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July 27, 2011  
VIA HAND DELIVERY

Tom Corbett, Governor  
Commonwealth of Pennsylvania  
225 Main Capitol Building  
Harrisburg, Pennsylvania, 17120

Dear Governor Corbett:

I am writing on behalf of the Pennsylvania Environmental Defense Foundation (PEDF) in response to the Governor's Marcellus Shale Advisory Commission Report of July 22, 2011.

PEDF is providing comments on two issues:

- (1) The Commission's Recommendations on further leasing of State-owned land; and
- (2) The need to maintain the integrity of the Oil and Gas Lease Fund to protect and preserve the peoples' constitutional rights to the lands currently under lease.

#### **FURTHER LEASING OF STATE LANDS**

On February 22, 2011, PEDF sent notice to you that further leasing of State land managed by DCNR would be in violation of Article I Section 27 of Pennsylvania's Constitution. PEDF cited Section 302 of the Conservation and Natural Resources Act, as well as Executive Order No. 2010-05, The Governor's

Moratorium on Leasing of State Park and State Forest Land, as authority for its belief.

In reviewing the Commission's Report, PEDF is gratified that the Commission clearly understands the gravity of the potential threat that the current leasing program has on the constitutionally protected uses of State lands currently under lease. The discussion of Land Issues in the Environmental Impact Mitigation section of the Work Group Summaries (Paragraph 8.1.2 of the Report) provides a good overview of the problems associated with the land disturbance activities of the Marcellus Shale development and extraction process. Under Land Issues, the Commission acknowledges that Marcellus Shale development will result in fragmentation of some of our most intact forests. The Commission further recognizes that this development threatens sensitive areas needed to protect some of our globally rare and Pennsylvania threatened species; and impacts lands that provide wildlife food and cover, that prevent erosion and sedimentation, and that provide recreation.

The Commission then identifies critical steps to deal with these impacts: monitor the development of the extraction process to assess potential impacts; employ best management practices (BMPs) to try to avoid the impacts; minimize the unavoidable impacts;; and mitigate the unavoidable impacts.

The Commission's Land Issues summary explicitly recognizes the need for more intensive surveys for globally rare and state critically endangered species in high potential Marcellus development areas *before development begins* (emphasis added).

Finally, the Commission Summary on Land Issues, (No. 8.1.2), concludes with recognition of the need to avoid "*the cumulative impact on the Commonwealth's landscape*" especially as additional shale development is explored and developed.

Many of the Commission's Recommendations respond to the above findings in the Land Issues Summaries.

In Recommendation No. 9.2.23, the Commission proposes that the Department of Environmental Protection (DEP) and the Department of Conservation and Natural Resources (DCNR) work with the industry to continually review and examine the range of best management practices (BMPs) that can be utilized in the construction and operation of the well sites. This Recommendation suggests that the current BMP practices already used by DCNR in its leasing requirements should be applied to all leases.

In Recommendation No. 9.2.26, the Commission proposes that key agencies—DEP, DCNR, the Pennsylvania Game Commission (PGC) and the Pennsylvania Fish and Boat Commission (PFBC)—work together to identify and make accessible to the public relevant information on areas of high ecological value, high conservation value forests, concentrations of biological diversity, sensitive aquatic communities, etc. (The PEDF objects, however, to the Commission's allowance under this Recommendation for these areas to be disturbed by gas extraction activities.)

In Recommendation No. 9.2.28, the Commission proposes strengthening the effectiveness of the permit review process in protecting rare, threatened and endangered species by considering the following options: increasing staff capacity and program resources, enhancing quality and presentation of data on wildlife and critical habitats, identifying appropriate opportunities to improve and manage access to such data, upgrading computer systems, providing additional technical and planning assistance, increasing acquisition of current field data, and other options as identified.

In Recommendation No. 9.2.31, the Commission proposes that DCNR's expertise be recognized and utilized to advise other Commonwealth agencies which host natural gas development on their lands.

In Recommendation No. 9.2.32, the Commission proposes that DCNR monitor and document the effects, both positive and negative, of natural gas development on plants and forests, wildlife, habitat, water, soil and recreational resources.

In Recommendation No. 9.2.33, the Commission proposes that Commonwealth agencies work together to promote and establish regular communication with local communities, operators and conservation groups.

In Recommendation No. 9.2.34, the Commission proposes that DCNR establish a Natural Gas Advisory Committee to enhance communications among stakeholders regarding natural gas development on state forest and park land.

The Commission Report Recommendation No. 9.2.36 specifically addresses PEDF's concern for the impacts on further leasing of State lands by recommending that:

“Any future leasing of state forest land should be limited to agreements which result in no or minimal surface impact to Commonwealth owned land, and prohibits surface disturbance in high conservation value forest and other ecologically important areas.”

This recommendation goes a long way toward meeting PEDF's concerns. Of course, a lot will ride on how the key terms are changed and defined. For instance, what is meant by the term “minimal surface impact?”

The Commission Report summary findings and recommendations highlighted above, will, when implemented, go a long way toward protecting and conserving our State lands and the people's constitutional rights to the use of those lands. But to do so will cost a great deal of money. That fact leads to our second

major response to the Commission's Report: the need to protect the integrity of the Oil and Gas Lease Fund as the source to help pay for the implementation of the findings and recommendations.

**MAINTAINING THE INTEGRITY OF THE OIL AND GAS LEASE FUND TO PROTECT THE RIGHTS OF THE PEOPLE OF THE COMMONWEALTH TO THE STATE LANDS THAT ARE NEGATIVELY IMPACTED BY GAS EXTRACTION LEASES**

This is to notify you that it is the intent of PEDF to take whatever actions are necessary to protect and maintain the integrity of the Oil and Gas Lease Fund and insure its proper use to protect the State-owned lands held in trust for the people of Pennsylvania.

As a result of leasing the mineral rights on State lands there are numerous impacts, both immediate and long term, that affect the peoples' rights as stated in Article I Section 27 of Pennsylvania's Constitution, which states as follows:

The people have a right to clean air, pure water, and to the preservation of the natural scenic, historic and esthetic values of the environment. Pennsylvania's public natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people.

The impacts on the surface uses of Pennsylvania's State Parks and State Forests—public natural resources that are the common property of all the people—have been fairly well documented in the Governor's Marcellus Shale Advisory Commission Report, dated July 22, 2011. Those impacts directly affect the people's rights to the preservation of the natural, scenic, historic and esthetic values of the environment, and their right to have these public natural resources conserved and maintained for their benefit.

Specifically, the people have lost or will lose access to those State lands that are impacted by the gas development. They will not be able to hike or hunt on the well pads, the waste and water storage ponds, the compression stations, the access roads, etc. The use of hiking trails, hunting grounds, bird watching areas, and scenic vistas, and the esthetic enjoyment of unimpacted forests, will be hindered and in some cases, lost. The existence of rare and endangered species will also be threatened and in some cases, lost.

To protect the peoples' rights, such as those cited above, DCNR has immediate and long term funding needs, including the need for funds to do the following:

- a. To purchase additional lands to mitigate for those lost by the gas extraction activities. These additional lands are required to buffer the impact of the gas extraction process, to provide sufficient replacement of wildlife habitat affected by the gas extraction process, and to mitigate for the loss or disruption of hiking trails, hunting grounds and wild and scenic areas that are and will be impacted by the gas extraction operations.
- b. The need to increase staff capacity to monitor, analyze, and evaluate, through frequent inspections, and through employing existing and evolving new tests and study procedures, the document the impacts, both positive and negative, on the state lands from the gas extraction process, including the effects of fragmentation, loss of wildlife cover, impacts to forest interior species, the effects of creating new forest edges, the risk of predation, the expansion of invasive species, and increased erosion and sedimentation, first to avoid and minimize such impacts and, secondly, to mitigate them and develop the means to restore and maintain those lands.

- c. The need for intensive surveys for globally rare and state critically endangered species in high potential Marcellus development areas.
- d. The need to increase staff capacity and program resources, enhancing quality and presentation of data on wildlife and critical habitats, identifying appropriate opportunities to improve and manage access to such data, upgrading computer systems, providing additional technical and planning assistance, increasing acquisition of current field data, and other options as identified.
- e. The need to jointly identify and make accessible for public review areas of high ecological value, concentrations of biological diversity, sensitive aquatic communities, etc.
- f. The need to establish a Natural Gas Advisory Committee.
- g. To study and evaluate the cumulative impact of the gas extraction activities on a macro level, and to develop means to eliminate, alleviate and mitigate those impacts.

These needs will possibly cost hundreds of millions of dollars over the life of the gas extraction process.

In addition, our State parks and other State natural, wild and scenic areas are facing a potentially lethal challenge to their existence from the shale extraction process where the Commonwealth does not own the mineral rights within those parks. As a result of the State Supreme Court decision in *Belden & Blake Corp. v. DCNR*, 600 Pa. 559, 969 A. 2d 528, (April 29, 2009), the Commonwealth does not have the authority to protect the integrity of those parks through protective agreements with the mineral rights owners.

DCNR must be able to purchase the mineral rights beneath those parks and other natural, wild and scenic lands to protect and conserve them where developers

of private leasing operations will not cooperate. The cost to do so will be hundreds of millions of dollars.

The leasing of oil and gas on State lands is not meant to replace and destroy the use of those lands by the People of the Commonwealth. Article I Section 27 of the Constitution guarantees that these lands be conserved and maintained. The Oil and Gas Lease Fund is the legislatively created mechanism to insure that the leasing activities will pay for the loss, replacement and restoration of those leased lands.

The Oil and Gas Lease Fund was legislatively enacted to receive all the rents and royalties from leasing mineral rights on state lands, other than PGC and PFBC lands, for oil and gas exploration (Act of Dec. 15, 1955, P.L. 865, No. 256; 71 P.S. §§ 1331, *et seq.*). The exclusive purpose of the Fund is for conservation, recreation, dams and flood control in the Commonwealth. (See Section 1 of the Oil and Gas Lease Fund.)

Through the sale of natural gas leases on State lands managed by DCNR, the Oil and Gas Lease Fund received four hundred and thirteen million dollars, (\$413 million) from 2008 through 2010. During that same time period, the prior administration under then-Governor Rendell, with the cooperation of the State Legislature, transferred three hundred eighty three million dollars (\$383 million) to help pay down large deficits in the State General Budget. In budget Year 2008-9, the Governor transferred one hundred forty three million dollars (\$143 million) from the Oil and Gas Lease fund to the General Fund. In 2009-10, Governor Rendell transferred sixty million dollars (\$60 million); and in 2010-11, Governor Rendell transferred one hundred eighty million dollars (\$180 million), again to pay down the general deficit.

It is the belief of the Pennsylvania Environmental Defense Foundation that using the Oil and Gas Lease Fund to pay down the Commonwealth's budget

deficits is not authorized by the Oil and Gas Lease Fund Act. Further, it is in violation of Article I, Section 27 of Pennsylvania's Constitution, and the Conservation and Natural Resources Act, 71 P.S. §§ 1340.101 *et seq.*

Under Article I, Section 27 of the Pennsylvania Constitution, you, as Governor, are the trustee for the State-owned lands, which are the corpus of the trust created by the Constitution for the benefit of all the people, now and for generations to come. You have the fiduciary duty to conserve and maintain that trust and to preserve the natural, scenic, historic and esthetic values of the State-owned lands held in trust.

It is our hope that your administration is in full agreement with the need to maintain the integrity of the Oil and Gas Lease Fund to insure that DCNR has sufficient funds to purchase additional lands to replace the lands lost by the current and future development of gas extraction on State lands, to have the people and the technology to inspect and evaluate the impacts of the gas extraction process on State lands, and to restore and conserve the natural, wild and scenic nature of those State lands, in order to protect the Constitutional rights of the people of Pennsylvania.

The Pennsylvania Environmental Defense Foundation welcomes the opportunity to meet to discuss these comments. The Foundation can be reached through Ron Evans, President, 818 Spring Creek Road, Bellefonte, Pennsylvania, 16823, Phone 717-579-2263, as well as myself.

Respectfully,

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