 435 U.S. 519, 553 (1978) (“NEPA places upon an agency the obligation to consider every significant aspect of the environmental impact of a proposed action”). “These procedural provisions of NEPA ‘are designed to see that all federal agencies do in fact exercise the substantive discretion given them. These provisions are not highly flexible. Indeed, they establish a strict standard of compliance.’” *Sierra Club v. Watkins*, 808 F. Supp. 852, 859 (D.D.C. 1991) (quoting *Calvert Cliffs’ Coordinating Comm., Inc. v. United States Atomic Energy Comm’n*, 449 F.2d 1109, 1112 (D.C. Cir. 1971)).

For the reasons set forth below, the EA and resulting FONSI fail to comply with NEPA. BLM’s decision to rely on them is arbitrary and capricious, and it should be vacated.

i. BLM should have prepared an EIS for the Decision.

NEPA’s main “action-forcing” procedure comes in the form an environmental impact statement (“EIS”), a detailed statement on environmental impacts that must be prepared before an agency undertakes any “major Federal action[] significantly affecting the quality of the human environment.” 42 U.S.C. § 4332(2)(C). An EIS must include, among other things, a detailed description of the purpose and need for the proposed action, alternatives to the proposed action, the affected environment, and the environmental impacts of the proposed action, including any unavoidable adverse environmental effects. *See id.*

Here, the environment that would be potentially affected by the proposed action demonstrates its significance. For example, the Conecuh National Forest is locally important due to the presence of sensitive ecosystems, including federally designated critical habitat for endangered species. It contains regionally significant longleaf pine forests and watersheds. The forest is also significant for outdoor recreation and its scenic value, with local economies supported by both of these functions. On a statewide scale, it supports a disproportionately high percentage of Alabama's fish and mussels. It has significant national and global importance for biodiversity, particularly of fish, turtles, mollusks, and crayfish.

Several factors of degree also underscore the need for an EIS. For example, the proposed oil and gas drilling presents substantial public health and safety risks, including risks to water quality and quantity, air quality, dark skies, and the climate. The forest faces unknown and uncertain threats not only due to the BLM's failure to evaluate the effects of modern mineral development, but also because the EA discusses only the projected impacts from 11 wells when 96% of the forest would remain open to leasing. NEPA prohibits agencies from artificially segmenting or minimizing impacts to avoid triggering a finding of significance. Instead, agencies must comprehensively consider direct, indirect, cumulative, and connected actions to accurately disclose the full environmental consequences to the public.

NEPA also requires the BLM to consider whether the proposal complies with other environmental laws, including the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, Clean Air Act, 42 U.S.C. § 7401 *et seq.*, National Forest Management Act, 16 U.S.C. § 1600 *et seq.*, as well as Section 7 of the ESA, 16 U.S.C. § 1536. If BLM proposes new oil and gas leasing on the Conecuh National Forest, it must evaluate the full impact of that proposal in an EIS that is appropriate for a decision that authorizes large-scale, decades-long environmental destruction.

ii. BLM relies on an outdated analysis from the 2004 EIS.

When an agency has prepared a programmatic EIS, it may only rely on the analysis in that EIS in a subsequent NEPA analysis after five years have passed if the agency “reevaluates the analysis in the programmatic EIS and any underlying assumptions to ensure reliance on the analysis remains valid.” 42 U.S.C. § 4336b(2). The Forest Service prepared a programmatic EIS when it developed the Forest Plan that governs the Conecuh National Forest in 2004. It has now been 22 years since that EIS was prepared. The EA for the Oil and Gas Leasing Availability Analysis relied extensively on the 2004 EIS to evaluate the impacts of oil and gas on the forest;⁸ however, the Forest Service failed to reevaluate its analysis in the 2004 EIS, and the underlying assumptions therein, to ensure that the agency’s continued reliance on that EIS remained valid. When BLM adopted the Decision, which was dependent on the outdated analysis, it too violated NEPA. 42 U.S.C. § 4336b(2).

iii. The EA does not consider a reasonable range of alternatives.

NEPA requires agencies to consider a “reasonable range of alternatives to the proposed agency action ... that are technically and economically feasible, and meet the purpose and need of the proposal.” 42 U.S.C. § 4332(2)(C)(iii).

The EA offered only two true alternatives: open leasing across the forest or allow no new leases across the forest. This “all or nothing” approach did not cover the “full spectrum of alternatives” required for a NEPA analysis. 42 U.S.C. § 4332(2)(H) (requiring development of appropriate alternatives in any proposal involving unresolved conflicts concerning alternative uses of available resources).

⁸ EA, pp. 29, 39, 41, 63, 65, 85, 89, 90, 94, 95, 97.

The formulation of Alternative D, which the Forest Service and now BLM has ultimately adopted in the Decision, did not cure the deficiency. Alternative D still allows for open leasing across the forest – it does not close any areas to oil and gas leasing. Even though it designates some acreage as No Surface Occupancy stipulations, all acreage is still open to oil and gas leasing and at risk of suffering environmental harm if oil and gas development occurs there. Moreover, “NSO stipulations do not prohibit the lessee from submitting special-use permit applications for roads, pipelines, or other uses.”⁹ Additionally, each of the NSO stipulations is subject to exception, modification, and waiver.¹⁰ Because the EA and FONSI failed to analyze viable alternatives that strike a balance between open leasing and no new leasing, the agency is in violation of NEPA. *Dubois v. U.S. Dep’t of Agric.*, 102 F.3d 1273, 1289 (1st Cir. 1996) (holding failure to consider a viable but unexamined alternative renders a NEPA analysis inadequate).

iv. The EA fails to adequately describe the Environmental Baseline.

Establishing appropriate baseline conditions is critical to any NEPA analysis. *Great Basin Res. Watch v. BLM*, 844 F.3d 1095, 1101 (9th Cir. 2016). “Without establishing the baseline conditions . . . before a project begins, there is simply no way to determine what effect the project will have on the environment and, consequently, no way to comply with NEPA.” *Bureau of Land Mgmt. v. W. Watersheds Project*, 191 IBLA 144, 225 (2013) (quoting *Half Moon Bay Fishermans’ Mktg. Ass’n v. Carlucci*, 857 F.2d 505, 510 (9th Cir. 1988)); see also *Or. Natural Desert Ass’n v. Jewell*, 840 F.3d 562, 568 (9th Cir. 2016).

The EA is deeply deficient in disclosing baseline data for wildlife, including locations of habitats for species of concern, population levels and trends, and other factors which may accurately describe the baseline conditions for the affected environment. Surveys of federally-

⁹ EA, p. 7.

¹⁰ FONSI, Appendix A, pp. A-2 to A-5, A-8 to A-9.

protected mussels, for example, would be critical to an understanding of whether oil and gas affected freshwater resources on the forest, because they are indicators of water quality. Stream flows have never been quantified to establish whether oil and gas-related activities like fracking would substantially degrade or deplete freshwater resources on the forest, and there is insufficient baseline data that would provide the requisite hard look for examining how such withdrawals could affect aquatic species or other forest resources. The most sensitive ecosystems on the Conecuh National Forest, such as pitcher plant bogs, ephemeral ponds, wetlands, and old growth forest is neither mapped nor inventoried, despite a requirement in the forest plan requiring that before leasing moves forward.¹¹

At a minimum, baseline data on wildlife populations and trends as well as the locations of all riparian corridors, rare communities (like wetlands, ephemeral ponds and old growth stands), springs, headwaters, and aquifers is needed in order to properly analyze the impacts (direct, indirect, and cumulative) of the decision. Moreover, the EA fails to adequately establish a baseline throughout the entire forest even though it applies to every acre of the forest, and it improperly depends on future lease-specific action to evaluate environmental conditions, which will provide only an incomplete and piecemeal look at baseline conditions – if it occurs at all. The EA’s environmental baseline analysis is inadequate under NEPA.

v. The BLM failed to take the required “hard look” at the environmental consequences of its Decision.

The BLM failed to analyze and take a hard look at impacts on various resources throughout the Conecuh National Forest, which includes 81,3000 acres of the forest that are open to oil and gas leasing, as well as the resulting impacts on rare communities, old growth, federally listed

¹¹ FONSI, Appendix A, p. A-2.

species, prescribed fire, air quality, water quality and water quantity. Overlooking these impacts throughout the forest is arbitrary and capricious and a violation of NEPA.

C. BLM Violated the Federal Land Policy and Management Act

FLPMA is BLM's "organic act" and governs its management of public lands and resources. FLPMA declares that it is the policy of the United States to manage the public lands "in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values" and that, "where appropriate, will preserve and protect certain public lands in their natural condition." 43 U.S.C. §1701(a)(8).

As part of that mandate, FLPMA requires that: "[i]n managing the public lands [BLM] shall, by regulation or otherwise, take any action necessary to prevent unnecessary or undue degradation [UUD] of the lands." 43 U.S.C. §1732(b). The duty to "prevent UUD" is "the heart of FLPMA," *Mineral Policy Ctr. v. Norton*, 292 F. Supp. 2d 30, 33 (D.D.C. 2003), and "supplements requirements imposed by other federal laws and state law." *Center for Biological Diversity v. U.S. Department of the Interior*, 623 F.3d 633, 644 (9th Cir. 2010). Written in the disjunctive, BLM must prevent degradation that is "unnecessary" and degradation that is "undue." *Mineral Policy Ctr.*, 292 F.Supp.2d at 41-43.

Failure to conduct a proper NEPA analysis violates not only NEPA, but FLPMA's mandate to prevent UUD, which is a fundamental requirement of BLM's review of proposed projects on public lands. As the Board has held:

Like NEPA, the [UUD] definition requires BLM to consider the nature and extent of surface disturbances resulting from a proposed operation and environmental impacts on resources and lands outside the area of operations. *Kendall's Concerned Area Residents*, 129 IBLA 130, 140-41 (1994); *Nez Perce Tribal Executive Committee*, 120 IBLA 34, 36 (1991); see *Sierra Club v. Hodel*, 848 F.2d 1068, 1078, 1091 (10th Cir.1988) (nondegradation duty is mandatory). . . . [M]ost disturbed land at the mine sites is public land and other public land is adjacent to them. **To the extent BLM failed to meet its obligations under NEPA, it also**

failed to protect public lands from unnecessary or undue degradation.

Island Mountain Protectors, 144 IBLA 168, 202, 1998 WL 344223, * 28 (Interior Board of Land Appeals, IBLA) (internal citations omitted, emphasis added).

FLPMA also directs BLM to “develop, maintain, and, when appropriate, revise land use plans” which govern use of the public lands. 43 U.S.C. § 1712(a). The plans that BLM develops under this provision are called Resource Management Plans (RMPs). *See Or. Nat. Desert Ass’n v. BLM*, 625 F.3d 1092, 1096 (9th Cir. 2010). Once an RMP is in place, BLM must ensure that all site-specific actions conform to the RMP. 43 U.S.C. § 1732(a).

Finally, FLPMA Section 309(e) provides that the public must be allowed meaningful participation in public lands management decisions. 43 U.S.C. § 1739(e). It requires that: “In exercising his authorities under this Act, the Secretary [of the Interior] shall establish procedures, including public hearings where appropriate, to give the Federal, State, and local governments and the public adequate notice and an opportunity to comment upon the formulation of standards and criteria for, and to participate in, the preparation and execution of plans and programs for, and the management of, the public lands.” *Id.* (emphasis added). FLPMA Section 103(d) defines “public involvement” as “the opportunity for participation by affected citizens in rule making, decision making, and planning with respect to the public lands, including public meetings or hearings held at locations near the affected lands, or advisory mechanisms, or such other procedures as may be necessary to provide public comment in a particular instance.” 43 U.S.C. § 1702(d).

The FLPMA mandate to involve the public in all public lands management decisions applies not just to the development of plans and programs, but also to the “actual management of public lands.” *Donald K. Majors*, 123 IBLA 142, 147 (1992). “There are strong indications that Congress intended some form of public input for all decisions that may have significant impact on

federal lands.” *Nat’l Wildlife Fed’n v. Burford*, 835 F.2d 305, 322 (1987) (citing H.R. Rep. No. 1163, 94th Cong., 2d Sess. 7 (1976), U.S. Code Cong. & Ad. News 1976, p. 6181), *rev’d on other grounds*, 497 U.S. 871 (1990); *see also W. Watersheds Project v. Kraayenbrink*, 538 F. Supp. 2d 1302, 1316 (D. Idaho 2008) (“Congress, in FLPMA, did not give the BLM any discretion to cut the public out of these management and execution issues. Yet BLM seeks to grant itself that forbidden discretion in its regulatory revisions. Accordingly . . . WWP has met its ‘heavy’ burden of proving that those revisions limiting public input constitute a facial violation of FLPMA.”).

ii. BLM has failed to prevent UUD.

As explained, FLPMA requires that: “[i]n managing the public lands [BLM] shall, by regulation or otherwise, take any action necessary to prevent unnecessary or undue degradation [UUD] of the lands.” 43 U.S.C. §1732(b). BLM acknowledges in the Decision Record that the action must comply with FLPMA, but the Decision Record entirely fails to explain how or whether the BLM will prevent unnecessary or undue degradation of the affected lands from oil and gas leasing and development, in violation of FLPMA. *Id.*

iii. BLM Failed to Show Compliance with the Alabama RMPs.

BLM must ensure that all site-specific actions conform to the applicable RMP. 43 U.S.C. § 1732(a). BLM completed an RMP for Alabama in 2009. The BLM states that the action is in conformance with the Alabama RMP but only cites to one provision in the plan. BLM fails to explain how the action will comply with the many requirements and mitigation measures in the RMP, including for fish and wildlife, special status species, water resources, and aquatic habitats. Without explaining how the action will comply with all provisions of the RMP, the BLM has violated FLPMA. 43 U.S.C. § 1732(a).

V. Conclusion

In light of the foregoing substantive and procedural violations of federal law, Appellants respectfully request that the IBLA grant a stay of the of the Bureau of Land Management (“BLM”) Eastern States’ Decision Record adopting the United States Forest Service’s Environmental Assessment (“EA”) and Finding of No Significant Impact (“FONSI”) for the Conecuh National Forest Oil and Gas Leasing Availability Analysis, DOI-SLM-Eastern States-J000-2026-0009-EA pending this Appeal.

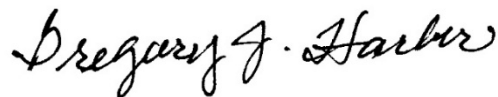
Respectfully submitted this 22nd day of July, 2026.



Marc Fink, Senior Attorney
Center for Biological Diversity
209 East 7th St.
Duluth, Minnesota 55805
Tel: 218-464-0539
mfink@biologicaldiversity.org



Lindsay E. Reeves, Senior Attorney
Center for Biological Diversity
3436 Magazine Street, FRNT PMB 539
New Orleans, Louisiana 70115
Tel. (504) 342-4337
lreeves@biologicaldiversity.org



Gregory J. Harber
Alabama Ornithological Society
88838 Tallassee Highway
Tallassee, AL 36078
(205) 807-8055
gharber@mindspring.com

APPELLANTS' ADDRESS AND
CONSENT TO ELECTRONIC SERVICE

Pursuant to 43 C.F.R. § 4.407(b), Appellants and their counsel provide the following physical and electronic addresses that they intend to use for service in this appeal. Pursuant to 43 C.F.R. § 4.407(b)(6), Appellants hereby consent to electronic service:

Marc Fink, Senior Attorney
Center for Biological Diversity
209 East 7th St.
Duluth, Minnesota 55805
mfink@biologicaldiversity.org

Lindsay E. Reeves, Senior Attorney
Center for Biological Diversity
3436 Magazine Street, FRNT PMB 539
New Orleans, Louisiana 70115
Tel. (504) 342-4337
lreeves@biologicaldiversity.org

Gregory J. Harber
Alabama Ornithological Society
88838 Tallassee Highway
Tallassee, AL 36078
gharber@mindspring.com

CERTIFICATE OF SERVICE

In accordance with 43 C.F.R. §§ 4.407(b), and the Office of Hearings and Appeals' Standing Order on Electronic Transmission, I hereby certify that on June 22, 2026, I served a true and correct copy of the foregoing **NOTICE OF APPEAL AND PETITION FOR STAY** upon the following:

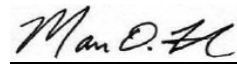
Via Bison File & Serve

Interior Board of Land Appeals
Office of Hearings and Appeals
U.S. Department of the Interior
801 N Quincy St., Suite 300
Arlington, VA 22203
Email: ibla@oha.doi.gov

Mitchell Leverette
Eastern States Director
Bureau of Land Management
5275 Leesburg Pike
Falls Church, VA 22041
Email: blm_es_inquiries@blm.gov

Annette Tarnawsky, Field Solicitor
U.S. Department of the Interior
Office of the Solicitor, Southeast Region
Knoxville Field Office
800 Gay Street, Ste. 1405
Knoxville, TN 37929
annette.tarnawsky@sol.doi.gov

U.S. Department of the Interior
Bureau of Land Management
Eastern States
5275 Leesburg Pike
Falls Church, VA 22041
Email: blm_es_inquiries@blm.gov



Marc Fink, Senior Attorney
Center for Biological Diversity